The cover features a dark green vertical bar on the left with a downward-pointing arrow. On the right, a dark green vertical bar with an upward-pointing arrow is partially visible. The background is a light green grid with various currency symbols (₪, \$, £, ¥, Bitcoin, €, ₹, 元) and a central icon of a person with a star and dollar signs.

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

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Final Report

June 2022

The Honourable Austin F. Cullen  
Commissioner

# Commission of Inquiry into Money Laundering in British Columbia

Austin F. Cullen, Commissioner

PO Box 10073, 601 – 700 West Georgia Street, Vancouver, BC V7Y 1B6

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June 3, 2022

The Honourable David Eby, QC, MLA  
Attorney General and Minister Responsible for Housing  
PO Box 9044  
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Victoria, BC V8W 9E2

AND TO:

The Honourable Selina Robinson  
Minister of Finance  
PO Box 9048  
Stn Prov Govt  
Victoria, BC V8W 9E2

The Honourable Mike Farnworth  
Minister of Public Safety and  
Solicitor General and Deputy Premier  
PO Box 9010  
Stn Prov Govt  
Victoria BC V8W 9E2

Dear Mr. Attorney and Ministers:

## **Re: Final Report**

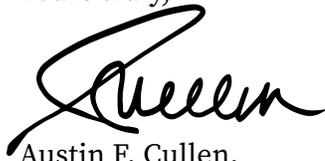
I am pleased to deliver to you the Final Report of the Public Inquiry into Money Laundering in British Columbia, pursuant to section 4(2)(c)(ii) of the Terms of Reference, established by Order in Council 2019-238.

This Report sets out my findings and recommendations resulting from an extensive review of the evidence I heard from nearly 200 witnesses and the 1,063 exhibits filed during 130 days of hearings into the matters set out in paragraphs 4(1) and (2) of the Terms of Reference.

I trust that my Report will contribute to an understanding of the nature and extent of money laundering in British Columbia and that my recommendations will help to abate this pernicious problem.

I consider it a privilege and an honour to have served as Commissioner.

Yours truly,



Austin F. Cullen,  
Commissioner

AFC/mw  
Enclosure

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

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**Final Report**

June 2022

The Honourable Austin F. Cullen  
Commissioner

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16. Austin F. Cullen.

## Acknowledgements

When this Commission of Inquiry was established on May 15, 2019, I recognized that I would need a first-class team to meet the challenges of inquiring into, understanding, and explaining as complex, wide-ranging, and elusive a subject as money laundering in British Columbia's economic and social life.

I was extremely fortunate to be able to retain Brock Martland, QC, and Patrick McGowan, QC, as senior Commission counsel. The involvement of Mr. Martland and Mr. McGowan in all aspects of the Commission's work from its inception until its conclusion has been extraordinary.

On the administrative side of the Commission, I was able to persuade Dr. Leo Perra and Ms. Cathy Stooshnov to serve as executive director and as manager of administrative and financial services, respectively. Their performance of their duties was exemplary and very helpful to the Commission in achieving its objectives, while remaining within budget.

The team of lawyers assembled to unearth, prepare, and present the evidence during the Commission's hearings was of the very highest quality. In addition to Mr. McGowan and Mr. Martland, the legal team included Alison Latimer, QC, Nicholas Isaac, Eileen Patel, Kyle McCleery, Kelsey Rose, Steven Davis, and Charlotte Chamberlain.

Two excellent lawyers were retained to serve as policy counsel, Tam Boyar as senior policy counsel and Dahlia Shuhaibar as junior policy counsel. Both Mr. Boyar and Ms. Shuhaibar worked tirelessly to consider, assess, and analyze the evidence to identify potential recommendations on crucial policy and practice issues. Their careful assessments and analytical skills are woven into the fabric of both the Interim and the Final Reports.

In addition, the Commission was aided by very helpful advice from Professor Gerry Ferguson, whose expertise was gained from many years of teaching and writing about corruption and money laundering.

I also had the great benefit of wisdom and experience from Keith Hamilton, QC, who was retained as a consultant to give invaluable advice and guidance to the legal team. There is likely no lawyer in British Columbia with more experience working with commissions of inquiry than Mr. Hamilton. He brought a wealth of experience to the Commission.

I was very fortunate to be able to rely on Doug Kiloh and Don Panchuk, two former police officers whose investigative skills were of great assistance to the Commission. I also benefitted greatly from the analytical efforts of Adam Ross in understanding and communicating aspects of money laundering activities.

The Commission was able to rely on a strong team of administrative staff to perform essential tasks. Linda Peter and subsequently Mary Williams provided invaluable

support as my administrative assistants. Ms. Peter and Ms. Williams also fulfilled other important administrative roles at the Commission.

Phoenix Leung was seconded from the Court Services Branch, where she worked as a Clerk of the Supreme Court. She played an important role as registrar for the Commission by managing the electronic hearings, swearing in or affirming witnesses, and marking and keeping track of the many exhibits filed at the hearings.

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Scott Kingdon brought his experience and expertise in web design and management to the Commission. Mr. Kingdon was responsible for creating and maintaining the Commission's website, which was critical for the public's access to and understanding of the Commission's work.

Christine Rowlands brought great skill and ability to her role as an editor and proofreader, as did Christine Joseph as report and research counsel.

Tom Norman of Kapow Creative provided excellent service in designing and publishing the report.

I would also like to acknowledge the work done by Ruth Atherley and her team at AHA Creative Strategies Inc., who engaged with the media and the public to keep them abreast of the significant developments in the hearings and the work of the Commission. Ms. Atherley and her team, Paul Holman, Roxanne Snopek, and Laurie Hanley, also helped to edit the Final Report.

Finally, I am grateful to Madam Justice France Charbonneau, the Honourable Dennis O'Connor, and the Honourable Bruce Cohen for their sage advice based on their experience as commissioners in very challenging commissions of inquiry.

As is apparent, it took many people to bring this Commission of Inquiry to a successful conclusion. I am grateful to all of them for their hard work and dedication.

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## Executive Summary

This Commission was established in the wake of significant public concern about money laundering in British Columbia. The public was rightfully disturbed by the prospect of criminals laundering their cash and parking their illicit proceeds in this province. I was given a broad mandate to inquire into and report on money laundering in British Columbia, including:

- the extent, growth, evolution, and methods of money laundering in various sectors of the economy;
- the acts or omissions of responsible regulatory agencies and individuals that contributed to money laundering in the province;
- the effectiveness of the anti-money laundering efforts by these agencies and individuals; and
- barriers to effective law enforcement.

I was also tasked with recommending measures to address the conditions that have allowed money laundering to thrive.

The Commission embarked on a process of extensive study and investigation culminating in the Commission's public hearings, where I heard testimony from 199 witnesses over 133 hearing days and received over 1,000 exhibits. In this Report, I review the evidence I received, make findings of fact, and set out key recommendations to assist the Province and others in addressing the serious money laundering problem facing British Columbia.

In this executive summary, I highlight some of the key themes that emerged during the Commission process.

## **Money laundering is a significant problem requiring strong and decisive action**

Money laundering is a significant problem deserving of serious attention from government, law enforcement, and regulators. An enormous volume of illicit funds is laundered through the British Columbia economy every year, and that activity has a significant impact on the citizens of this province.

Money laundering has, as its origin, crime that destroys communities – such as drug trafficking, human trafficking, and fraud. These crimes victimize the most vulnerable members of society. Money laundering is also an affront to law-abiding citizens who earn their money honestly and pay their fair share of the costs of living in a community. There can be few things more destructive to a community’s sense of well-being than a governing regime that fails to resist those whose opportunities are unfairly gained at the expense of others.

While it is not possible to put a precise figure on the volume of illicit funds laundered through the BC economy each year, the available evidence shows that the figure is very large (with estimates in the billions of dollars per year in this province alone).

Sophisticated professional money launderers operating in British Columbia are laundering staggering amounts of illicit funds. Evidence uncovered by law enforcement indicates that a *single* money services business was involved in laundering upwards of \$220 million per year through a sophisticated scheme that relied on underground banking infrastructure and that took advantage of a lax regulatory environment in the gaming sector.

It is essential that government, law enforcement, and regulators take strong and decisive action to respond to the problem.

## **The federal anti–money laundering regime is not effective**

To understand money laundering in British Columbia, it is necessary to understand the federal regime and the work done by agencies such as the Royal Canadian Mounted Police (RCMP) and Canada’s financial intelligence unit, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). The federal government plays a key role in addressing money laundering risk and activity, given that criminal law is primarily a federal matter. It is important to identify and understand gaps and weaknesses in the federal anti–money laundering regime in order to make effective recommendations to the Province as to the measures it must take to respond to money laundering.

Over the past two decades, the federal government has enacted increasingly complex legislation aimed at addressing money laundering activity. However, serious questions have been raised about the effectiveness of that regime in relation to money laundering in the province of British Columbia.

One of the primary criticisms of the federal regime is the ineffectiveness of FINTRAC, the agency responsible for receiving and analyzing information about money laundering threats and communicating this information and analysis to law enforcement. While I recognize that there is a statutory threshold that must be met before FINTRAC can disclose information to law enforcement, the number of disclosures to law enforcement is not commensurate with the volume of reports that FINTRAC receives, nor with the scale of money laundering activity in British Columbia. Law enforcement bodies in British Columbia cannot rely on FINTRAC to produce timely, useful intelligence about money laundering activity that they can put into action.

FINTRAC receives an enormous volume of reports from public- and private-sector reporting entities, but it produces only a modest number of intelligence packages that go to law enforcement. For example, in 2019–20, FINTRAC received over 31 million individual reports. In that same year, FINTRAC disclosed only 2,057 intelligence reports to law enforcement across Canada, and only 355 to law enforcement agencies in British Columbia.

The federal regime in Canada has encouraged defensive reporting, a practice under which reporting entities err on the side of making a report wherever there is some uncertainty. This has led to high-volume, low-value reporting. The high volume of reports submitted to FINTRAC is especially apparent when compared to reporting in other nations. On a per capita basis, reporting entities in Canada submit 12.5 times more reports than similar entities in the United States, and 96 times more reports than those in the United Kingdom.

Given the state of the federal regime, if the Province is to achieve success in the fight against money laundering, it must develop its own intelligence capacity in order to better identify money laundering threats. I am therefore recommending the creation of a **dedicated provincial money laundering intelligence and investigation unit** with a robust intelligence division. This unit will be responsible for developing actionable intelligence concerning money laundering activity and threats in British Columbia.

### **British Columbia has made progress on money laundering, but much remains to be done**

The Province has taken laudable steps to understand and respond to money laundering threats in British Columbia. It has commissioned expert reports on money laundering in various sectors. It implemented a source-of-funds recommendation from Peter German, which significantly limited the volume of illicit funds entering BC casinos. It has implemented a beneficial ownership registry for real estate. It requires the collection of beneficial ownership information for companies and supports the creation of a registry.

These efforts are commendable. But much remains to be done. This Report makes a number of recommendations for reform, some of which transcend specific sectors. Two key recommendations are the creation of an AML Commissioner and the dedicated

provincial money laundering intelligence and investigation unit. My aim is to offer advice that is realistic, practical, and effective, and I hope and trust that the Province will remain committed to tackling this pernicious problem.

### **The Province should establish an independent AML Commissioner, who will provide strategic oversight of the provincial response to money laundering**

An overarching theme that emerged through the course of this Inquiry is that money laundering is rarely afforded the priority it requires. Because it operates in the shadows, it often goes unnoticed. Because the damage it causes is not as visible as that caused by other crimes (such as violent crime), it is often afforded less priority and attention. Even when aspects of a money laundering scheme come out of the shadows and operate in plain sight – as occurred in the casino industry – a lack of will and coordination has led to an ineffective response.

Unlike many government priorities, anti-money laundering does not fit easily into one sector or ministry. For this reason, anti-money laundering has not been the dedicated responsibility of any one minister and has not received sufficient attention or priority from government. It has similarly been neglected by law enforcement, which has, when faced with competing priorities, paid little attention and dedicated few resources to the fight against money laundering.

Put simply, despite a relatively long history of mounting evidence about the extent of this problem – and despite growing public concern – government, law enforcement, and regulatory agencies have, for many years, failed to grasp the nature and extent of this growing problem. They have failed to afford it the priority and resources that are required.

It is time to change this trend – and change it permanently. The only way to reverse this unhappy state of affairs is to vest with one office the responsibility to support, oversee, and monitor the provincial response to money laundering. As such, I recommend the establishment of the AML Commissioner. The AML Commissioner will be an independent office of the Legislature that will provide strategic oversight of the provincial response to money laundering and report to the Legislature regularly.

The AML Commissioner's mandate will be to oversee and monitor the provincial response to money laundering by carrying out the following functions:

- **Keeping people informed:** producing annual reports that are publicly available, as well as special reports. The reports will describe money laundering risks, activity, and responses in British Columbia.
- **Researching:** undertaking, directing, and supporting research on money laundering issues. The AML Commissioner will develop expertise on money laundering

methods, including emerging trends and responses, informed by an understanding of the measures taken internationally.

- **Advising:** issuing policy advice and recommendations to government, law enforcement, and regulatory bodies on money laundering issues.
- **Assessing:** monitoring, reviewing, auditing, and reporting on the performance of provincial bodies that have an anti-money laundering mandate.
- **Coordinating:** leading working groups and co-operative efforts to address money laundering issues.

The creation of a new office of the Legislature with an *exclusive* focus on anti-money laundering will counteract the neglect that this topic has faced for too long. The AML Commissioner will give anti-money laundering pre-eminent attention, in a public and accountable way, so that the people of British Columbia and the government have accurate, current, and reliable information about how public agencies, law enforcement, and government are doing in coming to grips with and responding to money laundering in British Columbia.

### **The RCMP's lack of attention to money laundering has allowed for the unchecked growth of money laundering since at least 2012**

Prior to 2012, the RCMP maintained some capacity and expertise to pursue money laundering and proceeds of crime investigations. A shift in focus in 2012 largely eliminated that capacity and expertise, leaving, for the next decade, a glaring enforcement gap. This gap left money laundering to proliferate in this province, largely unchecked.

From 1990 to 2012, the RCMP maintained Integrated Proceeds of Crime (IPOC) units in each province. These units were responsible for the most serious money laundering and proceeds of crime investigations. They developed a high level of expertise and were critical to the federal government's strategy to combat organized crime.

In 2011, the officer-in-charge of the British Columbia IPOC unit became concerned about the large volume of \$20 bills being received by BC casinos and initiated an investigation. The investigation revealed substantial amounts of cash entering BC casinos, which the investigators believed were from criminal activity. These investigators also correctly identified the typology being used to launder this cash – a group of cash facilitators were loaning large sums of cash to high-limit gamblers, who often paid back the debt using a cross-border value and payment transfer system, which allows for cash to be advanced in one country and the debt repaid in another.

In 2012, the federal government made significant cuts to government services and disbanded the IPOC units. This left no enforcement body with primary responsibility to investigate money laundering or proceeds of crime in this province. The disbandment of the IPOC units was a pivotal moment, which allowed for the unchecked growth of

money laundering in the gaming industry and other sectors of the economy for the better part of a decade.

Without a dedicated unit, RCMP money laundering investigations were subject to the federal prioritization process and were weighed against other pressures and priorities, such as national security. This resulted in money laundering and proceeds of crime investigations being given very little attention. Important investigations in British Columbia, including the investigation into money laundering at BC casinos, were terminated.

After 2012, despite repeated requests, there was no enforcement body available to address the casino problem, and the volume of suspicious cash entering BC casinos rose to unprecedented levels.

In 2015, the BC Lottery Corporation (BCLC), in part by leveraging a personal relationship, was finally able to convince the Federal Serious and Organized Crime (FSOC) section of the RCMP to start an investigation. In that year, BCLC reported over \$183 million in suspicious transactions to FINTRAC. Shortly into its investigation, FSOC was able to make a direct link between the suspicious cash being provided to patrons at the River Rock Casino Resort and an unlicensed money services business in Richmond. The investigation uncovered evidence suggesting that upwards of \$220 million in illicit funds was being moved through this single money services business each year.

Unfortunately, this one investigation was an anomaly. There was no sustained effort to investigate money laundering activity in British Columbia. Between 2015 and 2020, there were only two other major money laundering investigations that progressed to the charge-approval stage. This level of attention by the RCMP to money laundering is not commensurate with the money laundering activity and risks in this province.

### **A dedicated provincial money laundering intelligence and investigation unit is needed to mount a sustained and effective response to money laundering**

While I accept that there are significant challenges associated with the investigation and prosecution of money laundering offences, the primary cause of the poor law enforcement results in this province is a lack of resources. Unfilled positions and the reassignment of units to deal with other federal priorities have exacerbated the problem. The result has been that there are often few (if any) officers available to investigate money laundering activity in British Columbia.

Since the establishment of this Commission, the RCMP has taken steps to address some of the resourcing issues that led to the poor enforcement results in this province. I have some optimism that the RCMP may find a measure of success if its commitment to money laundering investigations is genuine and if the federal government prioritizes and devotes sufficient resources to money laundering issues. At the same time, I have serious concerns that the RCMP's newfound commitment to these issues may be short-

lived and that current resourcing levels will not be maintained once the work of the Commission is over and the public scrutiny on this issue has diminished. I would add that, given the magnitude and complexity of the problem, even the proposed federal resources will be insufficient to fully and effectively respond to money laundering.

I therefore recommend the creation of a **dedicated provincial money laundering intelligence and investigation unit** to lead the law enforcement response to money laundering in this province. The new unit will do so by (a) identifying, investigating, and disrupting sophisticated money laundering activity, and (b) training and supporting other investigators in the investigation of the money laundering and proceeds of crime offences.

I recommend that this new unit be located within the Combined Forces Special Enforcement Unit (CFSEU). This is important so that the provincial government has a higher degree of oversight and visibility into its operations, and it will avoid “hollowing out” the provincial police force. This structure will also give the Province greater flexibility to hire *and retain* police officers and civilian specialists who have the knowledge, skills, and motivation to investigate money laundering and proceeds of crime cases.

Too often, high levels of turnover within specialized policing units – especially those investigating financial crime – have undermined their effectiveness. My goal in recommending this unit is to build the permanent infrastructure necessary to mount a sustained and effective response to money laundering.

In order to be successful, the new unit will need access to prompt, ongoing legal advice, as well as a surveillance team that prioritizes its needs. It is also essential that the new unit be staffed with police officers and civilian specialists with expertise in a wide variety of disciplines. The unit must also maintain a team of money laundering and financial crime experts who can “demystify” money laundering and help investigators, prosecutors, and judges understand money laundering and the evidence that exposes it.

While the creation of the new unit will require a significant investment by the Province, it is my expectation that these costs will be offset by the identification and targeting of additional illicit assets for forfeiture. The experience in other jurisdictions demonstrates that a focused and effective asset forfeiture regime can have a significant impact on organized crime *and* lead to substantial financial benefits for the state.

### **Law enforcement bodies must make better efforts to follow the money and pursue money laundering and proceeds of crime charges**

Another cause of the poor law enforcement outcomes in this province has been a failure, at all levels of policing, to consider money laundering and proceeds of crime charges in investigations into profit-oriented criminal activity. Money laundering and proceeds of crime charges are rare in this province. This is because police conducting investigations into profit-oriented criminal activity, such as drug dealing, are not investigating these offences.

Every investigation into profit-oriented criminal activity should have, as one of its aims, building a case to support money laundering and/or proceeds of crime charges. Even a basic financial investigation into the accumulation of wealth by those involved in criminal activity can have real benefits. Such investigations can disrupt organized crime networks by identifying assets for seizure and forfeiture. They can also help reveal criminal connections and hierarchies, and show how the subjects are laundering their money. Money laundering and proceeds of crime investigations can also expand the pool of potential accused and allow for charges to be brought against those who are involved in different aspects of the criminal enterprise.

I am therefore recommending that all provincial law enforcement agencies conducting investigations into profit-oriented crime (a) consider money laundering and proceeds of crime charges at the outset of the investigation, and (b) where feasible, conduct a financial investigation with a view to pursuing those charges and identifying assets for seizure and/or forfeiture. While I appreciate that the allocation of law enforcement resources to these matters will put additional strain on law enforcement agencies in the short term, I strongly believe that the consistent and rigorous implementation of this measure has the potential to substantially improve law enforcement results. It could also result in the forfeiture of substantial criminal assets, which will help offset this important investment.

### **Asset forfeiture must be pursued more vigorously**

Asset forfeiture is widely regarded as one of the most effective ways of stifling and disrupting organized crime groups and others involved in serious criminal activity. Not only does it deprive these groups of the profits of their unlawful activity (thereby taking the profit out of crime), it also prevents those funds from being reinvested in the criminal enterprise, where they can be used to purchase drugs, weapons, vehicles, and other products necessary to support their unlawful activities. In many cases, the seizure of unlawfully obtained assets will have a greater impact on organized crime groups than the arrest and prosecution of low-level members.

Unfortunately, the number and value of unlawfully obtained assets seized through the asset forfeiture system in British Columbia is shockingly low. The BC Civil Forfeiture Office recovered approximately \$13.4 million in 2019 and \$10.7 million in 2018. The criminal asset forfeiture amounts were similarly unimpressive. These recoveries are not commensurate with the huge volume of illicit funds being laundered through the province each year.

To mount an effective response to money laundering, it is essential that investigators understand the powerful tools available within the criminal asset forfeiture regime and develop the evidence needed to pursue successful criminal forfeiture applications.

It is also essential that police and prosecutors be given training in the importance of criminal asset forfeiture and the use of the criminal asset forfeiture provisions.

With respect to civil forfeiture, it is critically important that the BC Civil Forfeiture Office expand its focus from the forfeiture of instruments of crime and low-value assets identified incidentally in law enforcement investigations to the identification and forfeiture of high-value assets owned or controlled by those involved in serious criminal activity. To support this wider focus, the Civil Forfeiture Office must expand its operational capacity by adding investigators and analysts capable of identifying and targeting unlawfully obtained assets that are not identified in the police file.

I also believe that the provincial government should transition the Civil Forfeiture Office from a self-funded agency to a government-funded agency, in which the revenue generated by that office flows to government. The Civil Forfeiture Office should be encouraged to pursue cases that have the greatest impact on organized crime groups, regardless of whether those cases are “commercially viable.” That is not to say that an expansion of the office will be a drain on government resources. On the contrary, if the recommendations contained in this Report are adopted, there should be a significant increase in the number (and value) of assets forfeited, and the government should properly determine the allocation of that revenue.

### **Unexplained wealth orders will be a valuable additional tool in the fight against money laundering**

Unexplained wealth orders are a promising tool used in some jurisdictions to address the accumulation of illicit wealth by those engaged in profit-oriented criminal activity. In basic terms, they allow the state, upon meeting a certain evidentiary threshold (such as reasonable grounds to suspect that the person is or has been involved in profit-oriented criminal activity), to obtain an order compelling a person to produce information concerning the provenance of a particular asset (for example, the source of funds used to purchase a house). If the recipient of the order fails to produce the required information, a presumption will arise that the property was purchased with illicit funds. If the presumption is not rebutted, the property will be forfeited to the state.

I am persuaded that unexplained wealth orders are a valuable tool in targeting illicit wealth held by members of criminal organizations and others involved in serious profit-oriented criminal activity. By introducing an unexplained wealth order regime, the Province will be better able to determine whether assets suspected to be illicit are, in fact, proceeds of crime and to target those assets in civil forfeiture proceedings.

While unexplained wealth orders could be used in a wide variety of circumstances, they may be particularly useful in targeting the assets of individuals further up the criminal hierarchy, who are often involved in highly lucrative but less visible forms of criminal activity. If used properly, unexplained wealth orders also allow authorities to address problems such as nominee ownership, where those involved in criminal activity put unlawfully obtained assets into the hands of a family member or associate in an attempt to insulate them from forfeiture.

Another benefit of unexplained wealth orders is to discourage foreign corrupt officials and others involved in criminal activity from moving their illicit wealth to British Columbia through the purchase of real estate and other valuable assets.

One thing that has become apparent during the Commission's process is that many of those involved in profit-oriented criminal activity are rational actors who are aware of the different regulatory requirements in different jurisdictions and consider those differences in determining where to place and launder their ill-gotten gains. Faced with the prospect of having to prove the provenance of a particular asset, to avoid a forfeiture order, these offenders may choose to launder their proceeds and place their wealth in another jurisdiction.

I recognize that unexplained wealth orders are not without controversy and that some have raised concerns about the presumption of innocence and the right to silence. However, it is important to understand that the provincial *Civil Forfeiture Act* cannot be used to impose any criminal penalties. Unexplained wealth orders would only be used in *civil* proceedings for the forfeiture of *property*. The information provided in response to an unexplained wealth order cannot be used in a criminal prosecution. I would add that people who legitimately own valuable assets are well placed to show the provenance of those assets.

When used to target high-value assets in the hands of those involved in serious criminality, unexplained wealth orders will prove an effective additional tool to address money laundering.

### **For the better part of a decade, an unprecedented volume of illicit cash was laundered through BC casinos**

Between 2008 and 2018, Lower Mainland casinos accepted hundreds of millions of dollars in cash that was the proceeds of crime. These transactions were an integral part of a money laundering typology known as the “Vancouver model” – in which wealthy casino patrons were provided vast sums of illicit cash by “cash facilitators” who were affiliated with criminal organizations. Typically, these patrons were not themselves involved in the criminal activity that generated these funds. Some held significant wealth in China but were unable to access that wealth in Canada because of Chinese currency export restrictions, so they resorted to cash facilitators to get money to gamble in BC.

These patrons would genuinely use this cash to gamble. They often lost it. But whether they won or lost, they would repay the cash advance to the criminal organization in a form other than cash, often via an electronic funds transfer in another jurisdiction. This arrangement enabled wealthy casino patrons to gamble in British Columbia without running afoul (or at least without appearing to run afoul) of Chinese currency export restrictions, while allowing criminal organizations in BC to launder their illicit cash. They did so by converting it into a different medium of exchange, transferring it to another jurisdiction, and obscuring its illicit origins.

The illicit cash used by these casino patrons played a central role in fuelling extraordinary growth in large and suspicious cash transactions in Lower Mainland casinos. Beginning in 2008, investigators with the Gaming Policy and Enforcement Branch (GPEB) – British Columbia’s gaming regulator – identified a significant increase in suspicious cash transactions in casinos. They became concerned that this was money laundering. In the years that followed, the size and frequency of these transactions increased dramatically, peaking in the mid-2010s.

In 2014 alone, British Columbia casinos accepted nearly \$1.2 billion in cash transactions of \$10,000 or more, including 1,881 individual cash buy-ins of \$100,000 or more – an average of more than five per day.

In many instances, these transactions were identified and reported as suspicious by BCLC and the private-sector companies that had been contracted by BCLC to operate casinos. In 2014, BCLC reported nearly \$200 million in suspicious transactions to FINTRAC. These suspicious transaction reports included 595 separate transactions with a value of \$100,000 or more.

In addition to the extraordinary amounts, the cash used in many of these transactions exhibited well-known characteristics of cash derived from crime. It often consisted predominantly of \$20 bills, oriented in a non-uniform fashion, bundled in “bricks” of specific values (as opposed to number of notes), bound with elastic bands, and carried in shopping bags, knapsacks, suitcases, gym bags, cardboard boxes, and all manner of other receptacles. These vast quantities of cash were frequently delivered to casino patrons at or near casinos, very late at night or early in the morning, by unmarked luxury vehicles. It should have been apparent to anyone with an awareness of the size and character of these transactions that Lower Mainland casinos were accepting vast quantities of proceeds of crime during this time period.

### **GPEB, BCLC, and law enforcement were aware of the burgeoning money laundering crisis but failed to intervene effectively**

The growth of these large and suspicious cash transactions, beginning in 2008, did not go unnoticed. By that year, the GPEB investigation division, led by a former RCMP officer and expert in the investigation of money laundering and proceeds of crime, identified the severe money laundering risk posed by these transactions. Over the next six years, the GPEB investigation division repeatedly issued warnings about this risk – and made recommendations to address it – to their superiors within GPEB, to BCLC, to law enforcement, and to the provincial government. Similarly, warnings were given by BCLC’s own investigative staff and some within law enforcement during this time period. Besides raising concern about the size and suspicious nature of these transactions, some of these warnings specifically identified the money laundering typology that was being used.

Despite these repeated warnings, no meaningful action was taken to address this issue until 2015. BCLC resisted these calls for action and continued to allow these transactions, almost without exception. Managers within BCLC's corporate security and compliance unit repeatedly insisted that these transactions could not be connected to money laundering if patrons were genuinely putting their funds at risk and often losing them. This insistence continued despite the GPEB investigation division and one of BCLC's own investigators precisely identifying the money laundering typology to which these transactions were connected. While BCLC managers in the corporate security and compliance unit acknowledged the risk that the cash used in these transactions could be the proceeds of crime, they insisted that, in the absence of a law enforcement investigation proving this, they could not take action. Instead, they stood by and permitted BC casinos to accept vast sums of illicit cash. BCLC's approach reflected a completely unacceptable and unreasonable risk tolerance.

GPEB and law enforcement likewise took minimal action to respond to the growth in large and suspicious cash transactions prior to 2015. While GPEB's leadership during this time period was more open than BCLC's to the conclusion that these transactions could be connected to money laundering, GPEB's efforts to reduce these transactions were largely limited to working with BCLC to develop voluntary alternatives to the use of the cash. This strategy stood no realistic prospect of having a meaningful impact on large and suspicious cash transactions. It fell far short of what was called for in the circumstances.

Within law enforcement, the RCMP's IPOC unit undertook an intelligence probe focused on these transactions beginning in 2010. The officers involved in this probe came to believe that these transactions were connected to money laundering, and they developed an operational plan that held real promise in addressing the supply of illicit cash provided to casino patrons. However, the plan was never carried out. The IPOC unit was soon disbanded.

Following the conclusion of the IPOC intelligence probe, it would be more than three years before there was further meaningful law enforcement engagement with the rapidly growing large and suspicious cash transactions in BC casinos. In early 2015, at the urging of BCLC, the RCMP's FSOC unit commenced surveillance of people connected to these transactions. In several days of surveillance conducted over several months, the FSOC unit confirmed a direct link between criminal organizations and cash transactions at the River Rock Casino Resort. The police believed that those providing the cash used in these transactions were linked to transnational organized crime.

BCLC finally began to respond to these concerns around the time that it learned of FSOC's conclusions regarding the connection between suspicious casino transactions and organized crime. The actions taken by BCLC included incrementally placing select patrons identified in the FSOC investigation, and those engaged in the largest and most suspicious transactions, on conditions that prohibited them from buying in with unsourced cash. However, despite the confirmation it had received from law enforcement that BC casinos were accepting proceeds of crime, and despite the

persistent urging of both GPEB and the minister responsible for gaming to take further action, BCLC continued, in many instances, to permit patrons to buy-in at casinos with hundreds of thousands of dollars in cash that bore obvious indicators of being illicit.

GPEB also began to take additional action in response to suspicious cash transactions after learning of the initial results of the FSOC investigation and following the compilation, by two GPEB investigators, of a spreadsheet detailing suspicious transactions in July 2015. That spreadsheet showed more than \$20 million dollars of suspicious cash in transactions of \$50,000 or more in one month, over \$14 million of which was in \$20 bills. The spreadsheet impressed upon GPEB's leadership the urgency of the problem posed by suspicious cash transactions in Lower Mainland casinos. It inspired GPEB to seek the intervention of the minister responsible for gaming. These efforts led to the creation of a law enforcement unit dedicated to the province's gaming industry. This filled a long-standing enforcement gap. The responsible minister also issued a letter to BCLC that included a direction to take additional action to identify the source of funds used in cash transactions prior to cash acceptance. Like those of BCLC, however, these actions ultimately proved inadequate to stop the regular acceptance of substantial quantities of suspicious cash by BC casinos, and GPEB failed to take adequate further steps to seek the further intervention of the minister.

While the rate at which suspicious cash was being accepted by BC casinos slowed beginning in 2015, it remained at an unacceptably high level for several years afterwards. Even after both BCLC and GPEB received confirmation from law enforcement that BC casinos were accepting illicit cash, casinos continued to accept tens of millions of dollars of suspicious cash annually. Even though some progress was made following 2015, the efforts made during this time period fell well short of what was required. They were not commensurate with the scale of the money laundering crisis that had developed in the industry in the years leading up to 2015.

### **Elected officials were aware of suspicious funds entering the provincial revenue stream through the gaming industry, but there is no evidence of corruption**

Money laundering in the province's casinos persisted over the tenures of multiple ministers responsible for gaming. Each of these ministers was privy, on some level, to information showing that the gaming industry was at elevated risk of money laundering. By 2010, then-minister responsible for gaming Rich Coleman was aware of the concerns of the GPEB investigation division and law enforcement that the province's casinos were being used to launder the proceeds of crime. At the same time, Mr. Coleman also received information from BCLC stating that the province's gaming industry had a strong and effective anti-money laundering regime. Mr. Coleman responded to these mixed messages by arranging for an independent review of anti-money laundering measures in the gaming industry, but he did not take action to stem the flow of the suspicious cash transactions that he had been warned about.

A similar dynamic characterized the years that followed when the ministers responsible for gaming, including Shirley Bond, Mr. Coleman (returning to the position), and Michael de Jong, received conflicting information about money laundering in the gaming industry. Each minister, to varying degrees, received some indication that the gaming industry was at an elevated risk of money laundering. In some instances, this included specific warnings that casinos were likely accepting substantial quantities of illicit cash. Each minister also received assurances from BCLC and, in some instances, GPEB, that BC's gaming industry had a robust, industry-leading anti-money laundering regime.

Each of these ministers took some action to respond to the risk of money laundering in the gaming industry. Mr. Coleman initiated an independent review of the industry's anti-money laundering regime. Ms. Bond directed the immediate implementation of nine of 10 recommendations emanating from that review. Mr. de Jong spearheaded the creation of a new, gaming-focused law enforcement unit and directed BCLC to enhance its efforts to evaluate the source of funds used in cash buy-ins before those funds were accepted. None of these actions, however, was sufficient to resolve the extensive money laundering present in the industry through much of the 2010s. Money laundering in the gaming industry accelerated through the tenures of Mr. Coleman and Ms. Bond, and the first half of Mr. de Jong's. While the rate of suspicious transactions in casinos began to decline in the second half of Mr. de Jong's tenure, it remained unacceptably high until the end of his tenure. While I am unable to find fault with the response of Ms. Bond, given her short tenure as minister responsible for gaming and the information she received while in this role, more could have been done by Mr. Coleman and Mr. De Jong, who served in that role for extended periods during the evolution of this crisis.

Former Premier Christy Clark appropriately delegated oversight of the gaming industry to a succession of experienced ministers. In 2015, however, the premier learned that casinos conducted and managed by a Crown corporation and regulated by government were reporting transactions involving enormous quantities of cash as suspicious. Despite receiving this information, Ms. Clark failed to determine whether these funds were being accepted by the casinos (and in turn contributing to the revenue of the Province) and failed to ensure such funds were not accepted.

Despite the failure of these elected officials to take steps sufficient to resolve the extensive money laundering occurring in the industry for which they were responsible, there is no basis to conclude that any engaged in any form of corruption related to the gaming industry or the Commission's mandate more generally. While some could have done more, there is no evidence that any of the failures was motivated by corruption. There is no evidence that any of these individuals knowingly encouraged, facilitated, or permitted money laundering to occur in order to obtain personal benefit or advantage, be it financial, political, or otherwise. To the extent that some have hypothesized that money laundering in casinos was facilitated by corrupt politicians or officials, they are engaging in conjecture that is not rooted in evidence.

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## **The implementation of Peter German's recommendation has significantly curtailed the prevalence of illicit cash in BC casinos**

The rate at which suspicious cash was accepted in BC casinos was not reduced to acceptable levels until 2018, during the tenure of Mr. de Jong's successor, David Eby. Like his predecessors, Mr. Eby was initially confronted with contradictory information about the prevalence of money laundering in the gaming industry. Early in his tenure as gaming minister, while GPEB was raising the alarm, BCLC was hailing the strengths of its anti-money laundering program. In response, Mr. Eby engaged Dr. Peter German to conduct an independent review of money laundering in the industry.

Soon after commencing his review, Dr. German presented Mr. Eby with an interim recommendation. The recommendation led to a requirement that casino patrons present proof that funds used in cash transactions of \$10,000 or more were from legitimate sources. In 2018, the year in which this measure was implemented, the value of suspicious transactions reported to FINTRAC by BCLC declined by nearly 90 percent.

This success was not the result of a solution invented by Dr. German. Measures similar to that implemented in 2018, and others likely to have had a similar effect, had been proposed repeatedly since suspicious transactions began to grow in 2008. What was lacking prior to 2018 was not the identification of an appropriate policy response, but rather the will – on the part of both government and industry – to take the kind of decisive action necessary to effectively respond to this problem.

Today, BC's gaming industry is greatly changed from that which permitted extensive money laundering in British Columbia casinos between 2008 and 2018. The source-of-funds requirements implemented following Dr. German's interim recommendation are an important part of this change. Other changes since the implementation of these requirements also support the view that the industry is in a better place. After many years of resisting vital anti-money laundering measures, BCLC now seems to have embraced its responsibility to safeguard the industry from money laundering and proceeds of crime. GPEB – which the Province is in the process of replacing with a new, independent regulator – has been granted important new powers. It has redefined its role in combatting money laundering. There is also a law enforcement unit, the Joint Illegal Gaming Investigation Team (JIGIT), that was initiated during Mr. de Jong's tenure and is now fully engaged with the industry. Whereas GPEB and BCLC seemed to work at cross-purposes for many years, it now seems that these two organizations, along with JIGIT, are working co-operatively and collaboratively.

While the industry is much improved, there must be continued vigilance and further improvement. It is essential that the new, independent gaming regulator be granted clear, independent authority over the industry. This includes the authority to issue directions to BCLC without the approval of the responsible minister or any other external authority. Further, in the interest of ensuring that the industry builds on the advancements made to date, the threshold for requiring proof of the source of funds, implemented following Dr. German's recommendation, should be lowered to \$3,000.

The industry must also move rapidly toward 100 percent account-based, known play in the province’s casinos.

### **The BC real estate sector is highly vulnerable to money laundering**

The BC real estate sector is highly vulnerable to money laundering. These vulnerabilities are exacerbated by the persistent adherence of some real estate professionals to outdated attitudes and myths about what money laundering is and how it occurs in their industry. While money laundering in the real estate sector does not conjure up dramatic images of hockey bags full of cash being emptied onto the desks of realtors, that does not mean money laundering is not occurring.

The BC real estate market has traditionally been strong. This makes it attractive to criminal actors who want the investment of their criminal proceeds to be relatively immune from negative market forces. Illicit funds that have already made their way into the financial system can be invested in real estate, providing the criminal with a safe place to store their wealth and a façade of legitimacy when the property is eventually sold. Buying and selling a series of properties can further obscure the criminal origins of the funds.

Money laundering in the real estate sector often involves the use of loans, mortgages, and, in some cases, lawyers’ trust accounts and the legal system. It can also involve cash. For example, a criminal might take out a mortgage for the purchase of property and repay the mortgage with proceeds of crime. If the cash deposited for each payment is under \$10,000, it will not trigger the requirement for a large cash transaction report to FINTRAC. Over time, criminals may acquire multiple properties or higher-value real estate through the use of this typology. The properties can then be sold (often at a significant profit in the Vancouver real estate market) with the criminal property owner receiving “clean” funds from the purchaser to complete the money laundering process.

Illicit funds can also be laundered in a manner that exploits the real estate industry by loaning those funds to individuals who do not qualify for a traditional mortgage or who need cash for another purpose (such as gambling). Such loans can be secured through a lien registered on title by falsifying loan documents to suggest the loan was for the purchase or renovation of real property. When the loan is repaid, the criminal receives “clean” funds. If the loan is not repaid, the criminal can, often with the assistance of a lawyer, use the court system and seek a forced sale of the property, again receiving repayment from a credible source.

While most real estate professionals operate with integrity, evidence I heard demonstrates how money laundering risks can be exacerbated by those who seek to bend the rules or ignore or downplay their professional obligations. It is essential that the British Columbia Financial Services Authority (BCFSA), which regulates real estate professionals, be given a clear and enduring anti-money laundering mandate and that it be given sufficient resources to address allegations of misconduct in a timely way.

## **Realtors have a poor record of anti–money laundering reporting and compliance**

Real estate licensees (realtors) have a poor record of anti–money laundering reporting and compliance. Many continue to display an inadequate understanding of, and hold misplaced beliefs about, how money laundering occurs in the real estate industry. These misplaced beliefs have led to complacency and a reluctance to comply with their anti–money laundering obligations.

FINTRAC reporting by real estate licensees is virtually non-existent and is nowhere near commensurate with the level of money laundering risk in the sector. For example, in 2015–16, real estate licensees in British Columbia submitted a *total* of seven suspicious transaction reports to FINTRAC. These numbers increased to a high of 37 in 2019–20 before decreasing to 15 in 2020–21.

One of the principal reasons for the poor record of anti–money laundering reporting and compliance among realtors is the persistent but mistaken belief that money laundering in real estate means buying houses with bags of cash. FINTRAC has recently started providing information to dispel that myth. Another cause of the poor record of anti–money laundering reporting and compliance is confusion among realtors about how to comply with their federal anti–money laundering obligations. Most real estate agents and brokers have no background in compliance or anti–money laundering measures, and there is significant frustration in the industry about the lack of guidance. There is a need for clear, simple guidance from FINTRAC about when transactions must be reported.

Changes must be made to ensure that realtors better understand their anti–money laundering responsibilities and report suspicious transactions as required. It is also important that realtors overcome their misgivings about filing suspicious transaction reports. Realtors have no obligation to maintain the confidentiality of potential criminal activity. They are the point of access for most people to the real estate market, and they have a legal and professional obligation to maintain the integrity of that market by making appropriate inquiries and reporting transactions to FINTRAC where they are suspicious.

## **Effective regulation of the mortgage lending industry is essential**

Regulation of the BC mortgage lending industry is deficient in many ways. Mortgage brokers are not reporting entities under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* even though they are often privy to transactions or attempted transactions that pose significant money laundering risks. I view the absence of a reporting requirement for mortgage brokers as a significant gap in the federal anti–money laundering regime and recommend that the provincial Minister of Finance urge her federal counterpart to amend the *PCMLTFA* and associated regulations to include mortgage brokers as reporting entities.

At the provincial level, it is essential that the Province continue its efforts to modernize the regulatory regime that applies to mortgage brokers. It should do so by replacing the *Mortgage Brokers Act* with new legislation that clarifies the definition of “mortgage broker,” gives the new regulator rule-making authority, and provides for significant penalties – including the power to make a disgorgement order – in order to better deter unlawful activity.

I also consider it important that the provincial government introduce separate legislation aimed at regulating private mortgage lenders to help ensure that private lending is not used or exploited in furtherance of money laundering schemes.

In order to prevent the abuse of the court system to enforce loans made with illicit funds, I believe the Province should implement a mandatory source-of-funds declaration to be filed with the court in every claim for the recovery of a debt, such that no action in debt or petition in foreclosure can be filed (except by an exempted person or entity) in the absence of such a declaration. The court should have discretion to refuse to grant the order(s) sought by the claimant in a debt action or foreclosure petition if it is not satisfied that the declaration is truthful and that the funds advanced by the lender were legitimate.

### **Money laundering is not the cause of housing unaffordability**

The public discussion about, and interest in, money laundering has been fuelled, in part, by rising real estate prices and the belief, by some, that high prices are the result of money laundering in BC real estate. Public attention has also been captured by the issue of foreign ownership in the BC real estate market. While the impact of money laundering and anti-money laundering measures on real estate prices is something that would benefit from further study, I am unable to conclude that money laundering is a significant cause of housing unaffordability in the residential real estate market.

I wish to be clear that I do not urge the provincial government to take up the recommendations contained in this Report on the basis that they will resolve British Columbia’s housing affordability challenges. There are strong reasons to think that fundamental factors such as supply and demand, population increase, and interest rates are far more important drivers of price. Money laundering should be addressed, to be sure, but steps taken to counteract money laundering should not be viewed as a solution for housing unaffordability.

### **Banks and credit unions dedicate great energy and resources to combatting money laundering, but serious risks persist**

Banks and credit unions are gatekeepers to the financial system. They are prime targets for criminals who try to introduce their ill-gotten gains into the legitimate economy. Passing funds through a financial institution provides a façade of legitimacy, facilitates the transfer of funds (including abroad and to legal entities such as corporations or trusts), and in general makes it easier for criminals to use

their ill-gotten gains. Most criminals seeking to launder funds will attempt to use a financial institution at some point in their process.

Canadian banks face inherent risks of being targeted by money launderers. As of 2015, banks held over 60 percent of the financial sector's assets, by far the majority of which were held by the six largest domestic banks. Provincial credit unions and *caisses populaires* also handle vast sums of money – \$320 billion in assets as of 2014. Financial institutions frequently handle significant transaction volumes and offer services to a large client base, including high-risk clients and businesses. Services most at risk of being targeted for money laundering include deposit services, wealth management, investment banking, and correspondent banking.

Banks and credit unions have a variety of obligations under the *PCMLTFA*, including compliance programs, client identification and verification, record-keeping, and reporting. They invest a great deal into their anti-money laundering compliance programs and have good knowledge of the risks. However, as money laundering is a frequently moving target, they must not become complacent. It is crucial that banks and credit unions maintain their focus on anti-money laundering, stay aware of emerging threats, and adapt quickly to address new threats.

While information sharing is important in many sectors, it is especially so for financial institutions. As gatekeepers to the financial sector, these institutions are well placed to observe suspicious activity, report it to FINTRAC, and collaborate with law enforcement and government. Public-private partnerships between public bodies and financial institutions have not been used as frequently in Canada as in other countries. So long as they have clear parameters that respect constitutional and privacy principles, these partnerships should be pursued more often. The Province should introduce a “safe harbour provision,” which would allow provincial financial institutions to share information about potential money laundering with one another without giving rise to liability. The Province should encourage the federal government to do the same for banks.

BCFSA, which regulates provincial financial institutions, has taken some positive steps to integrate anti-money laundering into its regulatory framework. However, it appears that BCFSA is awaiting an explicit anti-money laundering mandate before taking further steps. The Province should provide BCFSA with a clear and enduring anti-money laundering mandate, and ensure that it has sufficient resources to fulfill this mandate.

### **Money services businesses present a significant money laundering risk; they should be regulated by the Province**

Money services businesses (MSBs) are non-bank entities that provide transfer and exchange services, such as transmitting or exchanging funds and issuing or redeeming money orders. Virtual asset service providers and informal value transfer systems are both considered to be MSBs and are addressed separately below.

While there are many legitimate uses of MSBs, there are well-known money laundering risks associated with them. They are frequently used by professional money launderers, often in conjunction with other money laundering techniques. Many operate outside the traditional financial system and are difficult for law enforcement to identify and locate.

Although MSBs are subject to the *PCMLTFA*, that regime has deficiencies. Not all MSBs register with FINTRAC (as they are required to do every two years). This leaves FINTRAC and law enforcement in the dark about their activities. In addition, FINTRAC takes the approach that it can refuse registration *only* if an applicant has a criminal conviction for a specified offence. Being under criminal investigation or facing an outstanding charge is not enough. The result is anomalous: an applicant could be subject to a major and active money laundering investigation by law enforcement, but still get registered by FINTRAC. Indeed, that is what happened with one MSB in this province.

FINTRAC conducts relatively few compliance examinations of MSBs. When it does, few occur in the first years of an MSB's existence. Early examinations of MSBs would serve as a deterrent to those using MSBs for criminal purposes and would address situations where an MSB operates for two years and then re-registers with a new name, sidestepping the FINTRAC examination.

Given these risks and deficiencies in the MSB sector, the Province should regulate MSBs. BCFSA is well placed to take on this role. This will be a significant expansion to BCFSA's mandate, and the Province should ensure it has enough staff and resources to carry out this task. The regulatory regime should provide BCFSA with the ability to assess the suitability of applicants in a more meaningful way, not just asking if they have a conviction. There should be regular compliance examinations, especially during the first two years of an MSB's existence.

In establishing a regulatory framework for MSBs, British Columbia should draw from the experience in Quebec – the only province that regulates MSBs. While Quebec has encountered difficulties in the first years of regulating MSBs, its regime holds promise. The lessons learned in Quebec will be informative for our province.

### **A corporate beneficial ownership registry is essential to address money laundering risks in the corporate sector**

Corporate and other legal arrangements play an important and legitimate role in the Canadian economy. There are, however, well-known money laundering risks associated with these arrangements. The risks stem principally from the anonymity that corporate and other legal arrangements can provide. Criminals can obscure their identity by hiding behind a company, or perhaps using a few different companies, to distance themselves from certain transactions and funds. Law enforcement efforts are often frustrated when corporate arrangements make it impossible to determine beneficial ownership. This is particularly so where offenders use complex, multilayered ownership and control structures to shield their identity.

Beneficial ownership transparency is a promising tool to address the risks associated with companies and other such arrangements. The question is no longer *whether* the Province should implement a beneficial ownership registry, but *how* it should be done. The federal government has recently made a strong commitment to establish a national beneficial ownership transparency registry. It has committed to doing so by the end of 2023. Given that commitment, the Province should devote its energy and expertise to working with its federal, provincial, and territorial partners to ensure that an effective, publicly accessible, pan-Canadian corporate registry is created and implemented on schedule.

It is critical that the registry be publicly accessible. Privacy concerns should be addressed by using tiered access (with more information available to government and law enforcement than what the public gets) and limited exemptions (allowing a person not to be listed publicly where, for example, personal safety concerns arise). The registry will also need a strong compliance and enforcement regime to ensure the accuracy and comprehensiveness of the information it contains.

### **Lawyers are exposed to significant money laundering risks, but are subject to extensive regulation by the Law Society of British Columbia**

Lawyers do much of their work confidentially, and their zone of confidentiality is strongly protected. This is a sound principle, and it has been given constitutional protection. But the confidential nature of lawyers' work, coupled with the enormous variety and inherent nature of the transactions they are involved in, gives rise to an obvious risk of lawyers being used, knowingly or unwittingly, to facilitate money laundering.

Given the nature of sophisticated money laundering schemes – which use corporations, shell companies, real estate, and more – the involvement of a lawyer at some point is almost inevitable. While the extent of lawyer involvement in money laundering is unclear (given an absence of data), the risk is an obvious one.

Criminals can exploit features of the lawyer-client relationship. Solicitor-client privilege ensures that clients can be confident their communications will remain secret. Meanwhile, a lawyer's duty of commitment to the client means that the state cannot impose obligations on lawyers that interfere with their loyalty to the client's cause.

Solicitor-client privilege and the duty of commitment have received constitutional protection in Canada – for good reason. They encourage clients to speak freely with their lawyers, which in turn allows clients to receive informed advice and access the justice system. However, while legitimate clients benefit from these duties, criminals can abuse them.

Lawyers' trust accounts pose significant risks from a money laundering perspective. Recent case law from the Supreme Court of Canada suggests that transactions involving

a trust account are presumed to be privileged. As such, trust account records are generally out of reach for law enforcement. Passing funds through a trust account also cloaks transactions with an appearance of legitimacy, causing law enforcement, financial institutions, and others to ask fewer questions when a lawyer is involved.

Another key area of money laundering risk is the purchase and sale of real estate. Lawyers are routinely involved in real estate transactions, preparing title and mortgage documents, registering transfer of title, and receiving and disbursing funds through their trust accounts. Likewise, lawyers often assist with private lending schemes that can be used to launder money.

The same is true for incorporations, the creation of trusts and partnerships, and the facilitation of financial transactions. Legal entities and complex transactions can be used to conceal the true ownership of funds, and lawyers are instrumental in bringing them about.

While the foregoing risks are significant, the Law Society has mitigated many of them through robust regulation. Even though lawyers do not fall under the federal *PCMLTFA* regime, they do face extensive regulation for money laundering by the Law Society. This regulation goes a long way to addressing the exclusion of lawyers from the *PCMLTFA* regime, although there is room for improvement.

The Law Society regulates all aspects of lawyers' practice, and it has strong powers to investigate misconduct. It can overcome legal privilege, compel answers and documents, and use search and seizure-type powers. When misconduct is found, the Law Society can impose sanctions ranging from reprimands or fines to suspension and disbarment.

The Law Society has implemented a number of rules focused specifically on anti-money laundering. An important one is the **cash transactions rule**, which prohibits lawyers from accepting over \$7,500 in cash in any one client matter (with some exceptions). That rule is actually more stringent than large cash transaction reporting under the *PCMLTFA*, which requires those subject to the Act to *report* cash transactions of \$10,000 or more, but not necessarily *refuse* them. While some exceptions permit lawyers to accept over \$7,500 in cash, lawyers must make any refunds in cash, which goes some way to addressing the money laundering risk associated with accepting large amounts of cash.

The Law Society has also imposed a variety of **client identification and verification rules**, which, in many ways, parallel (or exceed) *PCMLTFA* measures.

Critically important to the Law Society's anti-money laundering regulation are its **trust accounting rules**. Lawyers must keep a variety of records, reconcile their trust accounts every month, make annual reports, and undergo regular audits. This oversight is crucial given that others, particularly law enforcement, cannot compel lawyers to produce privileged information or documents. The trust accounting rules and audit process significantly mitigate the money laundering risks associated with

trust accounts. However, given the potential for privilege to attach to trust account transactions, the Law Society should further limit what can enter a trust account in the first place, in order to ensure that trust accounts are used only when truly necessary.

In addition to these anti-money laundering rules, lawyers must comply with general ethical obligations. These include a prohibition on assisting crime, fraud, or dishonesty, and a requirement to withdraw if a client persists in instructing a lawyer to act contrary to professional ethics. These broad rules enable the Law Society to quickly respond to evolving risks; they are an important part of its anti-money laundering regulation.

### **A reporting regime for lawyers poses significant constitutional challenges and should not be pursued**

Unlike many professionals, lawyers are not subject to the *PCMLTFA*. The federal government attempted to include them in the regime in 2001; however, the Supreme Court of Canada determined in 2015 that it had not done so in a constitutionally compliant way. The Court concluded that the regime (a) authorized searches of lawyers' offices that inherently risked violating solicitor-client privilege, and (b) was inconsistent with lawyers' duty of commitment to their clients' causes.

Since the Supreme Court's decision, the federal government has not enacted new legislation to bring lawyers into the *PCMLTFA* regime. Critics contend that the failure to do so means there is a gap in Canada's anti-money laundering regime, and that lawyers in this country are not regulated for anti-money laundering purposes.

These critiques are too simplistic. It is true that the exclusion of lawyers from the *PCMLTFA* regime means that FINTRAC does not receive reports from lawyers; it therefore lacks the same lens into lawyers' (and their clients') activities as it has for other professions. There are also unique challenges for law enforcement when investigating cases involving lawyers because of solicitor-client privilege and the lack of reporting by lawyers. However, it is inaccurate to say that lawyers in British Columbia are not regulated for anti-money laundering purposes. Lawyers are subject to extensive anti-money laundering regulation by the Law Society, and that regulation has gone a long way to addressing many of the money laundering risks in this sector.

This Report is not the proper forum to determine if it is possible to create a constitutionally compliant reporting regime for lawyers. However, attempting to do so would be very challenging due to issues with solicitor-client privilege and the duty of commitment. Given these difficulties, the Province should not attempt to design a constitutionally compliant reporting regime at the provincial level.

However, this is not to say that lawyers cannot be regulated for anti-money laundering purposes. They should be, and they are. The regulation simply takes a different form than other sectors, in order to accommodate the constitutional rules that

apply to lawyers. Instead of a reporting regime for lawyers, a better approach to anti-money laundering efforts in the legal sector should focus on:

- continuing to revisit and expand anti-money laundering regulation by the Law Society, including limiting the circumstances in which a client's funds can enter a trust account;
- strengthening and making better use of information-sharing arrangements between the Law Society and other stakeholders;
- increasing the Law Society's use of its ability to refer matters to law enforcement where there is evidence of a potential offence;
- encouraging law enforcement to make better use of existing mechanisms by which it can access the information it needs from lawyers during investigations; and
- increasing public awareness about these measures to counter any perception that transactions conducted through a lawyer in furtherance of an unlawful aim are immune from detection.

It is also essential that law enforcement bodies and regulators bring concerns about the involvement (or potential involvement) of lawyers in money laundering activity to the attention of the Law Society for investigation.

### **The Chartered Professional Accountants of British Columbia must regulate its members for anti-money laundering purposes**

Accountants are gatekeepers to the financial system because of the knowledge and skill they have and use to structure their clients' finances in a tax-efficient manner. Their status as gatekeepers, coupled with the nature of their work, gives rise to the risk criminals will employ them – knowingly or unwittingly – in money laundering.

While there is an unfortunate lack of data on the extent of accountants' involvement in money laundering, the risks are nonetheless clear and significant. The key areas of risk are financial and tax advice; private-sector bookkeeping; company and trust formation; buying or selling property; and performing financial transactions. A money launderer may make use of an accountant's services in one or a number of these areas. The more sophisticated money laundering operations get, the greater the chance that bad actors will seek out an accountant for advice and to help manage large amounts of capital and avoid scrutiny by authorities.

There are three key ways that regulation in the accounting sector in British Columbia is inadequate in relation to money laundering risks.

First, a large proportion of accountants are not regulated at all. Only chartered professional accountants (CPAs), about one-third of the accounting profession, are regulated. Similarly, while CPAs are subject to the *PCMLTFA*, unregulated accountants

are not. As a result, the majority of individuals working as accountants in this province are not subject to any oversight. While it seems likely that many of the same money laundering risks would apply to unregulated accountants as CPAs (given the overlap in services provided), there is much we do not know about the unregulated accounting sector in British Columbia. The Province should study the nature and scope of work performed by unregulated accountants, in order to know where they work, what clientele they service, what services they provide, whether the services pose a significant risk of facilitating money laundering, and, if so, what oversight is warranted.

Second, while the Chartered Professional Accountants of British Columbia (CPABC) provides extensive regulation of CPAs for accounting purposes, it maintains that its mandate does not, and should not, extend to anti-money laundering regulation. CPABC takes the position that all such responsibility rests, and should continue to rest, with FINTRAC. This position should be rejected. It is inconsistent with CPABC's statutory mandate, which includes regulating *all* matters relating to the practice of accounting, including competency, fitness, and professional conduct. It is also inconsistent with CPABC's rules. Those rules require CPAs to act in the public interest, avoid conduct that would discredit the profession, not associate themselves with activity that they know or should know is unlawful, and report illegal and dishonest conduct to CPABC.

Third, the *PCMLTFA* captures only limited activities undertaken by CPAs, applying only when they:

- receive or pay funds or virtual currency;
- purchase or sell securities, real property or immovables, or business assets or entities; or
- transfer funds, virtual currency, or securities by any means.

This list excludes a number of activities that CPAs (and unregulated accountants) engage in and that pose money laundering risks. It notably excludes providing *advice* with respect to those activities, which appears to be a far more common service provided by accountants, and one where they are well placed to observe suspicious activity. When accountants assist and advise clients, they gain an in-depth understanding of the client's finances; they are well situated to spot suspicious activity.

It appears that CPAs' compliance with the *PCMLTFA* is low, with only one suspicious transaction report being filed between 2011 and 2015. While other reasons could contribute to lower reporting, it is highly unlikely that only one CPA identified a suspicious transaction between 2011 and 2015. Despite this almost complete absence of reporting, FINTRAC conducts few compliance examinations of CPAs. The examinations it has done have revealed deficiencies in CPAs' compliance; however, no CPA or firm has ever received an administrative monetary fine.

These points, combined with CPABC's position that its mandate does not extend to anti-money laundering, have resulted in a lack of meaningful anti-money laundering regulation in the accounting sector. CPABC should begin regulating its members for anti-money laundering purposes promptly. The fact that FINTRAC administers the *PCMLTFA* does not mean that it is the sole "anti-money laundering regulator," nor does it mean that CPABC should not also regulate for that purpose. To the contrary, there is a pressing need for anti-money laundering regulation by the regulator closest to accountants and most aware of their activities: CPABC.

**To address risks in the luxury goods sector, the Province should implement a reporting regime in which all cash transactions over \$10,000 must be reported to a central authority**

The category of "luxury goods" extends beyond expensive cars, jewellery, and yachts. Many goods that we do not usually think of as "luxuries" give rise to the same money laundering risks. For anti-money laundering purposes, this category should include any good that has a high value, a capacity to retain value, transferability, and portability.

Luxury goods are inherently vulnerable to money laundering. Criminals can use large amounts of cash to buy such goods. Then, they can be moved more easily and less suspiciously than bulk cash. Many of the goods criminals target retain or increase in value over time, and they can ultimately be sold. The inherent risks are heightened in British Columbia because luxury goods markets are generally composed of many small retailers who have little to no regulation.

The significant risk of money laundering in the luxury goods sector calls for forceful regulatory oversight and response. But to date, little has been done. Many markets have no regulation, and those with regulation often have done nothing to address money laundering risks. Luxury goods markets are also somewhat of a black box; there is little information about what is actually going on.

Any effort to combat money laundering in this sector needs to deal with this lack of visibility. I recommend that the Province implement a record-keeping and reporting regime, in which all cash transactions over \$10,000 (with narrow exceptions) must be reported to a central authority. The AML Commissioner should have access to this data. This will be a strong starting point and will enable the Province, with advice from the AML Commissioner, to develop sound policy and regulation for the luxury goods sector.

The main purpose of the reporting regime will be to guide anti-money laundering policy development. It will shed light on what is occurring in the luxury goods sector. It will provide valuable insight into markets and geographic locations, to know where enhanced anti-money laundering measures should be targeted. It should also deter large cash transactions from occurring at all, particularly by those seeking to avoid scrutiny.

The Province must be able to act on the information quickly to address emerging money laundering risks. To that end, I am recommending that the Province establish a mechanism by which a government minister, in consultation with the AML Commissioner, can quickly implement measures to address new and evolving risks in luxury goods markets.

### **Trade-based money laundering, informal value transfer, and bulk cash smuggling are money laundering typologies that demand attention from law enforcement and regulators**

Much money laundering activity occurs in the context of legitimate business sectors and takes advantage of gaps in regulatory oversight or understanding. However, money laundering also takes place in the informal or “underground” economy, outside the regulated financial system. As such, the activity is far less likely to be caught by countermeasures put in place by countries that have adopted the Financial Action Task Force model, which is premised on a concept of industry actors reporting suspicious activity within their industries, but that will not capture activity that does not involve reporting entities. Informal value transfer systems and bulk cash smuggling are two such activities, and trade-based money laundering, while not entirely “underground,” is closely linked.

#### ***Trade-based money laundering***

Trade-based money laundering is arguably one of the largest and most pervasive money laundering typologies in the world. It refers to the process of disguising illicit funds and moving value between jurisdictions through international trade transactions. Complicit sellers and buyers in different jurisdictions use a variety of techniques to misrepresent the price, value, quantity, or quality of imports or exports.

A 2020 assessment by the Canada Border Services Agency suggests that *at a minimum*, hundreds of millions of dollars are laundered through trade to and through Canada each year, including a significant percentage of activity carried out by professional money launderers. British Columbia is particularly vulnerable because of its international shipping ports; large volume of international trade; and stable, accessible financial system.

Trade-based money laundering can hide in plain sight. Given the sheer volume of international trade, customs officials are unable to check every transaction and shipment to verify the accuracy of what is documented or reported. Those engaged in trade-based money laundering take advantage of the imbalance between the large volume of trade and the relatively limited level of oversight. Trade-based money laundering can also be combined with other money laundering tools – such as the use of shell companies, offshore accounts, nominees, legal trusts, third-party payment methods, and cryptocurrencies – which add complexity to investigations that are already challenging.

Faced with such complexities, investigative agencies have often done little to address trade-based money laundering. This is highly problematic, considering the volume of illicit funds that can be laundered in this way. While the RCMP, which has primary responsibility for the investigation of trade-based money laundering, has recently increased the number of investigators examining money laundering issues, it appears there have been no successful trade-based money laundering investigations or prosecutions in recent years.

A number of steps could be taken at the federal level to address trade-based money laundering, which the Province should encourage. A **trade transparency unit** is one of the most promising options. Such a unit would collect customs and trade data and share it with other countries, in order to identify anomalies that could demonstrate over- and under-invoicing. **Advanced data analytics** can be used to identify anomalies in Canadian trade data and to detect and measure the flow of illicit funds without needing to examine every shipment of goods into and out of the country. Improved **information sharing** is also crucial to investigations of trade-based money laundering.

### ***Informal value transfer systems***

Informal value transfer systems allow people to move *value* from one location to another without transferring *funds* through the regulated financial system. When a client needs to transfer funds, the money is paid into a “cash pool” in the first location and paid out of the cash pool in the second jurisdiction where the recipient needs the money. Over time, the operator of the informal value transfer system may need to reconcile the cash pools to keep them in balance. However, there is no transfer of funds on an individual basis. In this way, individuals are not actually sending *funds* across borders.

While informal value transfer systems have many legitimate uses, they also pose significant money laundering risks. They are “off the books,” often lacking official records, and not formally part of the financial system. Some operators may be unwittingly involved in money laundering schemes; others are complicit. Criminal groups – particularly professional money launderers – frequently control and make use of informal value transfer systems for money laundering.

Informal value transfer systems have undoubtedly been used to launder significant sums of money in British Columbia. Organized crime groups have used a technique dubbed the “Vancouver model” to launder significant sums of money through the British Columbia economy. The model makes extensive use of informal value transfer systems to move value between the Lower Mainland and countries such as China, Mexico, and Colombia.

Although FINTRAC considers informal value transfer systems to be money services businesses, and therefore subject to the *PCMLTFA*, it is challenging to identify operators that do not comply with that regime. The very limited regulation and supervision of

informal value transfer systems allows them to be used for money laundering without detection or intervention.

Identifying criminally run informal value transfer networks is primarily a task for law enforcement. It will be crucial for the dedicated provincial money laundering intelligence and investigation unit to seek to identify and develop intelligence on these networks.

### ***Bulk cash smuggling***

Bulk cash smuggling refers to the practice of moving large quantities of cash across international borders contrary to currency reporting requirements. Despite the rise of non-cash payment methods, cash continues to be the raw material of most criminal activity. Cash is attractive to criminals because it is relatively untraceable, readily exchangeable, and anonymous. The prevalence of illicit cash remains a significant problem in Canada.

Given that much criminal activity continues to generate cash and that it is increasingly difficult to conduct all of one's transactions in cash (due to anti-money laundering measures such as cash transaction reporting rules), criminals need to find ways to move large quantities of cash back into the legitimate economy. A common way of doing so is to move the cash to another country and thereby "break the audit trail" – in other words, make it more difficult for authorities to link the cash to the original criminal activity. Moving cash to another country is also attractive where the second jurisdiction has less stringent anti-money laundering regulation, such that it is easier to introduce the cash into the legitimate financial system without attracting scrutiny.

Given its inherently international dimension, bulk cash smuggling falls to be addressed primarily at the federal level. However, the AML Commissioner will be well placed to engage in ongoing monitoring and research into bulk cash smuggling, and to make recommendations to the Province. Similarly, the dedicated provincial money laundering intelligence and investigation unit must be alive to ways in which the movement of cash is a component of money laundering operations.

### **Cryptocurrency is an emerging money laundering vulnerability; it should be addressed through provincial regulation**

Cryptocurrency is a new and rapidly evolving technology that is already being exploited for money laundering and other forms of criminality. Because of its newness, many – including government, regulators, and law enforcement – lack the expertise to investigate crime that makes use of it. These features make cryptocurrency vulnerable to exploitation by money launderers.

The regulation of cryptocurrency is very new – the *PCMLTFA* has only captured it since 2020. That is a good first step. But given the significant risks in this sector, the Province should also regulate virtual asset service providers. The Province will need

to determine who is best suited to do this, whether it be BCFSA, the BC Securities Commission, or another body. It is crucial for government, regulators, and law enforcement to develop in-house expertise on cryptocurrency.

### **Reasons for optimism**

This Inquiry explored the myriad ways in which the greedy and the devious seek to make their crime-stained money appear legitimate. After such an endeavour, it might be forgivable to abandon optimism about stopping such enterprises and question whether anything can be done to suppress the relentless surges of dirty money that pollute the social and economic environment of the community. However, it is important to maintain the will to combat this social ill.

The adaptability of money launderers poses a challenge to law enforcement. The enormous variability and ever-changing nature of money laundering activity make it different from the majority of crime. Many of my recommendations address the need for a corresponding adaptability in how responsible government, regulatory, and law enforcement actors respond to this challenge.

A key feature of the proposed response is the AML Commissioner, who will be devoted to understanding the economic and social environment, exploring how and where it is at risk of contamination from money laundering, and advising on how best to defend the integrity of our society and economy. In addition, the creation of a dedicated provincial money laundering intelligence and investigation unit will permit a sustained and effective response to money laundering.

Money laundering, as with any entrenched and complex problem, requires a strong political will to oppose and deter it. From what I have seen, heard, and read during this Inquiry, the provincial government has, in recent years, demonstrated a strong will, and it is working on strategies to convert its will into action.

There is thus room for optimism that, at least in British Columbia, what *can* be done *will* be done to come to grips with the money laundering threat. But because of Canada's constitutional makeup, there is only so much one province can do to address a problem that has national and international dimensions. Because this Inquiry is provincially constituted, it is similarly constrained in the reach and impact of its findings and recommendations. The Province cannot tackle money laundering alone; it needs the support of the federal government.

This Inquiry has shone a light on the integral connection between organized crime and money laundering, and I recommend concrete responses. The organized criminal activity that plagues British Columbia is, no doubt, also present in other provinces. Solutions that prove effective in British Columbia can serve as an example to the rest of Canada. A heightened international focus on money laundering appears to have served as a galvanizing agent for the federal government to step up its anti-money laundering

commitment and efforts. If this commitment is sustained, it holds promise that an improved federal response will be mounted.

It is increasingly clear that taking firm and willful steps to prevent money laundering and the criminality it represents is critically important. The growing recognition of the need to fight such a corrosive form of criminality, and the commitment to do so, gives rise to optimism that British Columbia can lead by example.

## Consolidated Recommendations

Pursuant to section 2(a) of the Terms of Reference of this Commission of Inquiry, I make the following recommendations.

### **Provincial Anti-Money Laundering Regime**

**Recommendation 1:** I recommend that the Province establish an independent office of the Legislature focused on anti-money laundering, referred to throughout this Report as the Anti-Money Laundering (AML) Commissioner. The AML Commissioner should be responsible for:

- producing a publicly available annual report on money laundering risks, activity, and responses, as well as special reports on specific issues;
- undertaking, directing, and supporting research on money laundering issues in order to develop expertise on money laundering issues, including emerging trends and responses, informed by an understanding of the measures taken internationally;
- issuing policy advice and recommendations to government, law enforcement, and regulatory bodies concerning money laundering issues;
- monitoring, reviewing, auditing, and reporting on the performance of provincial agencies with an anti-money laundering mandate; and
- leading working groups and co-operative efforts to address money laundering issues.

**Recommendation 2:** I recommend that the Province maintain the Deputy Ministers' Committee and Anti-Money Laundering Secretariat and that they be given responsibility for the continued development and implementation of the provincial anti-money laundering strategy, including the implementation of measures identified in this Report.

**Recommendation 3:** I recommend that the Province introduce a statutory requirement that all government agencies, regulators, and law enforcement bodies with an anti-money laundering mandate designate an anti-money laundering liaison officer to be the primary point of contact for improved inter-agency collaboration and information sharing.

## Casinos

**Recommendation 4:** I recommend that the threshold for requiring proof of the source of funds for casino transactions conducted in cash and other bearer monetary instruments be lowered to \$3,000.

**Recommendation 5:** I recommend that the Minister Responsible for Gaming direct the British Columbia Lottery Corporation to implement 100 percent account-based, known play in British Columbia's casinos within a timeframe specified by the minister.

**Recommendation 6:** I recommend that current limits on the amounts that casinos are able to pay out to patrons in the form of convenience cheques remain in place.

**Recommendation 7:** I recommend that the Province ensure that the Independent Gaming Control Office, once established, maintain the authority to issue directives to the British Columbia Lottery Corporation without the consent of the Minister Responsible for Gaming or any other external authority.

## Real Estate Licensing

**Recommendation 8:** I recommend that the Province amend the *Real Estate Services Regulation* to bring the employees of developers within the licensing scheme.

**Recommendation 9:** I recommend that the Province bring business-scale "for lease by owner" and "for sale by owner" operations into the licensing scheme for real estate service providers.

## Real Estate Regulation by the BC Financial Services Authority

**Recommendation 10:** I recommend that the Ministry of Finance consult with the British Columbia Financial Services Authority regarding its data needs and put in place measures to accommodate those needs, in a manner that respects the relevant privacy interests arising in this context.

**Recommendation 11:** I recommend that the British Columbia Financial Services Authority (BCFSA) make inquiries with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to determine whether it plans to institute a source-of-funds inquiry requirement for licensees. If FINTRAC does not plan to do so, I recommend that the BCFSA require real estate licensees to ask clients about their source of funds at the outset of the client relationship, and record the information provided.

**Recommendation 12:** I recommend that the British Columbia Financial Services Authority use its rule-making authority to mandate that brokerages demonstrate the existence of an anti-money laundering compliance program as a condition of licensing.

**Recommendation 13:** I recommend that the Province allocate sufficient resources to the British Columbia Financial Services Authority to ensure that it has the capacity to address allegations of serious misconduct in a timely way.

## Regulation of Mortgage Brokers

**Recommendation 14:** I recommend that the Province amend the *Mortgage Brokers Act* definition of “mortgage broker” to harmonize it with the requirement for registration.

**Recommendation 15:** I recommend that the Registrar of Mortgage Brokers make it a requirement that applicants for registration provide an extended criminal and police background check, showing not only convictions and outstanding charges but also past charges relating to financial misconduct, as well as police database information about the person.

**Recommendation 16:** I recommend that, in its revision of the *Mortgage Brokers Act*, the Province include a requirement that brokerages submit annual information returns to give the Registrar of Mortgage Brokers better insight into industry trends and risks.

**Recommendation 17:** I recommend that the Province give the British Columbia Financial Services Authority rule-making authority in respect of mortgage brokers.

**Recommendation 18:** I recommend that the Province amend the *Mortgage Brokers Act* to create a managing broker role with clearly defined responsibilities.

**Recommendation 19:** I recommend that the Registrar of Mortgage Brokers require education for both managing brokers and sub-brokers, focusing on the detection and reporting of fraud and money laundering in the industry.

**Recommendation 20:** I recommend that the Province amend the *Mortgage Brokers Act* to allow for larger financial penalties, up to \$250,000, to align with penalties available under the *Real Estate Services Act*.

**Recommendation 21:** I recommend that the Province amend the *Mortgage Brokers Act* to give the Registrar of Mortgage Brokers the power to make an order of disgorgement of profits for registered mortgage brokers found to have engaged in misconduct and for unregistered persons engaged in mortgage brokering activities.

**Recommendation 22:** I recommend that the British Columbia Financial Services Authority impose a positive obligation on real estate licensees to report suspected unregistered mortgage brokering to it.

**Recommendation 23:** I recommend that the Province amend the *Mortgage Brokers Act* to eliminate the automatic stay pending appeal found in section 9(2) of the Act.

**Recommendation 24:** I recommend that the British Columbia Financial Services Authority work with the new dedicated provincial money laundering intelligence and investigation unit to develop an information-sharing partnership.

**Recommendation 25:** I recommend that the provincial Minister of Finance urge her federal counterpart to make mortgage brokers reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

**Recommendation 26:** I recommend that the Province create a positive obligation on mortgage lenders to make source-of-funds inquiries of investors providing capital for the lending business, if such obligations are not included in the federal reforms to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and associated Regulations.

**Recommendation 27:** I recommend that the Province amend Form B (the form for registration of a mortgage under section 225 of the *Land Title Act*) so that all legal owners of mortgage charges are reported, and that this information be available through the land titles registry.

**Recommendation 28:** I recommend that Province amend the definition of “interest in land” in the *Land Owner Transparency Act* to include mortgages, in order to ensure that the beneficial owners of a charge cannot obscure their ownership.

**Recommendation 29:** I recommend that the Province enact legislation directed at private mortgage lenders providing for registration, oversight, and enforcement. This regime should be separate from the scheme applicable to those engaged in brokering loans.

**Recommendation 30:** I recommend that the Province ensure that the regulator of private mortgage lenders has access to land title data, including new mortgage registrations, in a form that allows it to identify private lenders that ought to be registered with the regulator but are not.

## Private Lending

**Recommendation 31:** I recommend that the Province implement a mandatory source-of-funds declaration to be filed with the court in every claim for the recovery of a debt, such that no action in debt or petition in foreclosure can be filed (except by an exempted person or entity) in the absence of such a declaration.

**Recommendation 32:** I recommend that the Province enact legislation authorizing the court, in its discretion, to refuse to grant the order(s) sought by the plaintiff in a debt action or foreclosure petition if it is not satisfied that the declaration is truthful and accurate, or if it concludes that the funds advanced by the lender were derived from criminal activity.

## Land Owner Transparency

**Recommendation 33:** I recommend that the Province remove, by way of amendment to the *Land Owner Transparency Act* and/or its Regulations, the fee requirement for law enforcement and regulators with an anti-money laundering mandate who wish to access the Land Owner Transparency Registry.

**Recommendation 34:** I recommend that, within three years of the Land Owner Transparency Registry being populated with historical data, the AML Commissioner report to the Province with any recommendations for improvement to the registry. These recommendations should be informed by the AML Commissioner's study of the effectiveness of the registry and consultation with entities that are permitted to perform section 30(1) *Land Owner Transparency Act* searches.

## Improving Real Estate Data Collection

**Recommendation 35:** I recommend that the Ministry of Finance – either in conjunction with Canada Mortgage and Housing Corporation or on its own – develop the required data and conduct a market integrity analysis in order to identify suspicious transactions and activity in real estate.

**Recommendation 36:** I recommend that the Province give the Land Title and Survey Authority a clear and enduring anti-money laundering mandate, including the ability to more readily share data with other agencies having a complementary anti-money laundering mandate.

**Recommendation 37:** I recommend that the Province give the Financial Real Estate and Data Analytics Unit an express anti-money laundering mandate, so that it can prioritize data analysis and policy development that will further anti-money laundering objectives.

**Recommendation 38:** I recommend that the Ministry of Finance develop an action plan for addressing the data gaps and data quality issues identified by the federal-provincial working group on real estate in its reports, focusing on data issues within the Province’s jurisdiction.

**Recommendation 39:** I recommend that the Province adopt a modified “hybrid” model of data management (as contemplated in the federal-provincial working group on real estate reports) and that the AML Commissioner fulfill the function of analyzing data for anti–money laundering purposes.

**Recommendation 40:** I recommend that the Land Title and Survey Authority make information about historical mortgage and property ownership available through an online search.

**Recommendation 41:** I recommend that the Province amend the Land Title and Survey Authority’s enabling legislation to direct the collection of information on real estate agents and mortgage brokers involved in a property transaction. At a minimum, this information should be available to the Ministry of Finance, the British Columbia Financial Services Authority, law enforcement, and other federal and provincial agencies with an anti–money laundering mandate.

**Recommendation 42:** I recommend that the Province institute the use of unique identifiers for Land Title and Survey Authority records.

**Recommendation 43:** I recommend that the Province remove the fee requirement presently charged to access the Land Title and Survey Authority’s records for law enforcement and regulators with an anti–money laundering mandate.

## **Real Estate Prices**

**Recommendation 44:** I recommend that, as the Province implements new policies and measures against money laundering in real estate, it analyze the impact of those reforms on housing prices.

## **Banks and Credit Unions**

**Recommendation 45:** I recommend that the British Columbia Financial Services Authority develop anti–money laundering guidance for credit unions.

**Recommendation 46:** I recommend that the Province provide the British Columbia Financial Services Authority with a clear, enduring anti–money laundering mandate.

**Recommendation 47:** I recommend that the Province provide sufficient resources to the British Columbia Financial Services Authority (BCFSA) to create or staff an anti–money laundering group. This group should serve as a contact point for BCFSA with law enforcement, public-private partnerships, and other government stakeholders.

## Information Sharing and Collaboration Among Financial Institutions

**Recommendation 48:** I recommend that the Attorney General of British Columbia urge the appropriate federal minister to introduce amendments to the federal *Personal Information Protection and Electronic Documents Act*, providing for a “safe harbour provision” allowing financial institutions to share information related to potential money laundering activity.

**Recommendation 49:** I recommend that the Province introduce, in consultation with the Office of the Information and Privacy Commissioner, a safe harbour provision allowing provincially regulated financial institutions to share information related to potential money laundering activity.

**Recommendation 50:** I recommend that the Attorney General of British Columbia engage with his federal counterpart and other stakeholders to implement a formal “keep open” regime for financial institutions in which they can, at the request of law enforcement, keep an account suspected of involvement in money laundering open in order to further a law enforcement investigation.

## Money Services Businesses

**Recommendation 51:** I recommend that the Province expand the mandate of the British Columbia Financial Services Authority to encompass regulation of money services businesses. The regulatory scheme should include (but not be limited to) the following:

- a definition of “money services business” that aligns with the definition in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, except that virtual asset service providers should not be included at this stage;
- a capacity to identify unregistered money services businesses and sanction them;
- a registration process in which the suitability of applicants is assessed in a broader manner than is done under the *PCMLTFA* to include consideration of whether a money services business has been investigated or charged with criminal activity, whether or not this has resulted in a conviction, as well as a requirement to disclose business relationships in the same way as the Quebec regime;
- a compliance examination process that applies in the early years of a money services business’s existence;
- the ability to enter information-sharing arrangements with the Financial Transactions and Reports Analysis Centre of Canada and other relevant entities; and
- the availability of administrative and monetary penalties.

## Beneficial Ownership Registry

**Recommendation 52:** I recommend that the Province work with its federal, provincial, and territorial partners to ensure that, before the end of 2023, a publicly accessible pan-Canadian corporate beneficial ownership registry is in place.

## Improving Metrics and Collaboration Between Law Societies

**Recommendation 53:** I recommend that the Law Society of British Columbia work with the Federation of Law Societies of Canada to develop uniform metrics to track, at a minimum:

- the nature and frequency of breaches of rules that are relevant to anti-money laundering regulation;
- the number of breaches that are referred for investigation or into a remedial stream;
- the outcome of the referrals, including the nature and frequency of sanctions that are imposed;
- the rules, policies, and processes law societies have regarding information sharing with and referrals to law enforcement;
- the frequency, nature, and circumstances of the information sharing or referrals, including whether this includes sharing of non-public or compelled information and the stage of a proceeding or investigation at which it occurs; and
- the use of data analytics by law societies.

**Recommendation 54:** I recommend that the Law Society of British Columbia and the Federation of Law Societies of Canada develop systems to facilitate the more effective sharing of tactical information and coordination on investigations that affect multiple jurisdictions or involve lawyers who practise in multiple jurisdictions.

## Amendments to Law Society Rules

**Recommendation 55:** I recommend that the Law Society of British Columbia amend Rule 3-59 of the *Law Society Rules* to make explicit that any cash received under the professional fees exception to the cash transactions rule must be commensurate with the amount required for a retainer or reasonably anticipated fees.

**Recommendation 56:** I recommend that the Law Society of British Columbia amend its client identification and verification rules to explain what is required when inquiring into a client's source of money. The rules should make clear, at a minimum:

- that the client identification and verification rules require the lawyer to record the information specified in the fall 2019 *Benchers' Bulletin*;

- the meaning of the term “source of money”; and
- that lawyers must consider whether the source of money is reasonable and proportionate to the client’s profile.

**Recommendation 57:** I recommend that the Law Society of British Columbia extend the ambit of its client identification and verification rules to include the situations in which a lawyer is truly acting as a gatekeeper. The rules should be extended to include, at a minimum:

- the formation of corporations, trusts, and other legal entities;
- real estate transactions that may not involve the transfer of funds, such as assisting with the transfer of title; and
- litigation involving enforcement of private loans.

**Recommendation 58:** I recommend that the Law Society of British Columbia amend the *Law Society Rules* to require lawyers to verify a client’s identity when holding fiduciary property on the client’s behalf.

**Recommendation 59:** I recommend that the Law Society of British Columbia amend Rule 3-58.1 of the *Law Society Rules* to clarify, at a minimum, what is meant by “directly related to legal services” and to consider how to further limit the use of trust accounts so that they are used only when necessary.

**Recommendation 60:** I recommend that the Law Society of British Columbia promptly remove Commentary [3.1](a) from the *Code of Professional Conduct for British Columbia*.

## **Lawyers’ Anti–Money Laundering Training**

**Recommendation 61:** I recommend that the Law Society of British Columbia require that all trust auditors and investigators charged with investigating possible transgressions of the trust accounting rules receive anti–money laundering training.

**Recommendation 62:** I recommend that the Law Society of British Columbia implement mandatory anti–money laundering training for lawyers who are most at risk of facing money laundering threats. The education should be required, at a minimum, for lawyers engaged in the following activities:

- the formation of corporations, trusts, and other legal entities;
- transactional work, including real estate transactions;
- some transactions that do not involve the transfer of funds (such as transfer of title); and
- litigation involving private lending.

## Law Society: Improving Collaboration and Information Sharing

**Recommendation 63:** I recommend that the British Columbia Solicitor General direct law enforcement to refer matters involving lawyers to the Law Society of British Columbia where appropriate, and that the Law Society continue its advocacy with government, regulators, and other stakeholders about its role and when referrals to the Law Society should be made.

**Recommendation 64:** I recommend that the Law Society of British Columbia review and assess its approach to determining whether it possesses information or documents that may be evidence of an offence, and, if so, whether the executive director should seek approval from the Discipline Committee to deliver the information or documents to law enforcement.

**Recommendation 65:** I recommend that the Law Society of British Columbia and the Province work to increase public awareness of measures available to investigate wrongdoing involving lawyers, including:

- the limitations on the use of a lawyer's trust account;
- the information-sharing agreements that exist between the Law Society and government agencies;
- the ability of the Law Society to refer matters to law enforcement when there is evidence of a potential offence; and
- the pathways that exist for law enforcement to obtain information about lawyers during investigations.

## British Columbia Notaries

**Recommendation 66:** I recommend that the Province, in consultation with the Society of Notaries Public of British Columbia, raise the maximum fine that can be imposed when a member of the Society is guilty of misconduct as set out in the *Notaries Act*.

**Recommendation 67:** I recommend that the Society of Notaries Public of British Columbia require its members to obtain, record, and keep records of the source of funds from their clients when those members engage in or give instructions with respect to financial transactions.

**Recommendation 68:** I recommend that the Society of Notaries Public of British Columbia educate its members on the money laundering risks relating to private lending through educational materials or other means.

## Accountants

**Recommendation 69:** I recommend that the Chartered Professional Accountants of British Columbia (CPABC) amend its *Code of Professional Conduct* to specify that members must report to CPABC a finding by the Financial Transactions and Reports Analysis Centre of Canada that a member has not complied with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

**Recommendation 70:** I recommend that the Province study the nature and scope of work performed by unregulated accountants in British Columbia to determine where they work, what clientele they service, what services they provide, whether those services engage a significant risk of facilitating money laundering, and, if so, what form of anti-money laundering regulation and oversight is warranted.

**Recommendation 71:** I recommend that the provincial Minister of Finance urge her federal counterpart to introduce amendments to the *Proceeds of Crime (Money Laundering) and Financing of Terrorism Act* so that accountants' reporting and other obligations arise when they prepare for and provide advice about triggering activities.

**Recommendation 72:** I recommend that the Chartered Professional Accountants of British Columbia implement client identification and verification requirements, as well as requirements to verify a client's source of funds, that apply, at a minimum, when a chartered professional accountant engages in the following activities:

- preparing for and providing advice with respect to financial transactions, including real estate transactions;
- preparing for and providing advice with respect to the use of corporations and other legal entities; and
- private-sector bookkeeping.

**Recommendation 73:** I recommend that the Chartered Professional Accountants of British Columbia promptly determine how many of its members operate trust accounts, for what purpose, and in what circumstances.

**Recommendation 74:** I recommend that the Chartered Professional Accountants of British Columbia implement a trust account auditing regime in which chartered professional accountants and firms that operate a trust account are audited on a regular basis, and that a sample of chartered professional accountants and firms that report not operating a trust account be audited to ensure that is the case.

**Recommendation 75:** I recommend that the Chartered Professional Accountants of British Columbia determine the circumstances in which its members accept cash from clients and in what amounts.

**Recommendation 76:** I recommend that the Chartered Professional Accountants of British Columbia implement a cash transactions rule limiting the amount of cash its members can receive in a single client matter.

**Recommendation 77:** I recommend that the Chartered Professional Accountants of British Columbia determine how often its members engage in the activities specified in section 47 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

**Recommendation 78:** I recommend that the Chartered Professional Accountants of British Columbia (CPABC) expand its practice review program to address anti-money laundering issues including, at a minimum:

- compliance with client identification and verification measures implemented by CPABC;
- audits of trust accounts or confirmation that a member does not operate a trust account; and
- assessment of the adequacy of the anti-money laundering policies and programs in place by the member to ensure compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

**Recommendation 79:** I recommend that the Chartered Professional Accountants of British Columbia implement a mandatory continuing professional education requirement focused on anti-money laundering that applies, at a minimum, to chartered professional accountants who engage in the following activities:

- the activities specified in section 47 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*;
- preparing for and providing advice with respect to financial transactions, including real estate transactions;
- preparing for and providing advice with respect to the use of corporations and other legal entities; and
- private-sector bookkeeping.

**Recommendation 80:** I recommend that the Chartered Professional Accountants of Canada follow up with the Financial Transactions and Reports Analysis Centre, on an ongoing basis, to acquire and maintain insights into the level of reporting and compliance of its membership with the requirements of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

**Recommendation 81:** I recommend that the Chartered Professional Accountants of British Columbia pass bylaws or rules enabling it to share information with law enforcement in appropriate circumstances.

## Luxury Goods

**Recommendation 82:** I recommend that the Province implement a universal record-keeping and reporting requirement for cash transactions of \$10,000 or more. Every business that accepts \$10,000 or more in cash in a single transaction or a series of related transactions should be required to:

- verify a customer's identification and record their name, address, and date of birth;
- inquire into and record the source of funds used to make the purchase;
- determine whether the purchase is being made on behalf of a third party and, if so, inquire into and record the identity of that third party; and
- report the transaction – including the total amount of cash accepted; the item or service purchased; the source of funds reported by the customer; whether the purchase was made on behalf of a third party and, if so, the identity of that third party; and the name, address, and date of birth of the customer – to the Province.

The Province should ensure that the AML Commissioner has access to these reports.

The universal record-keeping and reporting requirement should apply in all circumstances, with some narrow exceptions:

- one-time transactions between private individuals;
- financial institutions and financial services businesses;
- lawyers; and
- other situations where it is determined that the requirement would be unduly onerous, generate reports of little value, or is otherwise inappropriate.

**Recommendation 83:** I recommend that the Province establish a mechanism by which a minister, in consultation with the AML Commissioner, can implement timely measures to address new and evolving risks in the luxury goods sector (as defined in Chapter 34 of this Report).

**Recommendation 84:** I recommend that the Province regulate the purchase and sale of vehicles for the purpose of export from British Columbia. This regulation should involve, at a minimum, a registration requirement for those who export more than an identified number of vehicles annually and a requirement that the export of all vehicles by registered exporters be reported prior to export.

**Recommendation 85:** I recommend that the Province amend the *Provincial Sales Tax Act* to ensure that information collected for the purpose of processing provincial sales tax rebates is available, at a minimum, to the Vehicle Sales Authority and the AML Commissioner.

## Virtual Assets

**Recommendation 86:** I recommend that the Province, in consultation with the AML Commissioner and the dedicated provincial money laundering intelligence and investigation unit, ensure that law enforcement, regulators, and Crown counsel with relevant duties are trained to recognize indicators and typologies of money laundering through virtual assets.

**Recommendation 87:** I recommend that the Province implement a regulatory regime for virtual asset service providers. In determining which authority is best placed to act as the regulator, the Province should consult with the AML Commissioner, the British Columbia Financial Services Authority, the British Columbia Securities Commission, industry members, and other stakeholders.

## Trade-Based Money Laundering

**Recommendation 88:** I recommend that the dedicated provincial money laundering intelligence and investigation unit implement and make use of the software developed by Professor John Zdanowicz, or other software with the same capability, as part of its intelligence functions.

## Enforcement

**Recommendation 89:** I recommend that all provincial and municipal law enforcement agencies in British Columbia implement a policy requiring all officers involved in the investigation of profit-oriented crime to consider money laundering and proceeds of crime issues at the outset of the investigation and, where feasible, conduct an investigation with a view to pursuing those charges, and identifying assets for seizure and/or forfeiture.

**Recommendation 90:** I recommend that all provincial and municipal law enforcement agencies involved in the investigation of profit-oriented crime develop training modules to ensure that their members have the knowledge and skills to pursue money laundering and proceeds of crime investigations, and identify assets for seizure and/or forfeiture.

**Recommendation 91:** I recommend that the Province create a dedicated provincial money laundering intelligence and investigation unit to lead the law enforcement response to money laundering in this province by (a) identifying, investigating, and disrupting sophisticated money laundering activity, and (b) training and otherwise supporting other investigators in the investigation of the money laundering and proceeds of crime offences.

**Recommendation 92:** I recommend that the AML Commissioner and the Policing and Security Branch make best efforts to monitor the response to money laundering within the RCMP federal police service by seeking detailed metrics concerning the resources dedicated to money laundering investigations, the number of money laundering investigations undertaken by the RCMP, and the results of those investigations.

**Recommendation 93:** I recommend that the Policing and Security Branch develop a way of tracking FINTRAC disclosures made in response to voluntary information records, in order to ensure that they are received promptly.

**Recommendation 94:** I recommend that the Province ensure that there is sufficient surveillance capacity within the Combined Forces Special Enforcement Unit to support the work of the new dedicated provincial money laundering intelligence and investigation unit.

**Recommendation 95:** I recommend that the AML Commissioner conduct a comprehensive review of the provincial money laundering intelligence and investigation unit every five years to ensure it remains relevant and effective.

## **Criminal Asset Forfeiture**

**Recommendation 96:** I recommend that law enforcement bodies implement a policy requiring that all investigators conducting investigations into profit-oriented crime consider the criminal asset forfeiture provisions and, where feasible, develop the evidentiary basis necessary to support a forfeiture application.

**Recommendation 97:** I recommend that law enforcement bodies implement a policy requiring that all investigators conducting investigations into profit-oriented crime include, in their Report to Crown Counsel, information concerning the assets owned or controlled by the target of the investigation (and their associates) along with recommendations concerning possible forfeiture applications.

**Recommendation 98:** I recommend that the Province ensure that all investigators and prosecutors addressing profit-oriented criminal activity receive training on the importance and use of the criminal forfeiture provisions.

## **Civil Asset Forfeiture**

**Recommendation 99:** I recommend that the Civil Forfeiture Office significantly expand its operational capacity by adding investigators and analysts capable of identifying and targeting unlawfully obtained assets and instruments of unlawful activity beyond those identified in the police file.

**Recommendation 100:** I recommend that the Province transition the Civil Forfeiture Office from a self-funded agency to a government-funded agency, in which the revenue generated by the Civil Forfeiture Office flows to government.

**Recommendation 101:** I recommend that the Province proceed with its plan to develop an unexplained wealth order regime in British Columbia.

# Part I

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## Introduction

My Terms of Reference require me to make findings of fact on the extent, growth, evolution, and methods of money laundering in various sectors; the acts and omissions of key actors in those sectors and of government officials; and the barriers to effective law enforcement in British Columbia. They also require me to make recommendations, including in respect of these matters, where I consider it necessary and advisable.

Before addressing these matters, it is necessary to consider some background concepts. What *is* money laundering? Who is involved in it? How much money laundering occurs? And, given that much of this activity occurs under the radar and does not directly result in physical harm, is money laundering a problem worth addressing? Part I addresses these questions.

# Chapter 1

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## Introduction

On May 15, 2019, the Lieutenant Governor of British Columbia issued Order in Council No. 2019-238 establishing the Commission of Inquiry into Money Laundering in British Columbia and appointing me as the sole commissioner in accordance with section 2 of the *Public Inquiry Act*, SBC 2007, c 9. The Commission was established in the wake of significant public concern over the nature and prevalence of money laundering in British Columbia as well as the institutional effectiveness of those charged with detecting and combatting it. Media reports suggested that a staggering amount of money was being laundered through the BC economy and serious concerns were raised about the response of regulators and law enforcement agencies.

While most of these reports involved suspected money laundering activity in and around Lower Mainland casinos, concerns were also raised about money laundering in other sectors of the economy, including the corporate sector, where concerns were raised about the use of shell companies to launder illicit funds, and the real estate sector, where there were suggestions that money laundering activity was contributing to the rapid increase in housing prices in the Lower Mainland and other parts of the province.

The Order in Council and Terms of Reference<sup>1</sup> give me a broad mandate to inquire into and report on money laundering in British Columbia. I am required to conduct hearings and make findings of fact with respect to:

- the extent, growth, evolution, and methods of money laundering in various sectors of the economy, including the gaming sector, the real estate sector, financial institutions and money services businesses, the corporate sector, the luxury goods sector, and the professional services sector;

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<sup>1</sup> The Terms of Reference can be found at Appendix A.

- the acts or omissions of responsible regulatory agencies and individuals, including whether those agencies or individuals have contributed to money laundering in the province;
- the scope and effectiveness of the anti-money laundering powers, duties, and functions exercised or carried out by the regulatory agencies and individuals referenced above; and
- barriers to effective law enforcement.

In considering these issues, I have been directed to review and consider four recent reports commissioned by the provincial government on these matters:

- Peter M. German, QC, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia*, March 31, 2018 (*Dirty Money 1*);
- Peter M. German, QC, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 (*Dirty Money 2*);
- Dan Perrin, *Real Estate Regulatory Structure Review (2018)* (Perrin Report); and
- Maureen Maloney, Tsur Somerville, and Brigitte Unger, “Combatting Money Laundering in BC Real Estate,” March 31, 2019 (Maloney Report).

I am also empowered to make any recommendations I consider necessary and advisable with respect to the conditions that have allowed money laundering to thrive.

## Guiding Principles

In carrying out my mandate, I have been guided by the fundamental principle that the Commission is an independent body that owes its allegiance solely to the people of British Columbia. Independence is particularly important where, as here, the Commission has been called upon to examine the response of government to a pressing social problem. While I have been careful to ensure that the findings set out in this Report are based on evidence – as opposed to speculation or conjecture – I have not been hesitant to make findings critical of government where those findings are supported by the evidence.

Another principle that has guided the work of the Commission is the need to conduct open, public hearings with a view to making findings of fact, and informing and educating concerned members of the public. In *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97, Mr. Justice Cory explained these important public functions as follows:

Commissions of inquiry have a long history in Canada. This Court has already noted (*Starr v. Houlden, supra*, at pp. 1410–11) the significant role that they have played in our country, and the diverse functions which they serve. As *ad hoc* bodies, commissions of inquiry are free of many of the institutional impediments which at times constrain the operation of the various branches of government. They are created as needed, although it is an unfortunate reality that their establishment is often prompted by tragedies such as industrial disasters, plane crashes, unexplained infant deaths, allegations of widespread child sexual abuse, or grave miscarriages of justice.

...

One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or scepticism, in order to uncover “the truth”. Inquiries are, like the judiciary, independent; unlike the judiciary, they are often endowed with wide-ranging investigative powers. In following their mandates, commissions of inquiry are, ideally, free from partisan loyalties and better able than Parliament or the legislatures to take a long-term view of the problem presented. Cynics decry public inquiries as a means used by the government to postpone acting in circumstances which often call for speedy action. *Yet, these inquiries can and do fulfil an important function in Canadian society. In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem ... They are an excellent means of informing and educating concerned members of the public.* [Emphasis added.]<sup>2</sup>

In furtherance of those objectives, the Commission conducted 133 days of evidentiary hearings and heard *viva voce* evidence from 199 witnesses (with another 23 witnesses giving evidence by way of affidavit). With a few limited exceptions,<sup>3</sup> these hearings were live-streamed on the Commission website and remain available for public viewing. Transcripts of these hearings – along with the exhibits tendered during the Commission process – are also accessible on the Commission website (though some of these exhibits have been sealed or redacted to protect security and privacy interests).<sup>4</sup>

While the breadth of the Commission’s mandate was such that not all possible lines of inquiry could be pursued, it is my sincere hope that these hearings have contributed to a

<sup>2</sup> *Phillips v NS (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at paras 60, 62.

<sup>3</sup> Two days of evidence in the financial institutions sector were not live-streamed on the Commission website or otherwise made available to the public in order to maintain the secrecy of countermeasures used by financial institutions to identify and combat money laundering activity (see Ruling 24 – Application for *In Camera* Hearing (January 15, 2021)).

<sup>4</sup> A copy of the Commission’s *Rules of Practice and Procedure*, which address the manner in which evidence was presented (among other things), can be found at Appendix B. A copy of the Commission’s *Rules for Standing* can be found at Appendix C.

deeper understanding of money laundering among concerned members of the public and that the continued availability of these materials on the website will provide an additional source of information for law enforcement, regulators, and other relevant stakeholders.

A third principle that has guided the work of the Commission is the need to respect the rights and interests of the many individuals and agencies that have participated in the Commission process as well as others who may be the subject of adverse comment in this Report. It is important to understand that a commission of inquiry is not a criminal trial. Nor is it an action for the determination of civil liability. There are no legal consequences attached to my findings and they do not bind courts considering the same subject matter.<sup>5</sup> At the same time, the findings made by a commission may have an impact on the reputations of the individuals and entities who are the subject of adverse comment in a final report and it is important that they be given notice of such findings as well as a fair opportunity to respond.

In order to ensure that those who could potentially be subject to adverse comment in the final report had a meaningful opportunity to respond, the Commission issued confidential notices to various individuals and entities advising that they could be subject to adverse findings and setting out the particulars of the alleged misconduct.

Notices of Anticipated Evidence were also issued to certain individuals at the beginning of the hearing process to ensure they had the ability to cross-examine witnesses and otherwise participate in the Commission process from an early stage.

While I appreciate that the receipt of these notices can sometimes come as a shock to the recipient,<sup>6</sup> it is important to reiterate that the purpose of these notices is to give the recipient notice of *potential* findings that could be made and to ensure that they have the opportunity to respond. In every case where a notice was issued, I was careful to not prejudge the issue and carefully reviewed any submissions and further evidence received by the recipient with a view to determining whether the potential findings set out in the notice were supported by the evidence. I also considered whether it was necessary for me to make those findings in order to fulfill my mandate.

In many cases, I chose not to make some or all of the findings set out in a notice either because the evidence did not support a particular finding or because it was not necessary for me to make that finding in order to fulfill my mandate (or both).

## Constitutional Limitations

While there can be little doubt that the Province has a legitimate constitutional interest in calling a public inquiry to address the nature and prevalence of criminal activity

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5 *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at para 34 citing *Beno v Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, [1997] 2 FC 527 at para 23.

6 On this point see Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Thomson Reuters Canada Limited, 2010), p 141.

within the province, it is important to recognize that this is a provincial commission and that there are a number of established constitutional principles that must be respected.<sup>7</sup>

First, it is well established that the Commission cannot allow its process to be transformed into an investigation of specific offences alleged to have been committed by specific persons. Not only would that encroach on the exclusive jurisdiction of the federal government to enact legislation relating to the criminal law, but it would also compromise the substantive and procedural rights guaranteed to those being investigated.<sup>8</sup> While not strictly a constitutional issue, it is also a well-established principle that public inquiries should avoid making findings with respect to civil liability. In *Canada (Attorney General) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 (*Krever*), Mr. Justice Cory expressed these principles as follows:

A public inquiry was never intended to be used as a means of finding criminal or civil liability. No matter how carefully the inquiry hearings are conducted they cannot provide the evidentiary or procedural safeguards which prevail at a trial. Indeed, the very relaxation of the evidentiary rules which is so common to inquiries makes it readily apparent that findings of criminal or civil liability not only should not be made, they cannot be made.<sup>9</sup>

At the same time, it is important to note that a commission of inquiry is not precluded from making findings relevant to its mandate, including findings that individuals or organizations are at fault in some way. Indeed, the efforts of most commissions would be pointless if they could not make findings about what went wrong and why. What is to be avoided are findings that incorporate a judgment based on a legal standard or that otherwise reflect the requirements of civil or criminal liability:

The restriction against making determinations of criminal or civil liability does not mean a commission of inquiry is precluded from making findings of fact. Rather, speaking generally, it means commissions may not assess factual matters with reference to normative legal standards.<sup>10</sup>

Second, it is a well-established constitutional principle that a provincial commission of inquiry cannot make findings or recommendations with respect to the internal administration and management of federal agencies. In *Quebec (AG) and Keable v Canada (AG)*, [1979] 1 SCR 218, Pigeon J. expressed that principle as follows:

7 For the proposition that the province has a legitimate interest in calling a public inquiry to address the nature and prevalence of criminal activity within the province, see *Di Iorio v Warden of the Montreal Jail*, [1978] 1 SCR 152 at p 201; *Quebec (AG) and Keable v Canada (AG)*, [1979] 1 SCR 218 at p 254–55 [*Keable*] (“[t]he investigation of the incidence of crime or the profile and characteristics of crime in a province, or the investigation of the operation of provincial agencies in the field of law enforcement, are quite different things from the investigation of a precisely defined event or series of events with a view to criminal prosecution. The first category may involve the investigation of crime generally and may be undertaken by the invocation of the provincial enquiry statutes”); and *O’Hara v BC*, [1987] 2 SCR 591 at p 610.

8 *Starr v Houlden*, [1990] 1 SCR 1366 at p 1397–1398.

9 *Krever* at para 53.

10 *Hartwig v SK (Inquiry into Matters Relating to the Death of Neil Stonechild)*, 2008 SKCA 81 at para 35. See also *Bentley v Braidwood*, 2009 BCCA 604 at para 45 and *Krever* at paras 38, 57, 62.

I thus must hold that an inquiry into criminal acts allegedly committed by members of the R.C.M.P. was validly ordered, but that consideration must be given to the extent to which such inquiry may be carried into the administration of this police force. It is operating under the authority of a federal statute, the *Royal Canadian Mounted Police Act*, (R.S.C. 1970, c. R-9). It is a branch of the Department of the Solicitor General, (*Department of the Solicitor General Act*, R.S.C. 1970, c. S-12, s. 4). Parliament’s authority for the establishment of this force and its management as part of the Government of Canada is unquestioned. It is therefore clear that no provincial authority may intrude into its management. *While members of the force enjoy no immunity from the criminal law and the jurisdiction of the proper provincial authorities to investigate and prosecute criminal acts committed by any of them as by any other person, these authorities cannot, under the guise of carrying on such investigations, pursue the inquiry into the administration and management of the force.* [Emphasis added.]<sup>11</sup>

While that principle prevents me from interfering in the management and administration of federal agencies, I do not understand it to prohibit a consideration of the federal anti-money laundering regime as a whole, or the effectiveness of federal entities such as the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the Royal Canadian Mounted Police (RCMP) and the Canada Border Services Agency (CBSA). Such inquiries are necessary “in order to explain what took place during the relevant time frame”<sup>12</sup> and make effective recommendations to the provincial government about steps that must be taken to address money laundering activity.

I have paid close attention to both constitutional principles in making the findings of fact and recommendations contained in this Report. While I have made a number of factual findings concerning the activities of those alleged to be involved in money laundering activity, the purpose of these findings is to shed some light on the methods used by organized crime groups to launder illicit funds and to evaluate the response of provincial regulatory agencies. I have not assessed their conduct against any legal standard, and it is not my intention to suggest that the elements of criminal or civil liability are satisfied. Likewise, I have conducted a comprehensive review of the federal anti-money laundering regime and considered the effectiveness of federal agencies such as FINTRAC and the RCMP in responding to money laundering in the province of British Columbia. However, I have, at all times, been mindful of the prohibition against interference in the management and administration of federal agencies.

## Commission Counsel

One of my first tasks as Commissioner was to put together the senior leadership team that would be responsible for managing the substantive work of the Commission.

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<sup>11</sup> Keable at p 242.

<sup>12</sup> Reply of the Attorney General of Canada, October 19, 2021, p 127.

In May 2019, I appointed Brock Martland, QC, and Patrick McGowan, QC, as senior Commission counsel. Both have significant knowledge, expertise, and experience in the conduct of public inquiries, and I have relied on them to manage the substantive work of the Commission. Mr. Martland and Mr. McGowan were assisted by a talented team of associate and junior counsel, which included Alison Latimer, QC, Nicholas Isaac, Eileen Patel, Kyle McCleery, Kelsey Rose, Steven Davis, and Charlotte Chamberlain.

In December 2019, Tam Boyar, a senior lawyer with a broad range of experience, was appointed as policy counsel. Mr. Boyar was assisted in that work by Dahlia Shuhaibar, who made significant contributions to the Inquiry in her role as junior policy counsel.

I would also be remiss if I did not express my gratitude to Dr. Leo Perra, the executive director of the Commission, Cathy Stooshnov, manager of finance and administration, and Keith Hamilton, QC, who shared his wisdom and experience with members of the legal and policy teams.<sup>13</sup>

Over the life of the Commission, Commission counsel acted as the alter ego of the Commissioner and were responsible for various tasks including:

- preliminary investigations;
- witness interviews and document production;
- consultation with experts and investigators;
- preparation of overview reports;
- communications with participants;
- organization and presentation of evidence;
- examination of witnesses;
- legal and policy research;
- advising and assisting with evidentiary and procedural rulings;
- advising and assisting with the Interim Report; and
- advising and assisting with the Final Report.

While I freely conferred with Commission counsel on most issues, there were a few instances in which it was necessary to take a different approach. On contentious applications where Commission counsel took a position, Commission counsel were divided into two groups: a legal team responsible for responding to the application (in a visible way, for all participants to see) and a separate advisory team responsible for advising and assisting with my eventual ruling.

<sup>13</sup> A full list of Commission staff can be found at Appendix D.

The purpose of that division was to ensure that those who took an adversarial stance on the application were not advising or otherwise assisting me in preparing my ruling.

I also issued a ruling on May 5, 2021, in which I restricted the role of hearing counsel (i.e., Commission counsel who participated in the gathering and presentation of evidence) in the consideration of certain evidence tendered during the Commission process.<sup>14</sup>

## Participants

Because of the breadth of the Commission’s mandate, I considered it necessary and appropriate to hear from a wide range of voices. I granted participant status to various individuals and organizations. Some of these participants were given standing with respect to all issues before the Commission, while others were given standing with respect to specific issues. In what follows, I provide some information on each of these participants and comment on the perspectives they brought to the Commission.<sup>15</sup>

## Province of British Columbia

The Province of British Columbia initially sought to participate in the Inquiry through the Ministry of Finance and the Gaming Policy and Enforcement Branch, and as such, I initially granted standing to those two provincial bodies. Both entities were highly responsive to the many document and interview requests made by Commission counsel, and I am very grateful for the efforts of these entities and their counsel.

The Ministry of Finance has responsibilities in many of the sectors identified in the Terms of Reference, including the real estate, corporate, and financial sectors. It has also been involved in the development and implementation of the provincial anti-money laundering strategy.

The Gaming Policy and Enforcement Branch is responsible for the overall integrity of gaming and horse racing in the province and has regulatory oversight of the gaming and horse-racing industries.

It is also responsible for providing advice to the Attorney General on all gaming policy matters, including both regulatory and operational matters.

On December 4, 2020, I issued a ruling in which I replaced the separate grant of participant status given to the Ministry of Finance and the Gaming Policy and Enforcement Branch with a single grant of participant status to Her Majesty the Queen in Right of the Province of British Columbia (HMTQ). I gave HMTQ standing with respect to all matters set out in my Terms of Reference.

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14 For a more detailed discussion of that issue, see Ruling 32 (May 5, 2021). A full list of rulings made during the Commission process can be found at Appendix E.

15 A list of all participants and their counsel can be found at Appendix F.

## Government of Canada

The Government of Canada (Canada) plays a central role in the fight against money laundering and has put in place an anti-money laundering regime made up of various agencies and institutions. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*), is the centrepiece of the federal anti-money laundering regime. Broadly speaking, that legislation creates mandatory record-keeping and reporting requirements for financial institutions and other businesses, such as casinos, where there is a risk of money laundering occurring.<sup>16</sup> Examples of these requirements include suspicious transaction reports, which must be filed where there are reasonable grounds to suspect that a transaction is related to the commission or attempted commission of a money laundering offence; large cash transaction reports, which must be filed when reporting entities receive \$10,000 or more in cash in a single transaction; and electronic funds transfer reports, which must be filed when reporting entities process cross-border electronic funds transfers of \$10,000 or more.<sup>17</sup>

The *PCMLTFA* also creates a financial intelligence unit (FINTRAC) that is responsible for receiving and analyzing information relating to money laundering activity. Under section 55(3), FINTRAC is required to disclose certain information to law enforcement agencies where it has reasonable grounds to suspect that the information is relevant to the investigation or prosecution of a money laundering offence. Moreover, it is authorized to conduct research into money laundering trends and developments and to inform reporting entities, law enforcement authorities, and the public about the nature and extent of money laundering in Canada and internationally.

Other federal agencies involved in the fight against money laundering include the Office of the Superintendent of Financial Institutions, the Public Prosecution Service of Canada, the RCMP, the Canada Revenue Agency, and the Canada Border Services Agency.

The Office of the Superintendent of Financial Institutions is responsible for supervising and regulating more than 400 federally regulated financial institutions and 1,200 pension plans. While it does not manage the substantive operations of these institutions, it plays an important regulatory and oversight role in assessing the strength of their regulatory compliance and risk management practices.

The Public Prosecution Service of Canada generally prosecutes criminal offences under federal statutes other than the *Criminal Code*, RSC 1985, c C-46. Examples include the *Controlled Drugs and Substances Act*, SC 1996, c 19; the *Income Tax Act*, RSC 1985, c 1 (5th Supp); the *Immigration and Refugee Protection Act*, SC 2001, c 27; and the *Firearms Act*, SC 1995, c 39. In prosecuting such offences, it can seek authorization from the province to prosecute related offences such as those set out in sections 354 and 462.31 of the *Criminal Code*. It also has the power to seek the forfeiture of illegal proceeds and offence-related property in the sentencing process.

<sup>16</sup> Examples of these entities (sometimes called “reporting entities”) include banks, credit unions, life insurance companies, trust and loan companies, real estate agents, notaries, accountants, and casinos.

<sup>17</sup> *PCMLTFA*, ss 7, 9, 12.

The RCMP, Canada Border Services Agency, and Canada Revenue Agency play critical roles in the investigation of money laundering offences, often in conjunction with provincial and international partners such as the US Drug Enforcement Administration.

In light of the central role it plays in the fight against money laundering, I gave the federal government participant status in all sectors identified in my Terms of Reference.

## **Law Society of British Columbia**

The Law Society of British Columbia (Law Society) is responsible for the regulation of lawyers in the province. It operates independently of government and is responsible for upholding the public interest in the administration of justice, including the integrity, independence, honour, and competence of lawyers practising in British Columbia.

The Law Society was given participant status in various sectors identified in my Terms of Reference, including the real estate sector, financial institutions and money services businesses, the corporate sector, luxury goods, and the professional services sector.

## **Society of Notaries Public of British Columbia**

The Society of Notaries Public of British Columbia is responsible for the regulation of notaries in British Columbia. Under section 18 of the *Notaries Act*, RSBC 1996, c 334, notaries are entitled to provide a range of legal services in the province, including services relating to the purchase and sale of real estate.

The Society of Notaries Public of British Columbia was granted participant status in the real estate sector and the professional services sector.

## **British Columbia Lottery Corporation**

The BC Lottery Corporation is a Crown corporation responsible for the “conduct and management” of gaming in the province.<sup>18</sup> In furtherance of that mandate, it has entered into operational service agreements with gaming service providers, who are responsible for the day-to-day operation of casinos. These agreements incorporate detailed standards, policies, and procedures that must be followed by gaming service providers in operating their facilities. The BC Lottery Corporation also has various reporting obligations under the *PCMLTFA* and the *Gaming Control Act*, SBC 2002, c 14. The BC Lottery Corporation was granted participant status in the gaming and horse-racing sector.

## **Great Canadian Gaming Corporation**

The Great Canadian Gaming Corporation (Great Canadian) is a publicly traded corporation that operates gaming facilities in British Columbia, Ontario, Nova Scotia,

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<sup>18</sup> *Gaming Control Act*, s 7.

and New Brunswick. At the time it applied for participant status, it operated 10 gaming facilities in British Columbia, including two of the largest casinos in the province (the River Rock Casino Resort and the Hard Rock Casino Vancouver) and the only two racetracks that continue to host live horse racing.<sup>19</sup> Great Canadian was granted participant status in the gaming and horse-racing sector.

## **Gateway Casinos and Entertainment Inc.**

Gateway Casinos and Entertainment Inc. (Gateway) is a gaming service provider that operates three of the largest gaming and entertainment facilities in the Lower Mainland as well as a number of smaller gaming sites in Vancouver, on Vancouver Island, and in the Okanagan Valley.<sup>20</sup> Gateway was granted participant status in the gaming and horse-racing sector.

## **Canadian Gaming Association**

The Canadian Gaming Association is a not-for-profit organization that works to advance the evolution of Canada's gaming industry; promote the economic value of gaming in Canada; use research, innovation, and best practices to help the industry advance; and create productive dialogue among relevant stakeholders.<sup>21</sup> Its members include leading gaming operators such as Gateway and Hard Rock casinos as well as law firms and suppliers to the industry.<sup>22</sup> The Canadian Gaming Association was granted participant status in the gaming and horse-racing sectors.

## **British Columbia Government and Service Employees' Union**

The British Columbia Government and Service Employees' Union (since renamed the British Columbia General Employees' Union) is one of the largest labour unions in British Columbia. It represents more than 80,000 members who work in almost every sector of the economy, including the public service, the financial services industry, and the gaming sector. The BC Government and Service Employees' Union was granted participant status in the following sectors: gaming and horse racing, real estate, financial institutions, the corporate sector, luxury goods, and the professional services sector.

<sup>19</sup> Each of these facilities is operated by Great Canadian's wholly owned subsidiaries: Great Canadian Casinos Inc., Hastings Entertainment Inc., Orangeville Raceway Limited, Great Canadian Entertainment Centres Ltd., and Chilliwack Gaming Ltd.

<sup>20</sup> Gateway also operates the Grand Villa and Starlight casinos in Edmonton and various gaming and entertainment facilities in Ontario.

<sup>21</sup> Application for standing (Canadian Gaming Association), para 3.

<sup>22</sup> Opening statement of the Canadian Gaming Association, p 2.

## **BMW Canada Inc. and BMW Financial Services**

BMW Canada Inc. (BMW) is the Canadian subsidiary of BMW AG, a German multinational company that manufactures and distributes luxury vehicles and mobility services through its retail network in Canada. BMW Financial Services, a division of BMW, provides financial services, including leasing and financing of vehicles, to BMW customers in Canada. BMW was granted participant status in two sectors: luxury goods and financial institutions.

## **Chartered Professional Accountants of Canada**

The Chartered Professional Accountants of Canada (CPA Canada) is the national organization that represents Canada's accounting profession domestically and internationally. CPA Canada was formed through the unification of Canada's three legacy accounting designation bodies: the Canadian Institute of Chartered Accountants, the Society of Management Accountants of Canada, and the Certified General Accountants Association of Canada. It has over 220,000 members who have obtained the chartered professional accountant designation or possess a legacy designation.

CPA Canada is not a regulator but works co-operatively with provincial and territorial regulatory bodies, including the Chartered Professional Accountants of British Columbia.

CPA Canada was granted participant status in the professional services sector.

## **Chartered Professional Accountants of British Columbia**

The Chartered Professional Accountants of British Columbia (CPABC) is a statutory corporation that exercises responsibilities under the *Chartered Professional Accountants Act*, SBC 2015, c. 1 (the *CPA Act*). CPABC is currently the sole statutory professional regulatory body for professional accountants in British Columbia.

CPABC was granted participant status in the professional services sector.

## **British Columbia Civil Liberties Association**

The British Columbia Civil Liberties Association is a non-profit advocacy group with a mandate to defend, maintain, and extend civil liberties and human rights in Canada. It has expertise in a wide range of civil liberties matters, including criminal law reform, police accountability, access to justice, due process, and the impact of investigative and enforcement mechanisms on privacy interests.

The BC Civil Liberties Association was given participant status in all sectors identified in my Terms of Reference and has brought an important civil liberties perspective to the work of the Inquiry, particularly as it relates to the potential

expansion of police and regulatory powers, the increased collection of personal information, and the introduction of measures such as unexplained wealth orders (discussed below).

## **Canadian Bar Association and the Criminal Defence Advocacy Society**

The Canadian Bar Association is a professional organization representing the interests of more than 36,000 legal professionals, including lawyers, law students, academics, and judges. Founded in 1896, the Canadian Bar Association was formally incorporated by an Act of Parliament in 1921 and has branches in every province and territory. The British Columbia branch has more than 7,000 members in a wide range of practice areas, including criminal justice, real estate, corporate law, family law, and civil litigation.

The Criminal Defence Advocacy Society was founded in 2015 by members of the criminal defence bar in British Columbia. It is particularly concerned with the rule of law, the independence of the bar, and the constitutional rights of accused persons.

Because of the substantial overlap between the proposed contributions of these organizations, I directed that they share a single grant of standing in relation to all sectors identified in my Terms of Reference.

## **British Columbia Real Estate Association**

The British Columbia Real Estate Association is a professional association representing more than 23,000 commercial and residential realtors in the province. It does not have any legislative or regulatory powers and works with its member boards on matters such as professional development, advocacy, economic research, and the development of standard forms.

The BC Real Estate Association was granted participant status in the real estate sector.

## **Transparency International Canada, Canadians for Tax Fairness, and Publish What You Pay Canada**

Transparency International Canada, Canadians for Tax Fairness, and Publish What You Pay Canada (Transparency Coalition) is a coalition of public interest advocacy groups that has been campaigning to increase corporate transparency and establish a publicly accessible beneficial ownership registry in Canada.

The Transparency Coalition was given a single grant of standing in relation to financial institutions, the real estate sector, and the corporate sector.

## **James Lightbody**

James Lightbody is the president and chief executive officer of the BC Lottery Corporation. He has held that position since February 2014, when he was promoted from vice-president of casino and community gaming. Mr. Lightbody was granted participant status in relation to the gaming and horse-racing sector.

## **Robert Kroeker**

Robert Kroeker has held a number of senior positions in the gaming industry, including chief compliance officer and vice-president of legal, compliance, and security at the BC Lottery Corporation and vice-president of compliance and regulatory affairs at Great Canadian. Mr. Kroeker was also involved in the creation and operation of the BC Civil Forfeiture Office, where he worked extensively with police and other enforcement agencies in British Columbia and beyond. Mr. Kroeker was granted participant status in the gaming and horse-racing sector.

## **Brad Desmarais**

Brad Desmarais is currently the vice-president of casino and community gaming at the BC Lottery Corporation and has been with the BC Lottery Corporation in various other capacities since 2013. Before joining the BC Lottery Corporation, he worked as a police officer with the Vancouver Police Department and the RCMP.

Mr. Desmarais was granted participant status in the gaming and horse-racing sector.

## **Paul Jin**

Paul Jin came to the attention of the Commission as someone who was potentially involved with the lending of cash to gamblers through his association with an unregistered money services business in Richmond, British Columbia.

Mr. Jin sought and was granted standing to question witnesses, make submissions, and exercise the rights of a participant in relation to evidence that affects his interests or engages him specifically.<sup>23</sup>

After granting participant status to Mr. Jin, I was asked to make various rulings relating to his participation in the Inquiry and the process adopted by the Commission for making findings and recommendations that could affect his interests. These rulings include:

- Ruling 26, which dealt with an application brought by Commission counsel concerning Mr. Jin's ability to access to documents produced by other participants;

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<sup>23</sup> Ruling 14 – Application for Standing (November 5, 2020), para 16.

- Ruling 32, which dealt with an application brought by Mr. Jin for various orders and directions relating to the process for making findings of fact and recommendations concerning Mr. Jin;
- Ruling 34, which dealt with an application brought by Mr. Jin for an order that Commission counsel provide him with the definition of the term “loan shark” as that term will be used and applied by the Commission in analyzing the evidence and considering and formulating findings and recommendations;
- Ruling 36, which dealt with an application brought by Mr. Jin for various orders relating to an overview report sought to be tendered by Commission counsel concerning Mr. Jin’s private lending activity; and
- Ruling 37, which dealt with an application brought by Mr. Jin to compel information and documents relating to the process adopted by the Commission for the issuance of summonses as well as certain interviews conducted by Commission counsel.

I have followed the process outlined in these rulings and given careful consideration to the oral and written submissions made by Mr. Jin (and his counsel) in every instance where I have made findings of fact and recommendations that could affect his interests.

## **Kash Heed**

Kash Heed has had a long career in public service, having served as a member of the Vancouver Police Department from 1979 to 2007, Chief Constable of the West Vancouver Police Department from 2007 to 2009, and Minister of Public Safety and Solicitor General from June 10, 2009 to April 9, 2010, and again from May 4 to May 5, 2010.

On November 12, 2020, I granted him participant status for the limited purpose of cross-examining Fred Pinnock, a former RCMP officer who has levied public criticisms of his superior officers, and others, for their alleged failure to take steps to abate money laundering activity in the gaming industry. I return to these issues in Part III.

## **Ross Alderson**

Ross Alderson was an employee of the BC Lottery Corporation from 2008 to 2017 and served as the director for anti-money laundering, investigations, and intelligence from 2015 until his resignation in 2017. Mr. Alderson first sought participant status by way of an application dated September 4, 2019, but subsequently withdrew that application.

On May 24, 2021, Mr. Alderson submitted a renewed application for standing in which he took the position that the evidence led through the Inquiry process has given rise to allegations of misconduct, unlawful behaviour, and mental health issues in relation to his employment at the BC Lottery Corporation. He also took the position that

he has “extensive knowledge of the gambling industry” and it has become evident that he is a “key witness with intimate knowledge of events between 2009–2017.”<sup>24</sup>

On June 25, 2021, I granted him limited participant status to address matters involving his personal conduct and respond to evidence that could adversely impact his legal, reputational, or privacy interests.<sup>25</sup>

## Public Meetings

From October 23 to November 14, 2019, the Commission held public meetings in Vancouver, Victoria, Kelowna, Prince George, and Richmond. The purpose of these meetings was to seek input from the communities most affected by money laundering.

While participants were free to speak on any topic relevant to the Commission’s mandate, the following questions were posed in advance of the meetings:

- What are the most significant money laundering issues facing your community in British Columbia and in Canada?
- What areas of our mandate would you like us to focus on or address in our process?
- What have been the major consequences of money laundering in your community?
- What do you think is required to address the issues you have identified?
- How can the Commission keep you informed on our activities and findings?
- How can community members participate or stay involved in the process?

I would like to thank the many individuals who attended and made presentations at these public meetings. The thoughtful presentations I heard gave me considerable insight into the perspectives and concerns of members of the public.

In the five sections that follow, I provide a summary of the ideas and concerns expressed by members of the public at each of these meetings.

## Vancouver

On October 23, 2019, the Commission held a public meeting in Vancouver and heard concerns regarding:

- the increase in criminal activity on the streets of Vancouver;
- the prevalence of money laundering in the gaming industry, including the lack of meaningful action taken by the Gaming Policy and Enforcement Branch, the BC

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<sup>24</sup> Ruling 33 – Application for Participant Status (June 25, 2021), paras 15–16.

<sup>25</sup> Ibid.

Lottery Corporation, and gaming service providers to combat money laundering in BC casinos;

- the involvement of lawyers in money laundering activity, including the absence of any reporting obligations under the *PCMLTFA* and the use of trust accounts to facilitate illegal transactions;
- the suppression of relevant information and evidence by different levels of government;
- the need to strengthen whistle-blower protections, particularly in the gaming industry;
- the use of illicit funds to purchase real estate in British Columbia;
- the infiltration of casinos by organized crime figures; and
- the failure of law enforcement and regulatory agencies to actively (or effectively) prosecute money laundering offences.

Many of the presenters spoke to their personal experiences and observations with these matters, including efforts to inform the RCMP and other relevant authorities about suspicious activity they believed to be connected to money laundering.

## **Kelowna**

On October 29, 2019, the Commission held a public meeting in Kelowna.

One of the presenters was a former manager of a real estate company who expressed concerns about the process for tracking money in real estate transactions as well as the lack of compliance with FINTRAC regulations. They also expressed concern about the potential use of rental income as a way of laundering illicit funds.

I also heard concerns about the ability of the BC Securities Commission to properly regulate the market and the extent to which organized crime and money laundering has infiltrated the community.

## **Victoria**

On November 4, 2019, the Commission held a public meeting in Victoria where presenters addressed a number of topics, including:

- the high proportion of money laundering cases involving white-collar professionals;
- the need to better regulate lawyers;
- the lack of compliance among reporting entities with the *PCMLTFA*;

- the prevalence of money laundering in BC casinos, including the perception that government has largely “ignored” the problem;
- the need to protect whistle-blowers;
- the impact of money laundering on housing affordability; and
- the lack of enforcement of anti-money laundering laws in comparison with other countries.

One of these individuals spoke to the “regrettable” decision to disband the Integrated Proceeds of Crime units and suggested that substantial money laundering leads submitted to the RCMP have not been acted upon. He also suggested that the sanctions for failing to report suspicious transactions to FINTRAC were not significant enough to act as an effective deterrent and that the centre should take additional steps to audit reporting entities to ensure compliance.

Among the solutions these individuals proposed were a beneficial ownership registry and the use of unexplained wealth orders.

## **Richmond**

On November 7, 2019, the Commission held a public meeting in Richmond and heard presentations from a number of concerned individuals. A consistent theme in these presentations was the impact of money laundering on the real estate sector, including the impact on housing affordability and the construction of “mega mansions” on agricultural land. Presenters expressed concern that such encroachment pulls good farmland out of production, drives up the cost of real estate, and allows criminals to enjoy the proceeds of crime. Other concerns included:

- the prevalence of money laundering in the gaming sector;
- the exemption of lawyers from the financial reporting requirements set out in the *PCMLTFA*;
- cash payments in the construction industry as a potential weakness in the current anti-money laundering regime;
- lack of compliance with reporting obligations under the *PCMLTFA*, particularly among realtors; and
- the lack of any meaningful enforcement of anti-money laundering laws by law enforcement agencies.

A few of these speakers expressed the view that the current state of affairs is contrary to Canadian values, discouraging for British Columbians, and a “black eye” on

the history of our country. They also expressed considerable support for unexplained wealth orders as well as increased corporate transparency, including the creation of a beneficial ownership registry in the corporate sector.

## **Prince George**

On November 14, 2019, the Commission held its fifth public meeting, in Prince George, where several speakers expressed concern that the Commission's work may have no lasting effect, particularly when law enforcement agencies have been subject to significant cutbacks and have failed to act on matters related to money laundering.

## **Written Submissions**

In addition to holding public meetings, the Commission invited members of the public who could not attend a public meeting or preferred to share their perspectives in writing to make written submissions to the Commission. The Commission has received a large number of written submissions from concerned members of the public.

These submissions are largely consistent with the perspectives and concerns raised at the public meetings reviewed above. I am grateful to the many citizens of our province who have taken the time to share their thoughts and perspectives with the Commission. Each of these submissions has been reviewed and considered.

## **Sources of Evidence**

In order to develop an evidentiary basis for the findings of fact and recommendations mandated by my Terms of Reference, the Commission received and considered evidence from a variety of sources. Each of these sources are discussed below.

## **Terms of Reference Reports**

One of the first steps taken by the Commission in furtherance of its mandate was to thoroughly review and analyze the Terms of Reference Reports along with various other studies and reports concerning money laundering in British Columbia.

While these reports were invaluable in identifying issues to be investigated and solutions to be explored, I have not considered or otherwise relied on these reports in making findings of fact on contentious issues or in making findings that could reflect adversely on any party.

A full review of the key findings and recommendations contained in the Terms of Reference Reports, along with the responses of each participant with standing in the Inquiry, is contained in my Interim Report released in November 2020.

## Overview Reports

On December 5, 2019, the Commission enacted *Rules of Practice and Procedure* in accordance with section 9 of the *Public Inquiry Act*.

Rule 32 allows Commission counsel to prepare “overview reports” containing core or background information with respect to issues being considered. These reports were then circulated to participants, who had the opportunity to comment on the information contained in those reports before they were entered into evidence. Because of the breadth of the Commission’s mandate, and the sheer volume of evidence tendered on each issue, these reports were invaluable in putting relevant evidence before the Commission in an efficient manner. A total of 57 such reports were entered as exhibits.

## Witness Testimony

Witness testimony was a critical source of evidence for the Commission in making the findings of fact and recommendations contained in this Report.

The Commission heard *viva voce* evidence from 199 witnesses, with another 23 witnesses giving sworn evidence by way of affidavit.

Many of these witnesses were highly qualified experts who gave evidence with respect to various topics including:

- money laundering typologies (i.e., the methods used by those involved in money laundering activity to launder illicit funds);
- the Financial Action Task Force and other components of the international anti-money laundering regime;
- the Canadian anti-money laundering regime;
- legal and regulatory responses to money laundering in other countries, including the United Kingdom, the United States, Ireland, Australia, and New Zealand;
- quantification (i.e., estimates of the total volume of illicit funds laundered through the BC economy);
- legal and regulatory responses to money laundering in specific sectors of the economy, including the gaming sector, real estate, financial institutions, the corporate sector, luxury goods, professional services, and cryptocurrency;
- law enforcement responses to money laundering in Canada and other jurisdictions, including the United Kingdom, the United States, and New Zealand;
- information sharing and privacy; and

- asset forfeiture, including the asset forfeiture regime in jurisdictions such as the United Kingdom, the United States, Ireland, New Zealand, and Manitoba.<sup>26</sup>

I am very grateful for the knowledge, experience, and insight that these witnesses brought to the work of the Commission.

## Exhibits

A total of 1,063 exhibits were entered through the Commission process, including the 57 overview reports referenced above. These exhibits include a wide range of reports, affidavits, briefing notes, slide decks, memos, emails, and other documents that contain a wealth of information on a wide range of money laundering topics.<sup>27</sup>

## Additional Research and Study

Finally, it is important to note that the Commission was established as both a hearing commission and a study commission under section 20 of the *Public Inquiry Act*.

In accordance with its study commission mandate, the Commission has conducted additional interviews and research to supplement the evidence tendered through the hearing process. I note, however, that the information received through the study commission process was not considered in making any findings of misconduct.

## The COVID-19 Pandemic

The COVID-19 pandemic has impacted the Commission – and the province – in ways that would have been unimaginable at the time the Commission was established.

Like most individuals, organizations, and businesses, the Commission was required to adapt to the reality of the pandemic and find new ways to conduct its work.

One of the key challenges faced by the Commission was the need to conduct virtual hearings. I am extremely grateful to Leo Perra, Shay Matters, Kelsey Rose, Linda Peter, Phoenix Leung, Natasha Tam, Sarah LeSage, John Lunn, Mary Williams, and Scott Kingdon for their dedicated efforts to create and run a virtual courtroom on very short notice.

I would also like to thank participants, witnesses, and counsel for their continued engagement with the Commission during these difficult times. In the best traditions, they adapted to, and facilitated, our shift to an entirely virtual hearing process, in a co-operative fashion. I remain grateful for their approach.

<sup>26</sup> A full list of witnesses with links to hearing transcripts and webcasts can be found at Appendix G.

<sup>27</sup> A list of exhibits tendered during the Commission process can be found at Appendix H.

In the next chapter of this Report, I provide a high-level overview of money laundering, including the methods commonly used by offenders to launder illicit funds.

I then provide an overview of the individuals and groups involved in money laundering activity, followed by a discussion of quantification (i.e., estimates of the volume of illicit funds laundered through the BC economy).

I conclude Part I with a discussion of the harms caused by money laundering, including the impact it has on individuals and communities throughout the province.

## Chapter 2

# What Is Money Laundering?

Section 1 of my Terms of Reference defines money laundering as “the process used to disguise the source of money or assets derived from illegal activity.”<sup>1</sup> Other commonly cited definitions include “the process by which one converts or transfers cash or other assets generated from profit-oriented crimes in order to conceal their illegal origins,”<sup>2</sup> “any act or attempted act to disguise the source of money or assets derived from criminal activity,”<sup>3</sup> and “the process used by criminals to conceal or disguise the origin of criminal proceeds to make them appear as if they originated from legitimate sources.”<sup>4</sup> The *Criminal Code*, RSC 1985, c C-46, creates the criminal offence of money laundering in Canada. It provides, in relevant part:

### **Laundering proceeds of crime**

**462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

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1 Terms of Reference, para 1.

2 Exhibit 6, Stephen Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 12.

3 Exhibit 3, Overview Report: Documents Created by Canada, Appendix A, Canada, Parliament, Senate, Standing Senate Committee on Banking, Trade and Commerce, *Follow the Money: Is Canada Making Progress in Combatting Money Laundering and Terrorist Financing? Not Really, Report of the Standing Senate Committee on Banking, Trade and Commerce*, 41st Parl, 1st Sess (March 2013) (Chair: Irving R. Gerstein), p 1.

4 Ibid, Appendix B, Canada, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015) [2015 National Risk Assessment], p 9.

- a) the commission in Canada of a designated offence; or
- b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.<sup>5</sup>

Section 462.3(1) defines the term “designated offence” as (a) any offence that may be prosecuted as an indictable offence under the *Criminal Code* or any other Act of Parliament, other than an indictable offence prescribed by regulation or (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to an offence referred to in paragraph (a). Examples include drug trafficking, human smuggling, counterfeiting, illegal gaming, and certain types of fraud.

While the primary objective of money laundering is to conceal the true origins and ownership of illicit funds, a comprehensive money laundering scheme will also seek to “legitimize” those funds (that is, to make it appear that they have been derived from legitimate sources, such as a legal business). Stephen Schneider, a professor at St. Mary’s University, Halifax, and one of Canada’s foremost authorities on organized crime, financial crime, and money laundering, distinguished between these two objectives as follows:

You can conceal criminal activity or a criminal source through what’s called layering, and that is ... transaction upon transaction upon transaction through numerous financial instruments or commercial sectors to try to basically obfuscate any kind of paper trail between the asset or the funds and the criminal source. So that is in itself an important step in the process or an important objective. *But again, on top of that, to really truly satisfy the process, it’s not good enough just to conceal it. You want to have that legitimate source. I mean, some examples of creating a legitimate source ... the most common ... is setting up a shell company or even a real company that produces legitimate revenue. You would like a company that in its normal line of business produces cash ... like a bar or a restaurant, and you commingle your drug proceeds with the cash from [a] legitimate [source] and then you deposit into a commercial bank account ... [T]hat’s a typical example of creating legitimacy. You ... are concealing the criminal sources, but more importantly you’re creating the guise of legitimacy. And there’s various techniques to use to create that legitimacy. [Emphasis added.]*<sup>6</sup>

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5 *Criminal Code*, RSC 1985, c C-46, ss 462.31(1). Note that the *Criminal Code* definition of money laundering is narrower than the definition contained in my Terms of Reference and that I have been guided by the definition in my Terms of Reference. Nothing in this Report is intended as a finding that any particular individual or entity is guilty of any criminal offence.

6 Transcript, May 25, 2020, pp 31–32. See also Exhibit 23, Money-Laundering Typologies: A Review of their Fitness for Purpose (October 31, 2013), p 8, where Professor Michael Levi of Cardiff University, an expert in money laundering and transnational organized crime, states that the “central purpose” of money laundering is to ensure a legitimate appearance of what is in fact the proceeds of crime; Evidence of Simon Lord, a money laundering expert at the National Crime Agency in the United Kingdom, Transcript, May 28, 2020, p 10 (“Money laundering at its most basic is the act of making the origin of criminally derived funds appear legitimate”); and Evidence of Robert Wainwright, Transcript, June 15, 2020, p 17 (“[Money laundering] is the process of ... concealing – disguising the identity and ownership of illegally obtained proceeds in a way that makes the origin appear legitimate while leaving no link to the real source of funds”).

In what follows, I make some general comments about money laundering and introduce some of the themes that have emerged during the Commission process.

## Predicate Offences

From the outset, it is important to recognize that money laundering is inextricably tied to revenue-generating criminal offences. Such offences (sometimes referred to as “predicate offences”) include drug trafficking, fraud, human trafficking, counterfeiting, and a variety of other offences that have as their primary objective the generation of illicit funds through criminal activity. A 2015 risk assessment conducted by the federal Department of Finance (the National Risk Assessment) describes the threat actors perpetrating profit-oriented crime as ranging from unsophisticated, criminally inclined individuals and street-gang members to criminalized professionals<sup>7</sup> and transnational organized crime groups such as Mexican and Colombian cartels.<sup>8</sup> The report goes on to identify 22 profit-oriented crimes and evaluates the money laundering threat associated with each of those crimes, using the following criteria:

- **Sophistication:** the extent to which the perpetrators have the knowledge, skills, and expertise to launder criminal proceeds and avoid detection by authorities;
- **Capability:** the extent to which the perpetrators have the resources and network to launder criminal proceeds (e.g., access to facilitators and links to organized crime);
- **Scope:** the extent to which the perpetrators are using financial institutions and designated non-financial businesses and professions (such as lawyers and accountants) to launder criminal proceeds; and
- **Magnitude:** the estimated dollar value of the illicit funds being generated annually from the profit-oriented crime.<sup>9</sup>

Nine offences were rated as having a very high money laundering risk. These offences were capital markets fraud, commercial trade fraud, corruption and bribery, counterfeiting and piracy, illicit drug trafficking, mass-marketing fraud, mortgage fraud, third-party money laundering, and tobacco smuggling and trafficking.<sup>10</sup>

Eight offences were rated as having a high money laundering risk. These offences were currency counterfeiting, human smuggling, human trafficking, identity theft and fraud, illegal gambling, payment-card fraud, pollution crime, and robbery and theft.<sup>11</sup>

7 “Criminalized professionals” are defined in that report as individuals who hold or purport to hold a professional designation and title in an area dealing with financial matters and who use their professional knowledge and expertise to commit or willingly facilitate profit-oriented criminal activity. Examples include lawyers, accountants, notaries, investment and financial advisors, stock brokers, and mortgage brokers.

8 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 18.

9 Ibid, p 19. For additional commentary on the four criteria used in this Report, see Evidence of S. Schneider, Transcript, May 25, 2020, pp 45–47.

10 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 19.

11 Ibid.

Four offences were rated as having a medium money laundering risk. These offences were firearms smuggling and trafficking, extortion, loan sharking, and tax evasion / fraud.<sup>12</sup>

One offence (wildlife crime) was rated as having a low money laundering risk.<sup>13</sup>

In what follows, I make some general comments about these offences and the associated money laundering risk.

## Capital Markets Fraud

Capital markets fraud involves a wide range of illicit activities relating to capital markets. Examples include investment misrepresentation, insider trading, and pyramid schemes.

The National Risk Assessment notes that capital markets fraud is a “rich source” of illicit funds that can generate millions of dollars in profits. It also notes that capital markets frauds are often perpetrated by criminalized professionals and accompanied by sophisticated money laundering schemes designed to integrate the profits of these schemes into the financial system.

In his testimony before the Commission, Professor Schneider expressed the view that law enforcement bodies tend to focus on crimes such as drug trafficking and do not pay sufficient attention to financial crime, despite the significant impact it has on society:

[W]e talk about proceeds of crime, we tend to focus on ... organized crime, like drug trafficking, prostitution and tobacco smuggling and people smuggling and gambling, but even though I'm loath to try to estimate the scope of any kind of crime ... certainly we do not pay sufficient attention to the type of commercial crimes that occur in society, the impact that has on society and the amount of proceeds of crime and money laundering that accompany these economic crimes.<sup>14</sup>

While the relative priority given to financial crime is beyond the scope of this Report, these comments are important insofar as they highlight the wide range of offences giving rise to money laundering activity. Moreover, it is important to note that there can be significant organized crime involvement in certain types of financial crime, with the lucrative financial returns being laundered and used to fund other types of criminality.<sup>15</sup>

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12 Ibid.

13 Ibid.

14 Transcript, May 25, 2020, p 51.

15 Exhibit 1017, Overview Report: Criminal Intelligence Service Canada National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud (2020), Appendix A, Criminal Intelligence Service Canada, *National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud 2020* (Ottawa: 2020), p 4 (“Financial crime, often seen as ‘white collar’ crime, is committed by highly capable criminals and interconnected [organized crime groups], both in Canada and abroad, with some Canadian [organized crime groups] directly involved in running boiler rooms (i.e., telemarketing centres used in fraud), and others simply collect a portion of profits. The lucrative financial returns produced by frauds are likely used to fund other criminal activity, primarily drug importation and trafficking”).

## Commercial Trade Fraud

While commercial trade fraud is not specifically defined in the 2015 National Risk Assessment, I understand it to involve the intentional misrepresentation of information declared to customs services in order to evade import duties and tariff quotas or to conceal the movement of restricted goods.<sup>16</sup> Joel Gibbons, a senior analyst with the Canada Border Services Agency's Trade Fraud and Trade-Based Money Laundering Centre of Expertise, described commercial trade fraud as follows:

What is trade fraud? It's the intentional misrepresentation of information that is declared to custom services like the CBSA and often the shipping and the sales documents that are related to those, the goods in question. Trade fraud has really been happening for as long as there have been customs authorities. It's a form of crime that enables a wide variety of criminal activity. In the more traditional customs context, trade fraud techniques are primarily used to evade paying import duties or to evade tariff quotas on certain goods. So it's really to evade controls that are established to ensure that the Government of Canada is collecting the appropriate amount of revenue for goods that are entering into the country. And when we talk about trade fraud techniques, what we're primarily talking about is misdescription. And we're talking about misdescribing a number of different elements on, again, primarily customs documents but also shipping documents as well. And some of the elements that we would be talking about include the price of goods or the value of goods, the description of the goods ... the quantity of the goods, the weight of the goods, potentially even the quality of goods that are declared on customs documents.<sup>17</sup>

Some estimates suggest that, globally, less than 2 percent of shipping containers are physically examined and that criminals “routinely” take advantage of customs processes by intentionally misstating the value, quantity, quality, weights, and descriptions of commercial goods in order to evade duty and regulatory requirements and smuggle restricted goods into and out of the country.<sup>18</sup> Concerns have also been raised about organized crime groups “profiteering” from illegally smuggled goods.

The National Risk Assessment notes that the transnational organized crime groups, terrorist actors, and networks that operate in this sphere are “very sophisticated and capable, with the knowledge, expertise and international relationships to manipulate multiple trade chains and trade financing vehicles, often operating under the cover of front and/or legitimate companies.”<sup>19</sup> It further notes that the sophistication and capability of these groups in conducting commercial fraud also extends to laundering its proceeds.<sup>20</sup>

16 Evidence of J. Gibbons, S. Sharma, and B. Gateley, Transcript, December 10, 2020, p 22.

17 Ibid, pp 22–23.

18 Exhibit 357, Canada Border Services Agency, *COVID-19 Implications for Trade Fraud* (April 2020), para 3.

19 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 20.

20 Ibid.

## **Corruption and Bribery**

The National Risk Assessment states that corruption and bribery in Canada come in many different forms ranging from small-scale bribe-paying activity to large-scale bribery schemes aimed at illegally obtaining lucrative public contracts. It goes on to state that the money laundering threat from corruption and bribery was given a very high rating “principally due to the size of the public procurement sector and the opportunities that this presents to illegally obtain high-value contracts.”<sup>21</sup>

*The Report of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry* (also known as the Charbonneau Commission Report, after the head of the inquiry, Madam Justice France Charbonneau) provides considerable insight into this type of criminality in the Quebec construction industry. The report outlines the various schemes used to manipulate the public procurement process as well as the extent to which organized crime groups have infiltrated the Quebec construction industry.

Of equal if not greater concern are corruption and bribery offences carried out by foreign officials and organized crime groups in other jurisdictions. While such conduct may be outside the reach of Canadian law, the proceeds of that unlawful activity often make their way to countries such as Canada, the United Kingdom, and the United States.

## **Counterfeiting and Piracy**

The National Risk Assessment states that the number and selection of counterfeit and pirated products has grown significantly over the last decade, with Toronto, Montreal, and Vancouver being the key entry points for these products. It also states that organized crime groups appear to have tapped into global illicit distribution channels, allowing them to bring increasingly more counterfeit products into Canada and to launder the proceeds derived from the sale of counterfeit goods.<sup>22</sup> All indications suggest that the counterfeit and pirated goods market is substantial and continues to grow rapidly. As a result, authorities can expect an increase in money laundering activity associated with this type of criminality.

## **Illicit Drug Trafficking**

The National Risk Assessment indicates that the illicit drug market is the largest criminal market in Canada, with cannabis, cocaine, amphetamine-type stimulants, and heroin making up a significant share of the market.<sup>23</sup> Since the release of that report, fentanyl and fentanyl-adulterated substances have taken over 90 percent of the opioid market in British Columbia and resulted in significant public harm, including the deaths of thousands of drug users. By 2016, fatal overdoses from fentanyl exposure

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21 Ibid, p 21.

22 Ibid.

23 Ibid.

had increased to 8.4 per 100,000 in Canada, and more Canadians died from fentanyl-contaminated opioid use than were killed in motor vehicle accidents.<sup>24</sup> By 2018, the rate of fatal overdoses from opioid use reached 12 per 100,000 – approximately 85 percent of the province’s fatal overdoses.<sup>25</sup>

A research report prepared for the Commission by Dr. Martin Bouchard (the Bouchard Report), a criminology professor at Simon Fraser University, sets out the reasons that fentanyl is attractive to those involved in drug trafficking:

High mortality from fentanyl exposure stems from its potency – reported to be nearly 25 times more potent than heroin (Pardo et al., 2019). Fentanyl is cheaper than heroin too, which means its emergence has been motivated by traffickers’ desire to cut costs and increase profits (Caulkins et al., 2021). Fentanyl’s high potency means traffickers can make considerable profits by smuggling very small quantities (Caulkins et al., 2021). And its production chain is shorter compared to heroin, which reduces overall manufacturing costs. Fentanyl is manufactured from chemical precursors, so traffickers bypass the first part of the heroin distribution chain (i.e., farmers cultivating opium from poppy fields). Although bought and sold itself, fentanyl contaminates large quantities of heroin, opioids, and stimulants sold on the street (Bardwell, Boyd, Arredondo, et al., 2019).<sup>26</sup>

The Bouchard Report also estimates the size of the fentanyl market in British Columbia and concludes that retail sales of fentanyl – as well as fentanyl-contaminated opioids and stimulants – are in the range of \$200–\$300 million annually.<sup>27</sup> These numbers provide some insight into the size of the fentanyl drug market in British Columbia as well as the financial opportunities available to organized crime groups and other threat actors intent on making a profit from the sale of illicit drugs.

The Criminal Intelligence Service Canada (CISC) estimates that more than 90 percent of organized crime groups are involved in at least one illicit drug market and that these groups directly control or indirectly influence all aspects of the illicit drug market, including production, importation, and distribution.<sup>28</sup> While recognizing that many of these groups were involved in the cannabis market leading up to the

24 Exhibit 335, Research Report: Estimating the Size of the Fentanyl Market in British Columbia (October 26, 2020) [Bouchard Report], p 7.

25 Ibid.

26 Ibid. The full references in the quotation are as follows: B. Pardo, J. Taylor, J. Caulkins, et al, *The Future of Fentanyl and Other Synthetic Opioids* (Santa Monica, CA: RAND Corporation, 2019); J.P. Caulkins, A. Gould, B. Pardo, et al, “Opioids and the Criminal Justice System: New Challenges Posed by the Modern Opioid Epidemic” (2021) 4 *Annual Review of Criminology* pp 353–75; G. Bardwell, J. Boyd, J. Arredondo, et al, “Trusting the Source: The Potential Role of Drug Dealers in Reducing Drug-Related Harms via Drug Checking” (2019) 198 *Drug and Alcohol Dependence* pp 1–6.

27 Bouchard Report, p 47.

28 Exhibit 3, Overview Report: Documents Created by Canada, Appendix F, Criminal Intelligence Service Canada, 2018-19 *National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Illegal Drugs* (Ottawa), pp 3, 5.

October 2018 enactment of the *Cannabis Act*, SC 2018, c 16, CISC’s intelligence indicates that almost all these groups are involved in at least one other illicit drug market and will likely increase their involvement in those other markets to counteract the displacement of their share in cannabis. It also suggests that these groups will pursue other adaptive strategies, such as exporting cannabis to countries where it remains illegal, focusing on more potent cannabis products, targeting consumers who are unable or unwilling to purchase cannabis from legitimate suppliers, and exploiting regulatory differences.<sup>29</sup>

After reviewing this evidence, I am satisfied that illicit drug trafficking remains one of the most financially lucrative criminal markets for transnational organized crime groups (and other criminal actors) and is one of the most significant sources of illicit funds in this province.

## Mass-Marketing Fraud

“Mass-marketing fraud” is an umbrella term for fraudulent schemes that use mass-communication media, including telephones, the internet, mail-outs, television, and radio, to defraud the victim.<sup>30</sup> Common forms of mass-marketing fraud include

- government services scams, where an individual or a group poses as a government representative in order to mislead victims into revealing sensitive financial or personal information, with the objective of stealing their money or identity;<sup>31</sup>
- phishing scams, where criminals contact victims from what appear to be reputable agencies in order to induce the disclosure of sensitive information;<sup>32</sup>
- romance scams, where victims are lured into a false relationship with a fraudster, often through the use of information that has been posted online;<sup>33</sup>
- ransomware scams, where criminal actors deploy malicious software to attack computer networks by encrypting files and holding data hostage until payment is made;<sup>34</sup> and

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29 Ibid, p 3.

30 Exhibit 1017, Overview Report: Criminal Intelligence Service Canada National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud (2020), Appendix A, Criminal Intelligence Service Canada, *National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud 2020* (Ottawa: 2020), p 18.

31 Ibid. Although communication with victims often occurs through the use of telephone and email, offenders are increasingly using social media platforms and text messaging to carry out this form of unlawful activity.

32 Ibid, p 19. Common forms of phishing scams include email phishing, where offenders target a large, indiscriminate number of people by email; spear phishing, which involves a targeted attack directed at a single person; and whale phishing, which involves a targeted attack on specific high-ranking employees such as CEOs.

33 Ibid.

34 Ibid, p 20. The Criminal Intelligence Service Canada estimates that Canadian individuals and institutions, including businesses, universities, banks, hospitals, and government agencies, are targeted by ransomware attacks approximately 3,200 times per day. On average, such attacks are estimated to cost between \$1 million and \$3 million per incident.

- elder-targeted scams, where criminals use a variety of techniques, including government service scams, romance scams, bank and investment schemes, and prize offers, to defraud seniors.<sup>35</sup>

The National Risk Assessment states that the majority of mass-marketing fraud scams in Canada are carried out by organized crime groups, which use a variety of methods and techniques to launder the illicit funds they generate.

While reported losses averaged approximately \$60 million annually from 2009 to 2013 and totalled \$73 million in 2014, the National Risk Assessment states that “actual losses are viewed as being much higher, in the hundreds of millions of dollars annually, given that [mass-marketing fraud] is generally under-reported by victims.”<sup>36</sup>

## Mortgage Fraud

Mortgage fraud includes a wide range of deceptive practices relating to the provision of mortgage financing. At its simplest, it includes false and misleading statements made by a borrower on a mortgage application. However, a large number of sophisticated schemes are used to defraud lending institutions and property owners.

The National Risk Assessment states that organized crime groups conduct the “vast majority” of mortgage fraud activity in Canada and are believed to rely on the assistance of professionals such as real estate agents, mortgage brokers, appraisers, and lawyers. Some estimates suggest that the total amount lost to mortgage fraud annually is in the hundreds of millions and could be as high as \$500 million.

## Third-Party Money Laundering

The National Risk Assessment states that large-scale money laundering operations, including those connected to transnational organized crime groups, frequently involve third-party money launderers (defined as individuals or groups who were not involved in the predicate offence). Examples include professional money launderers, nominee owners,<sup>37</sup> and money mules.<sup>38</sup>

Professional money launderers specialize in laundering large sums of money and generally offer their services to criminals for a fee. They are often the masterminds behind sophisticated money laundering schemes and are frequently

<sup>35</sup> Ibid.

<sup>36</sup> Exhibit 3, Appendix B, 2015 National Risk Assessment, p 22. It is also noteworthy that cryptocurrency is one of the most common methods of payment for mass-marketing fraud: Exhibit 1017, Overview Report: Criminal Intelligence Service Canada National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud (2020), p 16, and Evidence of R. Gilchrist, Transcript, June 9, 2020, p 62.

<sup>37</sup> Nominee owners hold assets in their names on behalf of the true owner – the beneficial owner.

<sup>38</sup> Money mules are individuals not involved in the predicate offence who are used to physically transport money, goods, or other merchandise. In some cases, they are willing participants in the money laundering scheme. In others, they are unaware that they are being used to facilitate criminal activity.

used by the most powerful organized crime groups to launder domestic- and foreign-generated proceeds. Nominees and money mules are less of a threat but are nonetheless important because they may be critical in carrying out money laundering schemes (large and small).<sup>39</sup>

A full discussion of third-party money laundering is contained in Chapter 3.

## **Tobacco Smuggling and Trafficking**

The National Risk Assessment states that organized crime groups have a high level of involvement in the smuggling and trafficking of illicit tobacco products, such as counterfeit cigarettes and “fine cut” tobacco imported illegally by Canadian-based manufacturers. It also indicates that the organized crime groups involved in that trade have the sophistication and capability to launder the significant cash proceeds generated from the sale of those products.<sup>40</sup>

## **Currency Counterfeiting**

Large-scale currency counterfeiting is predominantly undertaken by organized crime groups that conduct currency counterfeiting alongside other profit-oriented criminal activities.

The National Risk Assessment states that these actors exhibit a high level of sophistication and capability. They also appear to have the network and the infrastructure in place to successfully launder the cash proceeds arising from such activity.<sup>41</sup>

## **Human Smuggling**

The National Risk Assessment indicates that “Canada is a target for increasingly sophisticated global human smuggling networks.”<sup>42</sup> Such activity, it continues, is believed to be carried out by a small number of well-established organized crime groups that have developed the sophistication and capability to smuggle humans across multiple borders.

Human smuggling requires international connections along with a high degree of organization and planning. The organized crime groups engaged in this type of criminality are believed to engage in sophisticated money laundering activity.

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39 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 22.

40 Ibid, p 23. For an analysis of the illicit financial flows from the tobacco trade, see Exhibit 4, Overview Report: Financial Action Task Force, Appendix SS, *FATF Report: Illicit Tobacco Trade* (Paris: FATF, 2012).

41 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 23.

42 Ibid.

## Human Trafficking

Human trafficking for sexual exploitation is the most common form of human trafficking in Canada. There have also been cases of labour trafficking in the construction and housekeeping sectors. The National Risk Assessment indicates that sex trafficking is largely perpetrated by criminally inclined individuals who are not thought to have a high level of sophistication in terms of money laundering. Such individuals are believed to launder the proceeds of that activity for “immediate personal use, leveraging a very limited or non-existent network, and using a limited number of sectors and methods.”<sup>43</sup> Organized crime groups are also involved in human trafficking and use their established infrastructure to launder the proceeds of that activity.<sup>44</sup>

## Identity Crime

Identity crime – such as identity theft and identity fraud – is prevalent in Canada and is of particular concern because stolen identities are often used to support the conduct of other criminal activities. Stolen identities can also assist money laundering operations by giving offenders fake credentials to subvert customers’ due diligence safeguards.<sup>45</sup>

The National Risk Assessment states that the organized crime groups conducting identity crime are “well-established and resilient, and have well-developed domestic and international networks.”<sup>46</sup> I also heard evidence that a significant percentage of organized crime groups involved in this type of activity are located in British Columbia and that many of those groups have international connections.<sup>47</sup>

## Illegal Gaming

Illegal gaming consists of a variety of activities, including private betting or gaming houses, unregulated video gaming and lottery machines, and unregulated online gambling. The National Risk Assessment identifies organized crime as the major provider of illegal gambling opportunities in Canada, though there are some smaller operations. The National Risk Assessment also notes that the illegal gambling market appears to be small in terms of the number of threat actors but is believed to be highly profitable for those involved.<sup>48</sup>

43 Ibid. For additional commentary on the illicit financial flows generated by human trafficking, see Exhibit 4, Overview Report: Financial Action Task Force, Appendix KK, *FATF Report: Financial Flows from Human Trafficking* (Paris: FATF, 2018).

44 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 23.

45 Ibid, p 24.

46 Ibid.

47 Exhibit 1017, Overview Report: Criminal Intelligence Service Canada National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud (2020), Appendix A, Criminal Intelligence Service Canada, *National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud 2020* (Ottawa: 2020), p 18.

48 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 24.

Organized crime groups involved in illegal gambling conduct these activities in a sophisticated manner. They are believed to have the capability to use a variety of sectors and methods to launder the proceeds of that activity.

## Payment-Card Fraud

The National Risk Assessment notes that credit-card fraud increased significantly from 2010 to 2015, while debit-card fraud decreased over that period. Like many other profit-oriented criminal activities, organized crime groups are heavily involved in payment-card fraud, which includes card thefts, fraudulent applications, fake deposits, skimming, and card-not-present fraud.<sup>49</sup> These groups are sophisticated and have specialized technical knowledge that allows them to carry out this type of fraud. They also exhibit very high levels of sophistication and capability in laundering the proceeds of this activity.

A 2020 report from the Criminal Intelligence Service Canada indicates that financial institutions reimbursed approximately \$862 million to Canadian credit-card customers in 2018. However, it is unclear how much of that total is attributable to organized criminal activity, as opposed to opportunistic use of credit cards by criminally inclined individuals.<sup>50</sup>

## Pollution Crime

Pollution crime is generally understood as unlawful activity that directly harms the environment. Examples of such activity include the improper disposal of hazardous materials and the importation of counterfeit products that do not meet Canada's environmental standards (e.g., vehicle engines).<sup>51</sup>

The National Risk Assessment raises a particular concern about organized crime groups infiltrating the waste-management sector as a tool to generate illicit profits and launder proceeds from other types of profit-oriented criminal activity.<sup>52</sup>

## Robbery and Theft

While small-scale thefts and robberies carried out by opportunistic criminals and petty thieves do not raise any significant money laundering concerns, it is important to recognize that organized crime groups are heavily involved in large-scale motor

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49 The 2015 National Risk Assessment defines card-not-present fraud as “the unauthorized use of a credit (or debit) card number, the security code printed on the card (if required by the merchant) and the cardholder’s address details to purchase products or services in a non-face-to-face setting (e.g., online, telephone).” It identifies card-not-present fraud as the most significant type of credit-card fraud in Canada, followed by credit-card counterfeiting.

50 Exhibit 1017, Overview Report: Criminal Intelligence Service of Canada National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud (2020), Appendix A, Criminal Intelligence Service Canada, *National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud 2020* (Ottawa: 2020), p 22.

51 Exhibit 3, Appendix B, 2015 National Risk Assessment, p 25.

52 Ibid, p 25.

vehicle, heavy equipment, and cargo theft. The most sophisticated and capable threat actors in this area have well-established auto theft networks that are used to supply foreign markets with stolen Canadian vehicles.

The National Risk Assessment indicates that these organized crime groups are believed to use a range of trade-based fraud and money laundering techniques to disguise the illicit origin of the automobiles and to move the illicit proceeds back into Canada.<sup>53</sup>

## **Firearms Smuggling and Trafficking**

Firearms smuggling and trafficking has been assessed as having a medium money laundering risk in Canada. The National Risk Assessment states that very few organized crime groups are involved in the trafficking or smuggling of firearms in this country for the purpose of generating illicit profits. Instead, these groups use firearms to strengthen their position within other criminal markets (such as the illicit drugs market).<sup>54</sup>

## **Extortion**

The National Risk Assessment indicates that organized crime groups often use extortion in furtherance of other crimes such as drug trafficking, illegal gaming, and human trafficking. For example, there is evidence of extortion being used as a tool to obtain money and property, control the distribution of illicit drugs, force the payment of illegal gambling debts, and gain access to ports of entries. It also states that the organized crime groups operating in this space vary in their level of sophistication and capability.<sup>55</sup>

## **Loan Sharking**

The National Risk Assessment indicates that loan-sharking activity appears to be undertaken by a small number of sophisticated organized crime groups, as well as a small number of independent operators who have a relatively high level of sophistication and capability when it comes to laundering the illicit funds generated by this activity.<sup>56</sup>

Importantly, loan sharking has also been used as a way of laundering illicit funds generated by organized crime groups involved in other types of profit-oriented crime. These groups will provide the illicit cash generated by that activity to a loan shark, who will use it to make a loan to the borrower. In many cases, the loan will be secured through a lien registered against property. When the borrower repays the loan, the loan shark will receive “clean” funds in exchange for the illicit cash.

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53 Ibid.

54 Ibid, p 25.

55 Ibid, p 26.

56 Ibid.

## **Tax Evasion**

Tax evasion is carried out in many different forms in Canada. The ultimate objective of these schemes is to avoid the payment of taxes owing (or to unlawfully claim refunds or tax credits).

The National Risk Assessment indicates that tax evasion generally involves ordinary individuals using tax-evasion techniques of low sophistication. The ensuing money laundering activity is also believed to be relatively unsophisticated. However, it is important to note that some tax-evasion schemes – particularly those involving shell companies and offshore financial havens – can have a high level of sophistication and involve significant sums of money.<sup>57</sup>

## **Wildlife Crime**

Although wildlife crime was assessed as having a low money laundering risk, an illicit market exists for certain types of Canadian species, including narwhal tusks, polar bear hides, peregrine falcon eggs, and wild ginseng. Black-market prices for these species are high and have risen significantly in recent years. The National Risk Assessment indicates that wildlife crime is largely conducted by opportunistic, criminally inclined individuals who, from a money laundering perspective, exhibit low levels of sophistication.<sup>58</sup>

## **The Three Phases of Money Laundering**

Under the traditional conception of money laundering, there are three distinct phases in the money laundering process: (a) placement, where illicit funds are placed into the legitimate economy, usually by way of a deposit in a financial institution; (b) layering, where the criminal enterprise carries out various transactions to hide the true source and ownership of illegally acquired funds and obscure any paper trail that may lead back to the original offence; and (c) integration, where the illicit funds are fully integrated into the financial system and put back into the hands of the offender. Professor Schneider testified that these phases should be viewed more as individual functions within the money laundering process as opposed to a sequential series of steps undertaken every time someone seeks to launder illicit funds:

I think the important point is not to necessarily look at this through a linear process, or even as phases, but [to] look at these as each individual function within the laundering process that satisfies the objective. Again, with the key objective of obviously getting the proceeds of crime back into the hands of the offender, repatriate it back to the offender.<sup>59</sup>

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57 Ibid.

58 Ibid.

59 Transcript, May 25, 2020, pp 39–40. See also pp 40–41, 43 (“[T]here’s a misconception that these phases operate in a sort of unilateral sequential manner, and they don’t always do so, so in some cases I think they’re better referred to as functioning phases”).

At present, there is an active debate among experts and academics as to the descriptive accuracy and utility of the three-stage model. In what follows, I review the traditional three-stage model and then comment on some of its shortcomings.

## Placement

Placement refers to the process by which illicit funds generated by other forms of criminality are introduced (or “placed”) into the financial system. Professor Schneider describes placement as the most difficult stage for those involved in money laundering activity. He testified that most of the anti–money laundering regulations that have been put in place – such as the requirement that financial institutions report cash deposits exceeding \$10,000 – revolve around the placement stage and that this stage is where offenders are most vulnerable.<sup>60</sup> He also observed that one of the reasons that commercial crime such as capital markets fraud and mass-marketing fraud is given such a high threat rating is that the illicit funds generated by that type of activity are *already* in the financial system:

[O]bviously, the cash transaction reporting requirements of the legislation revolve around cash placement. So, in this case, what you have is many of these [commercial] offences don’t produce cash, they produce – if it’s mass marketing fraud, you’re basically asking your victim to send in a cheque or to wire transfer or to do an account transfer or an Interac transfer. And so that’s why [commercial offences] are rated such a high threat, because the proceeds of crime are in a non-cash form, and in some cases they’re in an electronic form.

...

And that makes it ... easier to integrate the proceeds of crime and launder it, and it makes it more difficult to detect the proceeds of crime ... [I]f you don’t have the cash to start with, that makes the laundering just so much easier and more efficient.<sup>61</sup>

One of the most common placement techniques is for the offender to deposit the cash at a financial institution. In order to avoid the mandatory reporting requirement for cash deposits in excess of \$10,000, offenders will often make a series of smaller deposits under the \$10,000 threshold (a technique known as “structuring”) or engage a number of other individuals to make cash deposits on their behalf (a technique known as “smurfing”).<sup>62</sup>

Establishing a commercial bank account and depositing the criminal proceeds in the name of the company is another placement technique that allows the offender

60 Transcript, May 25, 2020, p 49. Canadian anti–money laundering regulations, such as the requirement that financial institutions report cash deposits exceeding \$10,000, are reviewed in detail in Chapter 7.

61 Ibid. See also pp 50–51.

62 The term “smurf” is derived from popular culture and connotes the image of a large group of small, blue, humanoid creatures working together to achieve a larger goal.

to legitimize (or “justify”) the illicit funds by claiming the proceeds of crime as legitimate revenue earned by the business.<sup>63</sup> In some cases, the illicit funds are commingled with legitimate revenue (such as revenue from restaurants, bars, supermarkets, and/or gas stations).<sup>64</sup> In other cases, the funds are solely the product of criminal activity.

Outside of financial institutions, a variety of techniques are used by offenders to introduce cash proceeds into the legitimate financial system. These techniques include the purchase of real estate and luxury goods with the cash proceeds of criminal activity, and the use of money services businesses to convert cash proceeds to larger denominations (or other currencies) and send those proceeds to other individuals. Without proper safeguards, casinos can also be used as a portal to introduce illicit proceeds into the financial system through the purchase of casino chips.

While federal legislation requires certain transactions to be reported to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), there are a variety of ways to circumvent those reporting requirements. Moreover, some sectors, such as the luxury vehicle sector, have no reporting obligations, and offenders can make large cash purchases with very little scrutiny. The vehicles can then be sold or exported to other countries, allowing the purchaser to realize a significant profit.

I provide a more detailed description of these techniques – along with some specific case studies – in subsequent chapters of this Report.

## **Layering**

Once illicit funds are placed in the legitimate financial system, the offender will often carry out various transactions to hide the true source and ownership of the illicit funds and obscure any paper trail that may lead back to the original offence. Professor Schneider describes this phase of the money laundering process as an attempt to “distance” the illicit proceeds from their criminal source.<sup>65</sup> While there are many ways to achieve that objective, the most common involve nominee ownership, shell companies, and the use of offshore financial havens.<sup>66</sup>

## **Nominee Ownership**

Nominee ownership refers to the practice of putting an asset – whether it is land, a luxury vehicle, or even a bank account – in the name of someone else (sometimes

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63 Evidence of S. Schneider, Transcript, May 25, 2020, p 84.

64 Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, pp 92–94. Professor Schneider states that these types of businesses are particularly attractive to money launderers because they process a high volume of cash transactions.

65 Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 39. See also Evidence of S. Schneider, Transcript, May 25, 2020, p 37.

66 Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 39. Of course, there are many other methods of achieving this objective.

referred to as the “nominee”) to hold on behalf of the true owner (sometimes referred to as the “beneficial” owner).<sup>67</sup> The nominee is often a family member or a friend with no criminal record, making it difficult for law enforcement to trace the asset back to any criminal activity.<sup>68</sup>

While legal professionals use nominee ownership for a number of legitimate and important purposes, it is also a very effective way to put distance between the offender and the proceeds generated by criminal activity.

### **Shell Companies**

Shell companies are at the centre of most sophisticated money laundering operations and provide virtually unlimited opportunities for offenders to launder illicit funds. While there is no legal definition of a shell company, they are generally understood to be companies that exist only on paper and do not have active operations. There are legitimate ways that shell companies are used. However, they are also employed for illegitimate purposes such as money laundering or fraud.

In some cases, shell companies are incorporated and registered by the offenders themselves. In other cases, they are purchased from a company formation agent complete with a corporate bank account. These companies are sometimes referred to as shelf companies because they are purchased “off the shelf” from another party.<sup>69</sup>

Ownership of these companies is often obscured through the use of nominee directors and shareholders, making it difficult, if not impossible, for authorities to determine who owns and controls them. Moreover, it is common for offenders to create (or purchase) multiple shell companies in various jurisdictions and have them loan or otherwise transfer money to one another in order to further obscure the true ownership and origins of illicit funds.<sup>70</sup>

Jason Sharman, a professor of international relations at King’s College, Cambridge, explains the vulnerability associated with shell companies in the following terms:

Shell companies create vulnerability because ... an expendable legal person can set up in dozens of jurisdictions online very quickly for perhaps a few hundred dollars and, as a legal person ... it can be the owner of the property, it can hold a bank account, and it can act as the screen or a veil to separate and conceal the underlying real owner, the beneficial owner.

<sup>67</sup> In legal terms, legal title to the asset is registered in the name of the nominee and held in trust for the beneficial owner of the asset.

<sup>68</sup> Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 40.

<sup>69</sup> Evidence of S. Lord, Transcript, May 28, 2020, p 33.

<sup>70</sup> Evidence of S. Schneider, Transcript, May 25, 2020, pp 73–74.

Again, this means that suspicious transactions are less likely to be flagged as such and secondly, it means that investigations can stop dead. If you find out that company A, B, C is involved and then you can't find who actually owns company A, B, C, then that's that in terms of the investigation most often.<sup>71</sup>

While these companies are often incorporated in offshore jurisdictions such as the Cayman Islands, it is important to note that these countries are merely “transit” points for the illicit funds. What is really happening is that the money is moving from China to Vancouver or from Russia to London or from Equatorial Guinea to Paris with a complex series of transactions in the middle.<sup>72</sup> It is also important to note that Western countries such as Canada, New Zealand, and the United States can provide similar functions to the classic offshore financial centres.<sup>73</sup>

### ***Offshore Financial Havens***

Offshore financial havens such as the Cayman Islands, Panama, and St. Kitts provide fertile ground for money laundering. Such countries are attractive because of their strict secrecy laws, relaxed money laundering regulations, and the array of facilities and services offered to foreign investors reluctant to disclose their identity. Once illicit funds are transferred to a shell company in one of these jurisdictions, or cash is smuggled into one of these jurisdictions and deposited in a numbered account, it is infinitely more difficult to trace the criminal funds back to the offender.

Oliver Bullough, an investigative journalist and the author of *Moneyland: The Inside Story of the Crooks and Kleptocrats Who Rule the World*,<sup>74</sup> coined the term “Moneyland” to refer to the labyrinth of countries, companies, and transfer mechanisms used to obscure the ownership and origins of illicit funds. His point, as I understand it, is that these transfer mechanisms are constructs created by legal professionals to hide the movement of money so that it no longer resides in any geographic location that we would recognize as a country:

If you put your money in Moneyland, it drops off the map. It no longer is registered as existing anywhere that we would recognize as a country. So you have this hole in the global balance sheet ... The assets and liabilities of the world don't match. It's as if Mars was a major investor in the world, which obviously it isn't ... [I]n order to make the list of countries add up so that the assets and liabilities add up, I decided to add another country to the list, and that's the country I called Moneyland.<sup>75</sup>

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71 Transcript, May 6, 2021, p 30.

72 Evidence of O. Bullough, Transcript, June 1, 2020, p 33.

73 Exhibit 959, Jason Sharman, Report to the Cullen Commission, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, pp 14–18.

74 New York: St. Martin's Press, 2019.

75 Transcript, June 1, 2020, p 20.

Mr. Bullough also described the manner in which offenders, with the help of their legal and professional advisors, can bounce the money through six or seven jurisdictions in one afternoon, making it “astonishingly difficult” to find.<sup>76</sup> He states:

If you ... bounce the money through multiple bank accounts in multiple jurisdictions, each of them owned by a different corporate structure or registered again in different jurisdictions ... you confuse the picture so hugely that it becomes very, very hard to follow what’s going on, particularly if you don’t move the money around in a lump sum that’s always the same size. You know, if you have a lawyer’s escrow account and you send the money in in a million dollars, and then bring it out in 33 packages of \$33,000, then it becomes much harder to trace what’s really going on.<sup>77</sup>

I return to the manner in which illicit funds are transferred between different companies and corporate structures in subsequent chapters of this Report.

## Integration

While commonly described as the third “phase” of the money laundering process, the integration of the illicit funds into the legitimate economy is better viewed as the end goal rather than a distinct stage in that process. Moreover, it is important to reiterate that one of the goals of money laundering is to create a veneer of legitimacy and that many of the transactions carried out as part of the money laundering process are undertaken with that in mind. Examples include

- depositing cash into a bank account under the guise of revenue from a legitimate business;
- making a cash deposit to “hold” a luxury vehicle, with the funds being returned, by cheque, when the prospective purchaser changes his or her mind;
- loan-back schemes, where nominees or shell companies “loan” illicit funds back to the offender under the guise of a loan agreement; and
- selling property financed with the proceeds of crime to a legitimate buyer pursuant to a contract of purchase and sale.

It is also important to recognize that the illicit funds are not always returned to the jurisdiction where the predicate offence occurred. For example,

- illicit funds generated from criminal activity in British Columbia can be smuggled to countries such as Mexico, where high-ranking cartel members reside;
- illicit funds generated from criminal activity in British Columbia can be used to purchase illicit products, such as drug precursors, in other countries;

<sup>76</sup> Ibid, pp 9, 10.

<sup>77</sup> Ibid, p 56.

- illicit funds generated from criminal activity in foreign countries can “transit” through British Columbia;<sup>78</sup>
- illicit funds generated from criminal activity in other countries can pass through the bank account of a shell company based in British Columbia (or whose directors and/or shareholders are based in British Columbia);<sup>79</sup> and
- illicit funds generated from criminal activity in other countries can make their way to British Columbia and be used to purchase property and other assets.<sup>80</sup>

These possibilities illustrate the complexity of the problem and highlight the need for a co-operative approach among provincial, federal, and international agencies.

## Criticisms of the Three-Stage Model

While the three-stage model (placement, layering, and integration) continues to be cited in academic literature and training materials, it was developed more than 30 years ago, when anti-money laundering efforts were focused on the *cash* proceeds of drug trafficking activity and may no longer be a useful or informative way of thinking about money laundering.

Simon Lord, one of the world’s leading experts on money laundering, testified that the three-stage model has become “truth by repetition,” but it is not the typical money laundering structure.<sup>81</sup> He explained that the methods employed by offenders may change from week to week depending on what they want to achieve:

[T]he view I take – and this is what I always say when I’m beginning a lecture on money laundering – is essentially you have to look at the criminal decision-making process. So the first element of that would be the criminal makes money from organized crime in some way – so he might sell a kilo of cocaine or heroin or sell some illicit cigarettes or commit a robbery or something like that. So once he’s actually got the money, the second thing he’s going to say to himself is: What do I want or what do I need to do with this money now I’ve made it? The third process is: Where do I need it to be in order to achieve that, and in what form? And the fourth point is: How am I going to get it there? And that is actually what [indiscernible] how money laundering works. You have to consider the criminal has got the money and wants to do something with it. And that is how ... they’re going to think. And the important thing

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78 For some of the reasons that Canada is attractive as a “transit” country for money laundering, see Evidence of S. Schneider, Transcript, May 25, 2020, p 54.

79 See Evidence of J. Sharman, Transcript, May 6, 2021, pp 94–95, and Exhibit 959, J. Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 18.

80 See, for example, Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 23.

81 Transcript, May 28, 2020, p 10.

that follows on from that is that ... the funds arising from [different types of criminality] are not always going to be laundered in the same way. So as an example, you could be in the situation where a criminal sells a kilo of cocaine this week, and because he's bought it on credit he needs to pay his supplier. Now, in the UK, there's a good chance his supplier might be in somewhere like the Netherlands or overseas. In which case the criminal would probably want the money in euros, because that's the currency of the country where it needs to go, and so he might need – and he might elect to do something like hide it in the car and drive it out of the UK to the Continent.

The following week, he might sell another kilo of cocaine. He's paid off his supplier, and so this time he decides he wants to buy a car with it. So somehow he's got to get that money into the financial system in such a way as to make the person who's selling him the car believe that it's legitimate. *And so the predicate offence is the same two weeks running but the money has been laundered in two totally different ways. And I think it's really important to understand that because I think there is a general perception amongst some areas of society that drug trafficking – money laundering always happens in this particular way ... whereas in fact it's entirely down to what the criminal wants to do with it. [Emphasis added.]*<sup>82</sup>

Likewise, Professor Michael Levi, an expert in money laundering and transnational crime, argues that the three-stage model may have been appropriate at the early stages of the anti-money laundering movement, but must be reconfigured to account for the diversity of sources, transfer mechanisms, and destinations of proceeds of crime. He writes:

The placement / layering / integration model was developed at a time (1988–89) when drugs trafficking was the principal predicate offence in law and in practice, following the Vienna Convention and the creation of [the Financial Action Task Force]. Indeed, my discussions with those present at the Sommet de l'Arche make it clear that the model was firmly urged on the nascent FATF at its travaux préparatoires. In that era and place, models of Italian-American and rival syndicated crime groups were prominent, and it was generally accepted that this avenue from organised crime to social and political respectability constituted what the sociologist Daniel Bell (1953) termed “the queer ladder of social mobility.” So the focus of the typology was appropriate at the time. However we are now almost a quarter of a century on, and reconfiguring the process is also appropriate, in the light of our more developed understanding and the arrival of new technologies. Whether this means substituting it for one other “one size fits all” typology is more questionable, however. Rather

<sup>82</sup> Ibid, pp 11–13.

we need to stop using the placement-layering-integration process as a comfort blanket and think about the diversity of sources, transfer mechanisms and destinations of proceeds of crime (and, in the case of terrorism and WMD [weapons of mass destruction], proceeds [preceding events] of crime).<sup>83</sup>

While the debate about the descriptive accuracy of the three-stage model may seem academic, the use of a flawed model can have significant implications for the ability of law enforcement, regulators, and other stakeholders to recognize and identify money laundering activity. In *Money Laundering: A Concise Guide for All Business*, Doug Hopton describes the implications of using a flawed model as follows:

[The] three-stage model, while a convenient way of describing the activity, is a little simplistic and does not fully reflect what really happens. It relates back to the common historical definition of money laundering discussed earlier. While they are examples of money laundering, they do not define what money laundering actually is. This has led to those with the duty of recognising money laundering having insufficient knowledge to be able to identify it in all its guises. *Too often we have looked at money laundering from the aspect of what we expect it to look like, rather than by reference to what it actually is. Numerous cases have come to light where employees have failed to identify relationships in which property has been laundered, simply because what happened did not match with what they had been taught to expect such activity to look like. So while the traditional model is useful, it does not adequately cover all situations in which money laundering occurs.* [Emphasis added].<sup>84</sup>

I agree with these commentators that the time has come to move away from the three-stage model. While useful in the early stages of the anti-money laundering movement, the three-stage model provides little insight into the methods actually used by offenders to launder illicit funds and has arguably stood in the way of developing better ways of responding to the money laundering threat.<sup>85</sup> For example, the three-stage model fails to fully account for money laundering techniques such as informal value transfer and trade-based money laundering, which many experts view as the largest and most pervasive methodologies in the world (see below).<sup>86</sup>

It is also a poor fit for economic crimes – such as capital markets fraud – where the illicit proceeds are transferred electronically and do not need to be “placed” into the financial system. Indeed, it is common for fraudsters who have received electronic funds transfers from their victims to make cash withdrawals in order to break the audit trail.

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83 Exhibit 23, M. Levi, Money-Laundering Typologies: A Review of their Fitness for Purpose, pp 34–35.

84 Ibid, pp 11–12, citing D. Hopton, *Money Laundering: A Concise Guide for All Business*, 2nd ed (Aldershot, UK: Gower, 2009), pp 2–3. See also Evidence of M. Levi, Transcript, June 5, 2020, pp 27, 28.

85 Exhibit 23, M. Levi, Money-Laundering Typologies: A Review of their Fitness for Purpose, p 14.

86 See Evidence of S. Schneider, Transcript, May 25, 2020, p 42; Evidence of J. Cassara, Transcript, December 9, 2020, pp 43–47; and Exhibit 341, Statement to the Cullen Commission of Inquiry into Money Laundering in British Columbia by John A. Cassara, p 18.

Another way of conceptualizing the money laundering process is to think of it as a chain of transactions (and other forms of money movement) which aim to move the funds acquired through profit-oriented crime to a setting in which criminals can use it freely.

In an expert report prepared for the Commission by Christian Leuprecht, Jeff Simser, Arthur Cockfield, and Garry Clement (the Leuprecht Report), the authors describe the money laundering process as follows:

Money laundering requires moving value acquired as the result of a crime (the “predicate offence”) to a setting in which the criminals can use it freely; in other words, money laundering tries to break the connection between the crime and the use of the value it produced. Using a chain (or better still a network) of movements makes it more difficult to find and demonstrate the connection. There is a fundamental asymmetry between criminals and law enforcement because adding more complexity to the chain is relatively easy for criminals but disproportionately increases the effort to follow the chain for law enforcement. Each link in the chain is detectable in principle because the movement of value creates data that can be captured and analysed using data-analytic techniques. However, there are several kinds of links that do not leave a trace, and so break the chain required to prosecute the offence of money laundering.<sup>87</sup>

While these movements can include the physical movement of cash or the transfer of illicit funds through the financial system, offenders can use a wide range of other methods to break the connection between the predicate offence and the illicit funds it produces.

In subsequent chapters of this Report, I move away from the three-stage model and undertake a more detailed examination of the mechanisms used to launder illicit funds. I also make a number of recommendations aimed at giving law enforcement agencies, regulators, and the private sector the information they need to recognize money laundering activity in all its various forms.

## The Underground Economy

While a significant portion of this Report is devoted to the six economic sectors identified in my Terms of Reference, it is important to recognize that a great deal of money laundering activity occurs in the informal or “underground” economy. What distinguishes this form of money laundering is that much of it occurs outside the regulated financial system and may not be caught by the countermeasures put in place by countries that have adopted the Financial Action Task Force model (such as the

<sup>87</sup> Exhibit 828, Collaborative Report, *Detect, Disrupt and Deter: Domestic and Global Financial Crime – A Roadmap for British Columbia* (March 2021), p 6.

requirement that private-sector entities report suspicious transactions to a central financial intelligence unit).<sup>88</sup>

John Cassara, a former US law enforcement official and an expert on trade-based money laundering, testified that these forms of money laundering are still not recognized as significant threats even though they are among the largest and most pervasive methodologies in the world.<sup>89</sup>

In what follows, I provide an overview of three such techniques: bulk cash smuggling, informal value transfer, and trade-based money laundering.

## **Bulk Cash Smuggling**

Bulk cash smuggling is one of the oldest and most basic forms of money laundering. However, it remains a significant problem. Some estimates suggest that the total amount of illicit cash smuggled across international borders each year could be in the order of hundreds of billions of dollars.<sup>90</sup> Professor Schneider testified that bulk cash smuggling is favoured by many organized crime groups that use shipping containers, human “mules,” and a variety of other methods to smuggle cash across international borders. Once the funds have been moved, they can be used for various purposes, including the payment of employees and suppliers, the purchase of weapons, and the payment of protection money and bribes. The movement of funds across international borders allows the offender to distance illicit funds from the predicate offence and break the audit trail, making it extraordinarily difficult for law enforcement to investigate and prosecute money laundering offences:

One of the primary drivers for laundering money derived from criminal activity is to conceal its illegitimate origins, and one of the simplest methods of doing this is to remove it from the jurisdiction in which the predicate offence was committed ...

The movement of funds in the form of cash from one country to another fulfils numerous requirements for a criminal. Primarily, it makes

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88 Note, however, that it is something of a misnomer to say that these activities take place in the “underground” economy. In many cases, they occur in plain sight. Moreover, it cannot be said that such activity occurs outside the regulated financial system entirely. At some point, the illicit cash generated by profit-oriented criminal activity will re-enter the legitimate economy. However, that may occur in another jurisdiction or by co-opting individuals with no connection to the underlying criminal activity.

89 Transcript, December 9, 2020, pp 43–47. See also Evidence of J. Sharman, May 6, 2021, p 24; and Exhibit 1020, Overview Report: Information Relating to the FATF & Egmont Group Trade-Based Money Laundering Report, Appendix A, FATF & Egmont Group *Report on Trade-Based Money Laundering: Trends and Developments* (December 2020), p 4. For a contrary view, see Evidence of R. Wainwright, Transcript, June 15, 2020, p 21 (“[T]he regulated financial sector remains the primary means by which criminal funds are laundered”).

90 Exhibit 4, Overview Report: Financial Action Task Force, Appendix LL, *FATF Report: Money Laundering Through the Physical Transportation of Cash* (Paris: FATF, 2015), p 3. For the proposition that bulk cash smuggling remains a serious problem, see also Evidence of J. Sharman, Transcript, May 6, 2021, pp 15–16 (“[C]ash is probably still one of the most important mechanisms for laundering the proceeds of crime”).

the tracing of the proceeds of a crime very difficult for the authorities. Police investigating a crime may never be able to identify the money generated from it if they have been unable to identify any evidence leading them to believe that the cash has been smuggled out of their jurisdiction. Even if the cash is detected in the destination country at some stage of the process, the legal and practical implications of information and intelligence exchange and evidence gathering between the countries of origin and destination can frustrate law enforcement efforts to prosecute offenders and seize the cash.<sup>91</sup>

Offenders can also move illicit funds to jurisdictions with less diligent regulatory oversight, making it easier for the offender to place those funds into the legitimate financial system for use at a later date. I return to this topic in Chapter 36.

## Informal Value Transfer Systems

Informal value transfer systems (sometimes referred to as “underground banks”) are another mechanism used by offenders to launder illicit funds.<sup>92</sup> In basic terms, these systems allow people to move value from one location to another without transferring funds through the regulated financial system. While each system is slightly different, the operators of these systems typically have “pools” of cash available to them in different locations, usually in different countries. When clients need to transfer funds from one location to another, the money will be paid into the cash pool in the first location and paid out of the cash pool in the jurisdiction where they need the money. The money paid into the first pool will be held in that location until another client needs to transfer funds into that jurisdiction. Over time, the operator may need to reconcile the cash pools to keep them in balance. However, there is no transfer of funds on an individual basis.

Mr. Lord described the operation of informal value transfer systems as follows:

Essentially, it’s money transmission at its most basic. Quite a lot of the time these types of systems are tied to specific geographic regions, ethnic communities and what have you, and essentially what they do is they arrange for transfer and receipt of funds or equivalent value without the physical need to transfer the funds themselves. So you’re transferring value but not necessarily the funds. So there won’t be a straight line remittance from point A to point B through the banking system ... [S]omeone will make a deposit of funds in one location and will receive an equivalent value in another location, less fees and commission, but

91 Exhibit 4, Overview Report: Financial Action Task Force, Appendix LL, *FATF Report: Money Laundering Through the Physical Transportation of Cash* (Paris: FATF, 2015), p 37.

92 Note, however, that these systems are also used for legitimate purposes in countries where the financial system has collapsed or is otherwise unreliable: see Evidence of S. Lord, Transcript, May 28, 2020, pp 56, 57, 58. See also Evidence of J. Sharman, Transcript, May 6, 2021, pp 21–23.

without there actually being a physical connection between the two. And they generally involve a process which I generally refer to as cash pooling. So the people who are involved in these types of networks have available to them pools of funds in different locations, not always cash. Sometimes it's money in bank accounts, sometimes it's trade. But pools of funds in different locations, and you receive the payment into one of those pools and make a payment out of another one. And then over time there will be a settlement arrangement between the pools to keep them in balance. Because, obviously, if all the money went one way, you would end up with lots of money in one place and not in another, and you would have to have some sort of settlement mechanism in place. So settlement can take place through trade, through cash, through net settlements over a long period of time, quite often through the banking system. They're often informal in so far as this type of stuff often happens outside of the formal financial system, but by no means all the time. They often interact with financial systems as well.<sup>93</sup>

Over the past 10 to 15 years, informal value transfer has been used to launder substantial sums of money through the British Columbia economy using a money laundering technique known as the Vancouver model. Under that model, organized crime groups operating in the province deposit the cash proceeds of their illegal activity with the operator of an informal value transfer system in the Lower Mainland and receive an equivalent value (less the commission earned by the operator) in countries such as Mexico and Colombia. The cash received by the operator is then repurposed and provided to wealthy Chinese nationals who are unable to move their wealth to British Columbia because of the currency restrictions imposed by the Chinese government. Those individuals make payments to the operator of the informal value transfer system in China and receive the equivalent value in cash when they arrive in British Columbia.

While a significant portion of that cash was used to make large cash buy-ins at Lower Mainland casinos, it is important to note that the cash can be used for any legitimate or illegitimate purpose, including the purchase of real estate and luxury goods. It is also important to note that the individuals seeking to move their wealth from China to British Columbia are not necessarily involved in criminal activity and may well have acquired that wealth through legitimate means. The problem, however, is that most, if not all, of the actual cash provided to those individuals in British Columbia is derived from profit-oriented criminal activity and is being paid out by the operator of the informal value transfer system in furtherance of a money laundering scheme. I return to informal value transfer systems in Chapter 37.

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<sup>93</sup> Transcript, May 28, 2020, pp 57–58.

## **Trade-Based Money Laundering**

Trade-based money laundering is a related form of money laundering that involves the use of trade transactions to avoid the scrutiny of more direct forms of transfer and to move illicit funds (or more accurately, value) from one location to another. It can also help to legitimize illicit funds by making them appear to be generated through a legitimate commercial transaction.

Invoice fraud is one of the primary techniques used by offenders to transfer illicit funds from one jurisdiction to another. Under this form of value transfer, a company in one country will ship goods to another country at significantly overvalued or undervalued prices. For example, an importer in British Columbia could transfer money overseas by overpaying for goods (real or fictitious) that it has “imported” from another country. The shipment of goods and the accompanying documentation provide cover for the transfer of money.

Other techniques used to transfer value between jurisdictions include multiple invoicing, falsely describing goods and services, short-shipping, and phantom shipping.

While there is general agreement that trade-based money laundering is a significant threat and one of the largest and most pervasive methodologies in the world, it is not well understood and has not – to date – been the subject of any meaningful enforcement action in Canada and many other countries. I return to this topic in Chapter 38.

## Chapter 3

# Who Is Involved in Money Laundering?

In order to understand the nature and prevalence of money laundering activity in the province, it is useful to examine the individuals and groups typically involved in such activity. A 2015 risk assessment conducted by the federal Department of Finance (the National Risk Assessment) describes these groups as ranging from unsophisticated, criminally inclined individuals to criminalized professionals and transnational organized crime groups.<sup>1</sup> It also raises the spectre of professional money laundering organizations and networks that offer money laundering services to individuals and groups involved in profit-oriented crime.<sup>2</sup>

Each of these groups presents a different money laundering threat and poses different challenges for regulators and law enforcement agencies.

### **Transnational Organized Crime**

Transnational organized crime has been described as one of the pre-eminent criminal threats to Canada and its global partners.<sup>3</sup> It is also a significant money laundering threat because of the volume of illicit proceeds generated by these groups and the “intensity” of their money laundering efforts, which almost always involve the use of professional money laundering networks to move illicit funds to various locations around the globe.

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1 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Canada, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015) [National Risk Assessment], p 18.

2 Ibid.

3 Exhibit 757, Transnational Organized Crime in “E” Division: RCMP, “E” Division Federal Serious and Organized Crime, Major Projects [Transnational Organized Crime], p 2.

While there is no single definition of transnational organized crime, it is generally understood to include associations of criminally minded individuals who conduct illegal activity in multiple jurisdictions. Such groups often have economic gain as their primary goal and frequently protect their illegal activities through a pattern of violence and corruption.<sup>4</sup> They may also seek to exploit differences between countries to further their objectives and insulate their leadership and membership from detection, sanction, and/or prosecution.<sup>5</sup>

British Columbia has long been viewed as one of four key organized crime hubs in Canada (with the others being Ontario, Quebec, and Alberta).<sup>6</sup> It is attractive to organized crime because of its proximity to smuggling routes from Mexico to Los Angeles, its international flights and marine ports, and its orientation toward the burgeoning markets of Asia.<sup>7</sup> It also has a “vibrant” drug production industry that includes both the marijuana industry and the production of synthetic drugs such as methamphetamine.<sup>8</sup>

Calvin Chrustie, a former RCMP officer with significant experience in the investigation of transnational organized crime, testified that he has witnessed the convergence of three main organized crime groups in British Columbia over the past decade:

- Mexican and Colombian cartel networks;
- Middle Eastern organized crime networks; and
- Asian organized crime networks.<sup>9</sup>

Mexican cartels have been assessed as a high-level threat in British Columbia and are heavily involved in the movement of South American cocaine through the Mexico / Central American corridor to consumer countries such as Canada and the United States.<sup>10</sup> They are also increasingly involved in the movement of methamphetamine and fentanyl precursors into British Columbia. In *Hunting El Chapo, The Inside Story of*

4 Ibid, p 12. See also *Criminal Code*, s 467.1, and Evidence of S. Sharma, Transcript, December 10, 2020, p 61.

5 Exhibit 757, Transnational Organized Crime, p 12. See also Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 44-45.

6 Evidence of R. Gilchrist, Transcript, June 9, 2020, p 44.

7 Peter German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia*, March 31, 2018 [*Dirty Money 1*], para 119. See also Evidence of R. Gilchrist, Transcript, June 9, 2020, p 43, and Evidence of S. Schneider, Transcript, May 25, 2020, pp 53-54, and May 26, 2020, p 44.

8 See Evidence of S. Schneider, Transcript, May 25, 2020, p 53, and May 26, 2020, p 44. See also Evidence of R. Gilchrist, Transcript June 9, 2020, pp 70-71, and Exhibit 3, Overview Report: Documents Created by Canada, Appendix F, Criminal Intelligence Service Canada, *2018-2019 National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Illegal Drugs* (Ottawa), pp 7-8 (“[t]he majority of methamphetamine consumed in Canada will continue to be produced domestically in illegal-clandestine laboratories. In 2018, 23 assessed [organized crime groups] are involved in methamphetamine production, with the majority of groups based in British Columbia and Ontario”).

9 Evidence of C. Chrustie, Transcript, March 29, 2021, pp 12-13. See also Evidence of B. Baxter, Transcript, April 8, 2021, pp 77-78, where he discusses Asian organized crime groups acting as a “depository” for other organized crime groups and assisting them to launder illicit funds.

10 Exhibit 757, Transnational Organized Crime, p 3. While Canada is viewed as a consumer country for most illicit drugs, it has also emerged as one of the top “transit” countries for the movement of cocaine to places such as Australia and New Zealand.

*the American Lawman Who Captured the World’s Most-Wanted Drug Lord*, Andrew Hogan, an investigator with the US Drug Enforcement Administration (DEA), wrote that he was “caught off guard” by the Sinaloa Cartel’s deep infiltration of Canada.<sup>11</sup>

Mr. Hogan goes on to describe the extent to which Mexican cartels co-operate with other organized crime groups, including outlaw biker gangs, to move cocaine into Canada:

Chapo’s men had connections with sophisticated Iranian organized-crime gangs in Canada who were facilitating plane purchases, attempting to smuggle ton-quantity loads using GPS-guided parachutes, while sending boxes of PGP-encrypted smartphones south to Mexico at Chapo’s request. A network of outlaw bikers – primarily Hells Angels – were also moving his cocaine overland and selling it to retail dealers throughout the country.<sup>12</sup>

Asian and Middle Eastern groups have also been assessed as a high-level threat, in part because of their skill in moving large sums of money around the world. Money service businesses associated with Middle Eastern organized crime groups have long been involved in the movement of illicit funds through the Lower Mainland. However, there is increasing concern within law enforcement about the volume of illicit funds being laundered by individuals associated with Asian organized crime groups.

Mr. Chrustie described a meeting with Colombian and American authorities where he learned about the “extreme volumes of money that were being moved around the world related to a phone number with [a British Columbia prefix].”<sup>13</sup> He also spoke about the increased levels of co-operation between transnational organized crime groups in recent years, particularly as it relates to money laundering:

[O]ften ... we look at these crime groups in terms of limited or linear type of interactivity amongst them, but what we saw of interest was that certain crime groups had unique relationships that appeared to be significant based on the timing of the meetings, the level of the meetings and the sensitivity of the meetings.

So, for instance, when top Sinaloa Cartel members arrived in Canada or arrived in Vancouver, say, theoretically at 10 o’clock at night, at 11 o’clock at night showing up at the residence would be Iranian networks ... [W]e saw that quite a bit.

And then we also saw periodically the convergence with the Chinese networks, say, for example, dropped calls and then when we looked at

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11 Andrew Hogan and Douglas Century, *Hunting El Chapo* (New York: HarperCollins, 2018), p 110.

12 Ibid, p 111.

13 Evidence of C. Chrustie, Transcript, March 29, 2021, p 17. See also Exhibit 757, Transnational Organized Crime, pp 3–4, and John Langdale, “Chinese Money Laundering in North America” (2021) 6(1) *European Review of Organized Crime*, pp 10–35. For some of the challenges faced by law enforcement entities in responding to the threat posed by transnational organized crime, see Evidence of R. Wainwright, Transcript, June 15, 2020, pp 24–27.

dropped calls on digital number recorders we would see that some of the dropped calls came from somebody that was formally known to be affiliated closely with a Hezbollah-related network, i.e., Iranian proxy network. We would see some triad networks receiving security from Iranian networks.

So we saw the convergence. We weren't too sure if this was by coincidence, so we worked with our international partners ... to research if this was coincidental engagement or if there was something more significant to it. And our partners involved in the intelligence work globally confirmed with us repeatedly that there appeared to be a convergence of these three networks dominating the Vancouver area becoming a very significant threat.<sup>14</sup>

While the three groups discussed above pose a unique threat to Canada and its global partners, there are a wide range of other organized crime groups operating in British Columbia, including outlaw motorcycle gangs (which are among the most prominent organized crime groups in Canada and often have operations across the globe), drug-trafficking networks, and violent street gangs.<sup>15</sup> Many of these groups pose a significant public safety concern because of their frequent involvement in violent conflicts with other organized crime groups. They also pose a significant money laundering threat because of the considerable profits they generate from various forms of criminal activity, including fraud and drug trafficking.<sup>16</sup>

A 2019 report on organized crime in Canada identified 14 organized crime groups as posing a high-level threat to Canadian interests.<sup>17</sup> Moreover, it appears that a disproportionate number of these groups have connections to British Columbia. Chief Superintendent Robert Gilchrist, the director general of Criminal Intelligence Service Canada (CISC), testified that 10 of the 14 organized crime groups posing a high-level threat to Canadian interests are linked to British Columbia.<sup>18</sup> He also identified 35 medium-level threat groups and 83 low-level threat groups with links to this province.<sup>19</sup>

Chief Superintendent Gilchrist went on to testify about the number of organized crime groups involved in money laundering activity and the methods used by those groups to launder illicit funds. For example, he testified that 176 of the 680 organized crime groups assessed by CISC as part of the 2019 integrated threat assessment process were identified as

14 Evidence of C. Chrustie, Transcript, March 29, 2021, pp 19–21. See also Evidence of R. Wainwright, Transcript, June 15, 2020, pp 19–21, where he discusses the increasing professionalization of transnational organized crime networks and the marked change he has seen over the past 10 years.

15 Exhibit 3, Overview Report: Documents Created By Canada, Appendix E, Canada, Criminal Intelligence Service Canada, *Public Report on Organized Crime 2019* (Ottawa, 2019), p 9.

16 Ibid, pp 12–13. These groups may also provide transportation and support for transnational organized crime groups. Wayne Rideout, the assistant deputy minister and director of police services in the BC Ministry of Public Safety and Solicitor General, emphasizes that the violence they perpetrate is not “street gang” violence but “organized crime violence” perpetrated by groups operating at a very high level of sophistication and managing to garner attention at the national and international level: Transcript, April 6, 2021, pp 58–59.

17 Ibid, p 4.

18 Evidence of R. Gilchrist, Transcript, June 9, 2020, p 45.

19 Evidence of R. Gilchrist, Transcript, June 10, 2020, p 2.

being involved in money laundering, with 28 percent of those groups using private sector businesses to launder illicit funds, 9 percent using money services businesses or informal value transfer systems, 10 percent using casinos, 7 percent using real estate, 3 percent using cryptocurrency and 2 percent using trade-based money laundering techniques.<sup>20</sup>

While these numbers may provide a useful starting point for an analysis of these issues, there are a number of significant gaps in the underlying intelligence, which make it difficult to draw any definitive conclusions.

First, the numbers provided by Chief Superintendent Gilchrist reflect the money laundering habits of 176 organized crime groups, but there are an estimated 1,850 such groups operating across the country. Chief Superintendent Gilchrist was unable to provide any information regarding the groups that were not assessed as part of the 2019 threat assessment, and it may be that no such information is available because these groups are using more sophisticated money laundering techniques.<sup>21</sup>

Second, the numbers are not specific to British Columbia and they may reflect money laundering techniques that are not possible or not frequently used in this province. For example, a money laundering technique used to launder illicit funds through the gaming sector in other provinces may not be possible in British Columbia because of new measures introduced by the province in response to *Dirty Money 1*.<sup>22</sup>

Third, the information used to generate these numbers was acknowledged to be imperfect. Both Chief Superintendent Gilchrist and Ryland Wellwood, the current analytics manager with Criminal Intelligence Service British Columbia / Yukon Territory, agreed that the level of organized crime involvement in money laundering is likely under-reported, especially with respect to more sophisticated techniques such as trade-based money laundering, which many experts view as one of the largest and most pervasive methodologies in the world.<sup>23</sup> Mr. Wellwood also testified that the numbers produced by Criminal Intelligence Service BC / Yukon are largely based on *indicators* of money laundering (rather than specific intelligence) and that much of the information it receives is quite incomplete. He stated:

The first comment that I wanted to pass along was that when [Criminal Intelligence Service BC / Yukon] examines money laundering in general, we are looking at indicators ... [W]e don't work with evidence necessarily, we work with a lot of information, some of which is quite incomplete, and

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20 Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 47–49, 54.

21 See, for example, Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 54–55.

22 Ryland Wellwood, the current analytics manager with Criminal Intelligence Service BC / Yukon, provided a breakdown of the four most common typologies seen in British Columbia but was unable to provide a breakdown of percentages: see Evidence of R. Wellwood, Transcript, June 9, 2020, p 52. However, he did indicate that 37 of the 176 groups identified by Criminal Intelligence Service Canada as being involved in money laundering had a presence in British Columbia and that nine of these groups were considered to have a higher level of capability defined as the ability to conduct money laundering activity on behalf of other groups or criminal networks: Evidence of R. Wellwood, Transcript, June 9, 2020, p 51.

23 Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 54, 55, 57; and June 10, 2020, p 54.

we typically are ... making use of indicators on a frequent basis for the work that we do in the assessments we produce.<sup>24</sup>

Fourth, the numbers provided by Chief Superintendent Gilchrist tell us the percentage of organized crime groups using each sector of the economy to launder illicit funds. However, they tell us nothing about the volume of illicit funds being laundered through each sector of the economy.<sup>25</sup> A sophisticated money laundering technique such as informal value transfer could be used by a small minority of organized crime groups to launder the majority of illicit proceeds generated by criminal activity in this province.<sup>26</sup> Likewise, a more prevalent technique such as the use of private businesses could be used by large number of relatively unsophisticated groups to launder a small fraction of the illicit funds generated in this province.<sup>27</sup>

While I appreciate that money laundering is a complex and secretive activity, it is essential that government agencies do more to study and gather specific intelligence concerning money laundering threats. In subsequent chapters of this Report, I recommend that the Province create a new office of the Legislature to provide independent oversight of the provincial anti-money laundering regime and assess the money laundering risks facing this province. I have also recommended the creation of a designated provincial money laundering intelligence and investigation unit responsible for developing proactive, actionable intelligence with respect to money laundering threats. It is my sincere belief that the collection of better intelligence with respect to these issues will enable law enforcement agencies, regulators, and government to respond to the significant threats posed by organized crime in a more effective way.

## Politically Exposed Persons

Politically exposed persons are generally defined as individuals who are or have been entrusted with a prominent public function. Examples include heads of state, senior politicians, senior government staff, judicial or military officials, senior executives of state-owned corporations, and important political officials. Politically exposed persons are often discussed in conjunction with heads of international organizations, defined as persons who are or were, within a prescribed period, the head of an international organization or the head of an institution of any such organization. Because of the nature of their positions, politically exposed persons and heads of international organizations are at a higher risk of becoming involved in bribery and corruption offences, which gives rise to the need to launder the unlawful profits they receive.<sup>28</sup>

<sup>24</sup> See Evidence of R. Wellwood, Transcript, June 9, 2020, p 50. See also Evidence of R. Gilchrist, Transcript, June 9, 2020, p 48.

<sup>25</sup> Evidence of R. Gilchrist, Transcript, June 10, 2020, p 60.

<sup>26</sup> *Ibid*, p 61.

<sup>27</sup> *Ibid*.

<sup>28</sup> Exhibit 959, J. Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 12.

While Canadian officials are not immune from bribery and corruption, the bigger risk arises from foreign corrupt officials who seek to protect the proceeds of their unlawful activity by moving them to countries such as Canada, the United Kingdom, and the United States. Jason Sharman, the Sir Patrick Sheehy Professor of International Relations at the University of Cambridge, testified that this is an issue of real concern for British Columbia and Canada:

[A]s a multicultural society with a large stable financial sector, there's temptation for foreign corrupt officials to use the Canadian financial system or perhaps bits of it, like Canadian shell companies, to help in laundering money derived from corruption offences committed in other countries.<sup>29</sup>

Professor Sharman explained that the same factors that attract legitimate money – stable financial systems, predictable property rights, and sophisticated business professionals – attract criminal funds.<sup>30</sup> He indicated the real estate sector is particularly vulnerable to this type of money laundering insofar as it provides a store of value as well as a “vault” or “escape post” for foreign corrupt officials fleeing their home country.<sup>31</sup>

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*] seek to limit the extent to which these individuals can launder funds through the BC economy by imposing enhanced due diligence requirements on financial institutions and other businesses dealing with politically exposed persons. For example, the regulations require that financial institutions take reasonable measures to determine whether a person is a politically exposed person or head of an international organization, a family member, or a close associate of such an individual before opening an account or processing an electronic funds transfer of more than \$100,000 for or on behalf of that person.<sup>32</sup>

On June 1, 2021, the federal government expanded these due diligence requirements to designated non-financial businesses and professions such as casinos, dealers in precious metals and stones, real estate agents, accountants, and notaries. While these regulations make it more difficult for foreign corrupt officials to launder illicit funds through the Canadian economy, there remains a risk that these regulations can be circumvented through the use of shell companies and professional intermediaries such as lawyers, accountants, and real estate agents.<sup>33</sup> For example, Professor Sharman gave evidence that lax beneficial ownership

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29 Transcript, May 6, 2021, pp 82–83. See also Exhibit 959, J. Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 12: “[a]s a large, multi-cultural country that attracts migrants from all over the world, including highly corrupt countries, Canada also to a certain extent imports some of the corruption problems of these countries, in the sense of accepting assets that are the proceeds of foreign corruption offences.”

30 Transcript, May 6, 2021, p 82–83.

31 Ibid, pp 26, 88–89.

32 *PCMLTF Regulations*, s 116(1). Where a financial institution determines that a person is a politically exposed person, it must take reasonable measures to establish the source of funds that have been or are expected to be deposited into the account, obtain the approval of senior management to keep the account open, and conduct enhanced monitoring of the account for the purpose of detecting and reporting suspicious transactions: *PCMLTF Regulations*, s 121(1).

33 Evidence of J. Sharman, Transcript, May 6, 2021, pp 27–30. See also p 95.

standards in countries such as the United Kingdom, New Zealand, and the United States have allowed foreign corrupt officials to launder their tainted wealth through those jurisdictions and that Canadian corporate vehicles are at risk of being used for the same purpose.<sup>34</sup>

Another challenge that arises in this context is the difficulty of determining who is a politically exposed person, the head of an international organization, or a family member or close associate of a such a person. Commercial databases that provide information on politically exposed persons are not always comprehensive, reliable, or up to date. Moreover, the cost of these services may be prohibitive for professionals such as accountants, real estate agents, lawyers, and notaries.<sup>35</sup>

Other methods of determining whether a client is a politically exposed person – such as open-source research and customer declarations – are similarly problematic, especially where the politically exposed person is not forthcoming about their current or former position.<sup>36</sup> A research memorandum prepared for the Federation of Law Societies of Canada Anti-Money Laundering and Terrorist Financing Working Group describes some of these problems:

The practical issue remains that there is no clear way to designate and identify PEPs [politically exposed persons] due to the lack of available and useful information about the identity of PEPs around the world. There are private providers of PEP databases, however the information contained in them and the ability to positively match the client with a PEP in a database can be challenging. In addition, there is a cost to this service which could be significant to law firms. Also, PEPs are becoming more creative in finding ways to avoid detection, such as opening accounts in the names of corporations instead of their own names, so the PEP lists may not be effective. Using name checking lists is not easy as many PEPs may have numerous “Also known as” alternative names. Also, naming customs and protocols from other countries are not always understood, many names are the same, and there are not unique identifiers, such as an address or a date of birth.<sup>37</sup>

Professor Sharman testified that general improvements to the Canadian anti-money laundering regime (such as a beneficial ownership registry) would improve the situation to some extent. However, he opined that a comprehensive response to the problem would require the creation of a specialized unit akin to those developed in the United States, the United Kingdom, and Switzerland with responsibility for investigating

34 Exhibit 959, J. Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 14.

35 Exhibit 1046, Overview Report: New Developments & Miscellaneous Documents, Appendix F, *FATF Guidance Report: Politically Exposed Persons* (June 2013), paras 61–62.

36 Ibid, paras 60 and 64–78.

37 Exhibit 210, Federation of Law Societies of Canada: Memorandum from CIV [Client Identification and Verification] Subgroup – FLSC AML Working Group to FLSC AML Working Group, re: Report on CIV Issues Review, April 24, 2019, p 17. See also Exhibit 3, Overview Report: Documents Created by Canada, Appendix C, Canada, Parliament, House of Commons, Standing Committee on Finance, 42nd Parl, 1st Sess, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward, Report of the Standing Committee on Finance* (November 2018), pp 19–20.

money laundering by politically exposed persons.<sup>38</sup> While I accept that the creation of a specialized foreign corruption unit would bolster attempts to combat money laundering in British Columbia, I have decided not to recommend the creation of a provincial foreign corruption unit for three principal reasons.

First, the creation of a specialized unit would require a significant investment of public funds in circumstances where there is little, if any, specific evidence about the extent of the problem. While there is generalized evidence that British Columbia is an attractive destination for foreign officials seeking to hide their ill-gotten wealth, such evidence cannot, in my view, justify that type of expenditure.

Second, it may well be that the Province can make meaningful progress on this issue through other means, including the creation of a beneficial ownership registry and an enhanced asset forfeiture regime. Professor Sharman notes that the successes of the specialized foreign corruption units created in the United States, the United Kingdom, and Switzerland have rarely been the result of criminal convictions. Instead, he emphasizes the importance of non-conviction-based asset forfeiture in addressing this issue.<sup>39</sup> Moreover, it seems to me that unexplained wealth orders (discussed below) may be a particularly useful tool in addressing the problem of foreign officials parking their illicit wealth in the British Columbia real estate market. Such orders would serve as a deterrent for the purchase of real estate and other assets with illicit funds and allow for these assets to be repatriated to their country of origin.

Third, it seems to me that the creation of a specialized unit to investigate foreign corrupt officials is properly a federal responsibility. While constitutional constraints prevent me from making recommendations aimed at the federal government, I would strongly encourage further study of this issue to determine whether the creation of this type of unit is a necessary and proportionate response to the money laundering threat posed by politically exposed persons and heads of international organizations.<sup>40</sup>

Another solution that has been proposed is the creation of a central registry or database of politically exposed persons and heads of international organizations to make it easier for smaller non-financial businesses and professions – such as lawyers, accountants, and real estate agents – to determine whether a client (or potential client) is a politically exposed person or head of an international organization.

In its closing submissions, the Law Society of British Columbia asks me to recommend that the federal government create and maintain a registry of politically exposed persons and heads of international organizations that is available to regulators, financial institutions and designated non-financial businesses and professions:

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38 Exhibit 959, J. Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, pp 18–20.

39 Ibid, pp 18–20.

40 I understand there are currently units within the RCMP which investigate offences under the *Corruption of Foreign Public Officials Act*, SC 1998, c 34, along with other international offences (such as war crimes). However, I do not understand these units to have a specific focus on the movement of foreign corruption proceeds to Canada.

The work of FATF [Financial Action Task Force] and the United Nations has resulted in heightened due diligence requirements related to foreign PEPs [politically exposed persons], but many industry stakeholders experience challenges in meeting these requirements due to inconsistent definitions and methods for identifying PEPs. The same challenges arise with regard to identifying HIOs [heads of international organizations]. A government-created and maintained registry of PEPs and HIOs that is free and easily accessible would assist regulators, industry stakeholders and professionals in carrying out more effective and consistent due diligence activities. The federal government is best placed to create and maintain such a database, which should be made broadly available, taking into consideration relevant privacy legislation.<sup>41</sup>

While such a database would undoubtedly be difficult and costly to maintain, I believe it would provide a valuable resource for reporting entities including, in particular, smaller non-financial businesses and professionals such as real estate agents, accountants, and notaries. These entities have recently acquired obligations to determine whether a client or potential client is a politically exposed person and may not have the resources to subscribe to a commercial database or otherwise determine whether a client is a politically exposed person.

Indeed, it is unlikely that the legislative amendments introduced by the federal government on June 1, 2021, which expand the due diligence requirements for designated non-financial businesses and professions dealing with politically exposed persons and heads of international organizations, will have their intended effect if these businesses and professions are not given the tools they need to determine whether an individual is a politically exposed person.<sup>42</sup>

While it is theoretically possible for the province to create and maintain a list of politically exposed persons, I am of the view the federal government should have primary responsibility for creating and maintaining that list. Not only are the enhanced due diligence obligations imposed by federal legislation, but the federal government is in a better position to acquire the information needed to create the list as a result of its constitutional responsibility over international relations. It is also better positioned than the province to share relevant information with governments of other states.

I would therefore encourage the BC Minister of Finance and Minister of Public Safety and Solicitor General to work with their federal counterparts to study the viability of a database of politically exposed persons and heads of international organizations.

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41 Closing submissions, Law Society of British Columbia, July 9, 2021, paras 83–84.

42 In making these comments, I acknowledge the risk that non-financial businesses and professions will come to rely exclusively on that database instead of critically evaluating whether a client is a politically exposed person. However, it seems to me that the creation of such a database would give smaller businesses and professions an additional tool to determine whether their clients are politically exposed persons and that anti-money laundering efforts would be further ahead by the creation of that database than they would be without it.

If created, the database should be updated as frequently as possible and include a list of politically exposed persons and heads of international organizations as well as their family members and close associates. Moreover, it should make use of photographs and affiliated companies and businesses, include alternative (or “also known as”) names, take into account naming conventions in other countries, and allow these names to be searched in an intuitive way. It may also be useful to compile a list of positions and functions that are considered to be prominent public functions (i.e., positions held by politically exposed persons) for as many countries as possible.

## Professional Money Launderers

Professional money launderers are individuals or groups that provide money laundering services to other criminals in exchange for a commission, fee, or profit. While not typically involved in the predicate offence, they have close connections to organized crime and are the architects of many sophisticated money laundering schemes.<sup>43</sup>

In most cases, the illicit funds generated by organized crime groups will be transferred to the professional money launderer, who will use a range of money laundering techniques to clean the illicit funds and return them to an account owned or controlled by the offender.<sup>44</sup> In some cases, the professional money launderer will also invest the illicit proceeds in real estate, luxury goods, and other investment vehicles.<sup>45</sup>

A Financial Action Task Force report on professional money laundering notes that many countries limit money laundering investigations to self-launderers (i.e., criminals who launder the proceeds of their own criminal activity) and have largely ignored professional money laundering organizations.<sup>46</sup> The report goes on to state that the dismantling of professional money laundering organizations “requires focused intelligence collection and investigation of the laundering activities.”<sup>47</sup> However, the disruption of these organizations can have a significant impact on their criminal clients and be an effective interdiction strategy against numerous high-level criminal targets.<sup>48</sup>

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43 Exhibit 4, Overview Report: Financial Action Task Force, Appendix Q: FATF, *Professional Money Laundering* (Paris: FATF, 2018) [*Professional Money Laundering*], pp 10–11. See also Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 46–47; Evidence of S. Lord, Transcript, May 28, 2020, pp 15–16; Evidence of S. Schneider, Transcript, May 25, 2020, pp 27–28, 47–48; and Evidence of R. Wainwright, Transcript, June 15, 2020, pp 19–20, 22. Predicate offences, which are revenue-generating offences, are discussed in Chapter 2.

44 Exhibit 4, Appendix Q, *Professional Money Laundering*, pp 18–19.

45 Ibid, p 19.

46 Ibid, pp 6–7.

47 Ibid, p 7.

48 Ibid. See also Evidence of P. Reuter, Transcript, June 8, 2020, pp 40–41; and Evidence of P. Payne, Transcript, April 16, 2021, pp 121–122. Of particular note is the fact that many professional money laundering operations maintain a “shadow” accounting system that contains detailed records about their activities, including client names, funds laundered, the origin and destination of funds moved, relevant dates, and commissions received. These records represent an invaluable resource for investigators: Exhibit 4, Appendix Q, *Professional Money Laundering*, p 12. Note also that a non-public version of the FATF report, which includes practical information with respect to the investigation, detection, and prosecution of professional money launderers, is available to law enforcement on request.

I agree that greater priority should be given to the investigation of professional money laundering operations and review the key characteristics of these operations below.

## **Individuals, Organizations, and Networks**

The Financial Action Task Force report divides professional money launderers into three categories: individuals, organizations, and networks.<sup>49</sup>

### ***Individuals***

Individual professional money launderers are defined as persons who provide specialized money laundering services to criminal clients.<sup>50</sup> These services can include registering and maintaining companies and other legal entities; serving as nominees for companies and accounts; creating false documentation; commingling legal and illegal proceeds; indirectly purchasing and holding assets; orchestrating lawsuits; and recruiting and managing money mules.<sup>51</sup>

In many cases, these services are provided by professionals such as accountants and lawyers who otherwise act in a legitimate capacity. However, it is important to distinguish between professionals who knowingly assist criminal clients in laundering illicit funds and those who unwittingly become involved in a money laundering scheme. While both groups present a money laundering risk, the former group presents a particular challenge for law enforcement because of their specialized knowledge and expertise, as well as their status as professionals (which can aid in avoiding detection).<sup>52</sup>

### ***Organizations***

Professional money laundering organizations are defined as groups of two or more individuals acting as autonomous, structured units. While each organization is slightly different, they typically have a strict hierarchical structure, with each member playing a specific role within the organization.<sup>53</sup> These roles may include:

- leaders and controllers who are responsible for the strategic direction of the organization and have decision-making power with respect to matters such as the manner in which illicit funds are laundered, the commission charged by the organization, and the salaries paid to each member of the group;
- introducers and promoters, who are responsible for bringing clients to the organization and managing communications with those clients;

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49 Exhibit 4, Appendix Q, *Professional Money Laundering*, pp 12–13.

50 Ibid, p 12.

51 Ibid, p 15.

52 I return to these matters in Chapters 25–33.

53 Exhibit 4, Appendix Q, *Professional Money Laundering*, pp 12–13.

- infrastructure managers, who are responsible for the creation of money laundering infrastructure such as shell companies and bank accounts;
- document managers, who are responsible for the creation of the documentation needed to facilitate the money laundering process (e.g., fraudulent invoices or account statements);
- transportation managers, who are responsible for receiving and forwarding goods internationally, and preparing relevant customs documentation;<sup>54</sup>
- investors and purchasers, who are responsible for purchasing items such as real estate or luxury vehicles when needed to store value for later sale;
- collectors, who are responsible for collecting illicit funds from the client and, in some cases, “placing” the funds into the legitimate financial system;<sup>55</sup> and
- transmitters, who are responsible for moving illicit funds through the money laundering infrastructure established by the organization.<sup>56</sup>

In my view, it is essential for law enforcement officials to understand these roles in order to fully dismantle a professional money laundering organization.<sup>57</sup> For example, the arrest of a promoter, transmitter, or collector may have little effect on the operations of a professional money laundering organization if the leaders and controllers are not arrested and prosecuted.

## **Networks**

Professional money laundering networks are formal or informal collections of associates working together to facilitate money laundering schemes and/or subcontract their services for specific tasks. These networks can operate globally and may involve two or more professional money laundering organizations working together to launder illicit cash.<sup>58</sup> Collaboration with other money laundering professionals allows these networks to diversify the channels through which illicit funds can pass, thereby reducing the risk of detection and seizure. It also allows them to access the money laundering infrastructure controlled by other groups in order to better serve their criminal clients.<sup>59</sup>

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54 Transportation managers are particularly important for professional money laundering organizations that rely on trade-based money laundering to support their money laundering operations: Exhibit 4, Appendix Q, *Professional Money Laundering*, pp 16–17.

55 These individuals are at the highest risk of identification by law enforcement but are typically at the lower end of the hierarchy: *ibid.*

56 *Ibid.*

57 *Ibid.*, p 16.

58 *Ibid.*, p 13.

59 *Ibid.*

## Types of Money Laundering Organizations and Networks

The Financial Action Task Force report identifies four key types of professional money laundering organizations and networks: (a) cash controller networks; (b) money mule networks; (c) digital money and virtual currency networks; and (d) proxy networks.<sup>60</sup>

Each of these networks is supported by an array of money laundering techniques, including bulk cash smuggling, informal value transfer, and the use of shell companies to obscure the true origins and ownership of illicit funds.

### Cash Controller Networks

Cash controller networks allow criminal organizations to transfer vast sums of illicit cash throughout the world through the use of informal value transfer systems and other types of account settlement mechanisms.<sup>61</sup>

Generally speaking, these networks consist of a controller who directs multiple collectors and coordinators stationed in various countries throughout the world. While each system is slightly different, the controller will typically have pools of cash available to them in different locations. When a client needs to transfer funds from one location to another, the money will be paid into the cash pool in the first location and paid out of the cash pool in the jurisdiction where the client needs the money. The money paid into the first pool will be held in that location until another client needs to transfer funds into that jurisdiction. Over time, the operator may need to reconcile the cash pools to keep them in balance. However, there is no transfer of funds on an individual basis.<sup>62</sup>

One of the benefits of this business model is that criminal organizations can move value from one country to another without the need to transport cash across an international border or transfer the funds through the regulated financial system. It also allows criminal organizations to obfuscate any paper trail that may lead back to the original offence and receive legitimate funds at the conclusion of the money laundering process.

### Money Mule Networks

As the name suggests, money mule networks use individuals to transfer (or smuggle) illicit funds under the direction of the professional money laundering operation.

The Financial Action Task Force report states that cash transportation services are increasingly being outsourced to “specialized cash transportation networks that are responsible for collecting cash, transporting it to pre-determined locations and facilitating its placement in the financial system.”<sup>63</sup> It also notes that many money mule networks are “well-resourced and highly effective” in moving illicit funds from one location to another.<sup>64</sup> While money mules can be unaware they are being used to facilitate criminal

<sup>60</sup> Ibid, p 19.

<sup>61</sup> Ibid, p 19.

<sup>62</sup> Ibid, pp 19–22. See also Evidence of S. Lord, Transcript, May 28, 2020, pp 65–66.

<sup>63</sup> Exhibit 4, Appendix Q, *Professional Money Laundering*, p 21.

<sup>64</sup> Ibid, p 23.

activity, they are often willing participants who participate in the money laundering scheme in return for off-the-record cash payments and free travel.<sup>65</sup>

Money mules can also be used to open bank accounts to facilitate the movement of illicit cash through the global financial system. In these schemes, the professional money laundering operation will create apparently legitimate businesses and hire unsuspecting individuals whose job responsibilities involve setting up bank accounts to pass along supposedly legitimate payments. In reality, these unsuspecting individuals act as money mules, processing illicit funds and wiring them to other individuals involved in the operation.<sup>66</sup>

### ***Digital Money and Virtual Currency Networks***

Professional money laundering operations also allow criminals to “cash-out” proceeds generated in virtual currency via online markets such as dark web drug trafficking sites. In such cases, the professional money laundering operation will transfer the virtual currency through a complex chain of e-wallets to enhance the anonymity of the virtual currency transaction. The funds will then be sent back to the e-wallet of the organized crime group, transferred to bank cards, and withdrawn in cash.<sup>67</sup> Money mules employed by professional money launderers may also conduct ATM withdrawals on behalf of the organized crime group to further enhance anonymity.<sup>68</sup>

### ***Proxy Networks***

Proxy networks are professional money laundering operations that seek to clean illicit funds by moving them through a complex series of transactions within the legitimate financial system. These schemes typically involve multiple layers of shell companies in different jurisdictions, which have been established purely to redistribute funds and obfuscate the trail of financial flows.<sup>69</sup> The Financial Action Task Force report indicates that these schemes typically have the following structure:

- Client funds are transferred or deposited in accounts opened in the name of shell companies owned or controlled by the professional money laundering operation.
- The funds are moved through a complex chain of accounts established by domestic shell companies under fictitious contracts.<sup>70</sup>
- The funds are transferred abroad under fictitious trade contracts, loan agreements, and securities purchase agreements.

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65 Ibid, p 22.

66 Ibid, p 23.

67 Ibid, p 25.

68 Ibid.

69 Ibid, p 26.

70 Funds from different clients are mixed within the same accounts, making it difficult for investigators to trace the funds back to a particular client: *ibid*, p 26.

- The funds are moved through a complex chain of international transfers using bank accounts set up by shell companies in various locations.
- The funds are returned to accounts owned or controlled by the client, the client's close associates, or affiliated legal entities. Alternatively, the professional money laundering organization may purchase goods and services (including real estate) on behalf of the client.

The report notes that the networks that facilitate cross-border movement of funds often tie into a wider global network of professional money launderers.<sup>71</sup> The use of professional money launderers located in different countries, combined with the different methods of transferring funds internationally (e.g., fictitious trade contracts, loan agreements, and securities purchase agreements), ensures the diversification of financial transactions and reduces the risk of detection.<sup>72</sup>

## Complicit Professionals

A final point raised by the Financial Action Task Force report is the involvement of professionals such as bankers, lawyers, and accountants in money laundering schemes. The report notes that professional money laundering operations “actively seek out insiders as potential accomplices to help launder illicit proceeds.”<sup>73</sup> It also emphasizes the fact that these individuals have insider access and may be able to falsify documents or initiate transactions in order to bypass anti-money laundering regulations. For example, a complicit bank employee may perform functions such as:

- creating counterfeit cheques;
- coordinating financial transactions to avoid reporting requirements;
- accepting fictitious documents provided by clients as a basis for transactions without asking appropriate questions; and
- performing transactions to avoid scrutiny (for example, transferring funds on behalf of their clients without a change in the net balance in the account at the beginning and end of a working day).<sup>74</sup>

Lawyers and accountants can also be involved in setting up many of the corporate structures and offshore vehicles used to conceal the ownership of illicit funds and facilitate the movement of criminal proceeds throughout the world. In many cases, these professionals may use solicitor-client and other, similar forms of privilege to mask the movement of these funds.

<sup>71</sup> Exhibit 4, Appendix Q, *Professional Money Laundering*, p 28.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid, p 35.

<sup>74</sup> Ibid, p 39. In rare cases, a professional money laundering operation may be able to compromise entire institutions or businesses by acquiring control of the institution and appointing its own criminal management: *ibid*, p 36.

## Case Study – The E-Pirate Investigation

One of the most prominent examples of money laundering activity in British Columbia comes from a 2015 RCMP investigation named Project E-Pirate,<sup>75</sup> which is the only major money laundering investigation in this province to result in criminal charges in the five-year period from 2015 to 2020.<sup>76</sup> The Commission's purpose in inquiring into and discussing this project is not to make findings of criminal liability, but to learn from the observations of law enforcement and other agencies about money laundering in the province and possible approaches to preventing and combatting it.

Project E-Pirate was commenced in response to information provided by the BC Lottery Corporation concerning the activities of an individual named Paul Jin.<sup>77</sup> For many years, the BC Lottery Corporation had been trying to get the attention of law enforcement to investigate Mr. Jin's involvement in providing suspicious cash to high-stakes gamblers at Lower Mainland casinos. An affidavit sworn by RCMP Corporal Melvin Chizawsky suggests that Mr. Jin and his associates were identified by the BC Lottery Corporation as being connected to 140 casino transactions totalling more than \$23 million in the three-year period from June 27, 2012, to June 24, 2015.<sup>78</sup>

In February 2015, Brad Desmarais, the BC Lottery Corporation's vice-president of corporate security and compliance had an informal meeting with Mr. Chrustie, a former RCMP officer with significant experience in the investigation of transnational organized crime, at a coffee shop in North Burnaby. At the time, Mr. Chrustie was a senior member of the RCMP's Federal Serious and Organized Crime section.

75 An RCMP "project" file such as E-Pirate typically involves multiple investigative units and uses different techniques to gather information with respect to serious criminal offences. Such investigations are far removed from investigations conducted by front-line police officers that can be handled by just a few officers. The "E" in E-Pirate refers to the fact that the investigation is being conducted by "E" Division (which is responsible for policing in British Columbia).

76 Note, however, that the Crown entered a stay of proceedings on November 22, 2018, with the result that the matter did not proceed to trial: Exhibit 663, Affidavit of Cpl. Melvin Chizawsky, February 4, 2021, Exhibit A, para 125 [Affidavit of M. Chizawsky].

77 More specifically, the investigation was commenced in response to information provided by Brad Desmarais to Mr. Chrustie (who was, at the time, the officer in charge of the RCMP Federal Serious and Organized Crime Major Projects). Mr. Desmarais had been trying to secure the co-operation of other law enforcement agencies to conduct the investigation and approached Mr. Chrustie to ask for his help: Evidence of C. Chrustie, Transcript, March 29, 2021, pp 62–63. Note, however, that the issue of money laundering in Lower Mainland casinos was previously investigated by the RCMP's Integrated Proceeds of Crime Unit from 2010 to 2012. However, the investigation was terminated when these units were disbanded: see Evidence of B. Baxter, Transcript, April 8, 2021, pp 21–79.

78 Exhibit 663, Affidavit of M. Chizawsky, para 33. See also Evidence of M. Chizawsky, Transcript, March 1, 2021, pp 40–41.

Mr. Desmarais expressed his frustration that the issue of cash facilitation at Lower Mainland casinos was not being treated seriously and Mr. Chrustie agreed to assign a few of his investigators to look into the issue.<sup>79</sup>

In April 2015, the RCMP began conducting surveillance of Mr. Jin and his associates. Mr. Jin was the target of surveillance on 40 days between April 16, 2015, and February 24, 2016.<sup>80</sup> On numerous occasions during that time frame, he was observed to frequent the offices of Silver International Investment Ltd. (Silver International). According to the police, Mr. Jin would often leave Silver International with bags and/or suitcases and attend at a property on Jones Road in Richmond, British Columbia (the Jones Road Property). A short time later, he would leave the Jones Road Property with smaller bags and attend at other locations in the Lower Mainland, where he would give the smaller bags to other individuals. On multiple occasions, these individuals attended at Lower Mainland casinos shortly after meeting Mr. Jin and conducted large cash buy-ins.<sup>81</sup>

As a result of that surveillance, investigators came to believe that Mr. Jin was moving cash from Silver International to the Jones Road Property for repackaging, and that Mr. Jin would subsequently provide that money to customers who were converting it into casino chips at Lower Mainland casinos.<sup>82</sup> Investigators also came to believe Mr. Jin was running an unlicensed gaming house on No. 4 Road in Richmond, British Columbia (the No. 4 Road Property), and accumulating large sums of cash at a condominium on Brighthouse Way (the Brighthouse Way Property).<sup>83</sup>

On October 15, 2015, the RCMP executed search warrants at Silver International along with various other locations, including the Jones Road Property, the No. 4 Road Property, and the Brighthouse Way Property. These searches resulted in the seizure of large sums of cash as well as financial ledgers and daily transactions logs that appeared to record cash flows into and out of Silver International. An analysis conducted by Elise To, a financial analyst with the RCMP's Federal

79 Evidence of B. Desmarais, February 1, 2021, pp 118–119; Evidence of C. Chrustie, March 29, 2021, pp 62–63.

80 Exhibit 663, Affidavit of M. Chizawsky, para 116.

81 On two occasions the buy-ins were \$50,000 and \$99,900, respectively: Exhibit 663, Affidavit of M. Chizawsky, paras 40 and 57–58. See also Evidence of M. Chizawsky, Transcript, March 1, 2021, pp 52–53.

82 Exhibit 663, Affidavit of M. Chizawsky, para 107. In a statement given to police on February 24, 2016, Mr. Jin confirmed that he was in the business of loaning money and received funds from Silver International. He also described himself as a loan shark: *ibid*, para 93.

83 *Ibid*, paras 38, 108, 115. A report prepared by an RCMP analyst indicates that the net profit of the unlicensed gaming house from June 11, 2015, to October 8, 2015, was in the range of \$32,716,719: *ibid*, para 106.

Serious and Organized Crime, Financial Integrity Group, concluded that Silver International had conducted 474 debit transactions totalling \$83,075,330 and 1,031 credit transactions totalling \$81,462,730 for the 137-day period between June 1, 2015, and October 15, 2015.<sup>84</sup> On an annual basis, that corresponds to approximately \$221 million in debit transactions and \$217 million in credit transactions.<sup>85</sup>

Simon Lord, a senior officer with the UK's National Crime Agency and one of the world's leading experts on money laundering, was retained by the RCMP to give expert evidence in connection with Project E-Pirate. While not authorized to speak to all aspects of the investigation, he testified that the evidence he reviewed was consistent with an underground banking scheme whereby large amounts of money were being transferred to various locations using an informal value transfer system. He went on to explain that large amounts of cash were being delivered to Silver International and stored temporarily at its Richmond office. The principals of that company would then facilitate token-based cash handovers in places like Mexico City, with the cash delivered to Silver International being repurposed and given to individuals who wanted to gamble in legitimate or underground casinos but could not move their money out of China because of currency restrictions imposed by the Chinese government.<sup>86</sup>

Corporal Chizawsky gave evidence to the same effect. He testified that the international gambler would deposit money into a bank account owned or controlled by Silver International in China. Once those funds were received, Silver International would release an equivalent amount

84 Ibid, para 99. In accounting terms, a “debit” is an accounting entry that increases an asset or decreases a liability, and a “credit” is an accounting entry that increases a liability or decreases an asset: *ibid*, Exhibit 53, p 3. These terms can be somewhat counterintuitive. For the Silver International ledgers, the debit entries could be interpreted as money coming into the account, while the credit entries could be interpreted as money taken out of the account.

85 Ibid, paras 99–106; Evidence of M. Chizawsky, Transcript, March 1, 2021, p 95. Although Mr. Jin's legal name is not used in these ledgers, I accept the evidence of Cpl. Chizawsky that the entries referring to “XB,” “Xiao Bao,” “Xiao Bao XB,” and “Bao” in fact refer to Mr. Jin and that Mr. Jin was responsible for the withdrawal of approximately \$26,996,935 from Silver International between June 1, 2015, and October 15, 2015. First, it appears that Xiao Bao and Siu Bo are Mr. Jin's street names: Exhibit 663, Affidavit of M. Chizawsky, para 100. More importantly, the RCMP was able to match up the entries made in each of these ledgers with the closed-circuit television footage seized from Silver International as well as surveillance conducted by the RCMP to confirm that these entries refer to Mr. Jin: *ibid*, para 105; Evidence of M. Chizawsky, Transcript, March 1, 2021, pp 54–55 and 97–99. Mr. Jin's admission that he received funds from Silver International also supports that conclusion.

86 Evidence of S. Lord, Transcript, May 28, 2020, p 9, and May 29, 2020, pp 2–3. It also appears that Mr. Jin was conducting a private lending business in which he was lending large sums of money to borrowers in British Columbia. These loans were collateralized through mortgages and enforced using civil claims and charges placed against properties owned by the borrowers or their immediate family members: Exhibit 1052, Overview Report: Paul Jin Debt Enforcement Against BC Real Estate.

to Mr. Jin (who would subsequently provide it to his client).<sup>87</sup> Importantly, however, there was no electronic accounting between the two countries. Nor were there any electronic funds transfers. The money paid to Silver International in China stayed in that country (at least temporarily), and the client was paid out from the “pool” of funds maintained by Silver International in Canada.<sup>88</sup>

On the evidence before me, it seems clear that Silver International was using an informal value transfer system to move funds (or more accurately, value) from China to British Columbia, where it was being used by high-stakes gamblers to make large cash buy-ins at Lower Mainland casinos. While the evidence is less clear that the cash received by Silver International and provided to Mr. Jin in British Columbia was derived from profit-oriented criminal activity such as drug trafficking, there is, in my view, an unavoidable inference that most, if not all, of the cash being left at Silver International was derived from criminal activity and that Silver International was assisting one or more organized crime groups to launder those funds.

Corporal Chizawsky testified that the individuals who deposited these funds would enter Silver International with suitcases or boxes full of cash, walk directly to the back part of the office, drop the suitcases or boxes, and depart very quickly.<sup>89</sup> Corporal Chizawsky described the behaviour of these individuals as “almost the exact opposite” of how one conducts business when making a deposit of lawfully obtained money. He also testified that the behaviour of these individuals was markedly different from other customers of Silver International, who would present their identification and spend anywhere from five to 15 minutes in the office.<sup>90</sup>

Another factor suggesting that the cash was derived from criminal activity relates to the manner in which it was packaged. Unlike bills received from a financial institution, the number of bills in each bundle was not consistent, the bills were not oriented in the same direction, and the bundles were held together with different-coloured elastic bands that

87 Evidence of M. Chizawsky, Transcript, March 1, 2021, pp 72–74 and 82–85.

88 Ibid. Although Cpl. Chizawsky gave this evidence in response to questions regarding statements made by Mr. Jin in a police interview, I understood his answer to be based on all the evidence, including but not limited to Mr. Jin’s statement. For example, Cpl. Chizawsky states that Mr. Jin’s statement “solidifies our belief [in] the underground Chinese banking system” and that Mr. Jin has “reinforced” the underground banking theory (ibid, pp 83–84).

89 Ibid, pp 56–58. More specifically, Cpl. Chizawsky testified that the amount of time these individuals would spend in the office would be “probably two minutes at the most, maybe less, maybe up to five”: ibid, p 57. At least one of the individuals who deposited cash in this manner had known links to organized crime.

90 Ibid, pp 57, 125–126.

broke easily. Such indicators are commonly used by experts to distinguish legitimate cash from “street” cash (i.e., cash derived from criminal activity).<sup>91</sup> Melanie Paddon, former lead investigator on Project E-Pirate and an expert on cash bundling, made the following comments regarding the nature of the cash moving through BC casinos during this timeframe:

Well, yes, definitely I believed it was criminal. I mean, so basically cash coming in bags, suitcases, boutique bags is not normal practice ... [I]n my opinion illegal cash is basically held together in bricks, and they’re sub-bundled with elastic bands on them usually in amounts of ... 1,000, 2,000 or 5,000 which makes up the actual brick. Often the bills would be facing in different directions.

Criminals basically take their cash whereas a bank would put together a bundle of cash – it would be 100 notes of one specific denomination. Criminals don’t. They basically take their brick of cash, and it’s made up in dollar amount, so it would be in even dollars of 5,000, 10,000, that kind of idea. It’s not in hundred-note amounts. There are no paper bands around it. It’s held together with elastics on both ends, sometimes in the middle.

The bricks are put together and they’re often thrown into a boutique bag. They often tend to use ... grocery bags, plastic grocery bags, they’re concealed in compartments in vehicles, they’re hidden in briefcases and they’re basically brought into the casino.

That is dirty cash. I mean, that is ... not from a legal source. A bank would never distribute cash like that.<sup>92</sup>

One of the lessons that can be drawn from this investigation is that professional money laundering operations are highly opportunistic and flexible. They constantly seek to take advantage of changing geopolitical forces and lax regulatory environments. In this case, the transactions facilitated by Silver International were made possible by a confluence of

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91 Exhibit 663, Affidavit of M. Chizawsky, para 97. For additional evidence concerning the methods commonly used by experts to distinguish legitimate cash from street cash, see Evidence of S. Lord, Transcript, May 29, 2020, pp 10–12; Evidence of D. Dickson, Transcript, January 22, 2021, pp 83–84; Evidence of B. Baxter, Transcript, April 8, 2021, p 36; and Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–20. Although Mr. Lord’s evidence that the principals of Silver International were facilitating token-based cash handovers in places such as Mexico City would ordinarily be compelling evidence that Silver International was receiving illicit cash, the documents relied upon by Mr. Lord in coming to that conclusion are not in evidence, and I have decided not to give any weight to that evidence.

92 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–19.

geopolitical factors including: (a) the need for organized crime groups to get rid of the cash proceeds of criminal activity in BC and move the profits of that activity to places like Mexico City; (b) the restriction of capital outflows by the Chinese government; and (c) the willingness of the gaming sector to accept large sums of cash from wealthy Chinese gamblers.<sup>93</sup> The lack of attention to this issue by law enforcement also contributed to the unchecked growth of money laundering activity in the gaming sector from 2010 to 2015.

I return to the operations of Silver International and the regulatory environment that made it possible in subsequent chapters of this Report.

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<sup>93</sup> Mr. Jin's private lending business was also made possible by rising real estate prices, which created the equity that allowed wealthy gamblers to take out those loans.

## Chapter 4

# How Much Money Is Laundered in BC?

In coming to grips with money laundering in British Columbia, an obvious question presents itself: how much money gets laundered in this province in a given year? Can a total dollar figure be ascribed to money laundering? Quantifying this activity could contribute significantly to our understanding of the scope of the money laundering problem. And it could serve as a useful measurement – both of the problem, and the success of initiatives aimed at combatting the problem.

Section 4 of my Terms of Reference requires me to make findings of fact about money laundering in British Columbia, including its extent in several sectors.<sup>1</sup> In my Interim Report, I considered the issue of quantification, and recognized that, if it were possible to quantify, there would be value in a reliable measurement of money laundering. Now, having the benefit of the entirety of the evidence led in the Inquiry, and the participants' submissions, I have an even greater appreciation of the inherent and inescapable difficulties with quantification. But that does not mean throwing up one's hands, as I will explain.

Some experts say that estimates made using quantification methodologies are so imprecise they are simply not useful in creating and evaluating anti-money laundering policies.<sup>2</sup> Others maintain that quantification efforts *are* worthwhile, even though challenging, because decision-makers must be able to understand the extent of money laundering in order to make informed choices about the extent to which – and how – they will resist it.<sup>3</sup>

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1 Terms of Reference, para 4(1)(a).

2 Evidence of P. Reuter, Transcript, June 5, 2020, p 52 (“... you have to work out how to ... make policy here without numbers because the numbers are going to be so crude you couldn't possibly tell whether things have gotten better or worse, just with a set of numbers”).

3 Evidence of S. Lord, Transcript, May 28, 2020, p 19.

In my Interim Report, I commented that a key question for the Commission is whether quantification methodologies (either individually or in combination) can provide a reliable estimate of the volume of money laundering activity in British Columbia or, at the very least, whether they can give policy-makers a sense of the magnitude of the problem. In this chapter, I return to the topic. I proceed in this sequence:

- First, I discuss whether quantifying the extent of money laundering in British Columbia is a useful exercise.
- Second, I provide a brief summary of existing estimates of money laundering in British Columbia.
- Third, I canvass the methods for quantification that are identified in the literature.
- Fourth, I outline the Commission's efforts at quantification of money laundering in the province;
- Fifth, I set out my conclusion on the extent of money laundering in British Columbia.
- Sixth, I discuss ways of improving money laundering estimates.
- Finally, I make a few comments about evaluating the effectiveness of anti-money laundering efforts.

## **Why Try to Estimate Money Laundering?**

The literature shows that there are several methods that purport to estimate the extent of money laundering – in a sector, in a particular geographic region, or globally. But there is no consensus on which method, if any, can reliably estimate the extent of money laundering. The fact that it is hard to measure money laundering is not surprising, given the activity at issue. For certain criminal activity, it may be feasible to obtain accurate measurements, perhaps by adding up how many cars were stolen in a year or how many banks were robbed. But money laundering is not like that. Such activity is evasive of review. It is not well understood (many people, including police, are not well versed in the area and may not recognize when money laundering is happening). It is constantly changing (with new typologies and modifications of existing ones regularly appearing). It is not reliably reported to police or regulators. And money laundering is not organized in any way that allows for a straightforward estimation of the total activity. It is secretive and the goal is to remain in the shadows, out of view. This is one thing all experts agree on: because money laundering

takes place in secret, it is impossible to directly measure, and it is very hard, if not impossible, to reliably estimate.<sup>4</sup>

As noted, my Terms of Reference direct that I inquire into the extent of money laundering in British Columbia. While the challenges of quantification are large, in my view there are three sound reasons why estimating money laundering would be useful.

First, reasonable estimates could help government determine whether the problem is one worth putting resources into at all. In its closing submissions, British Columbia took the position that money laundering estimates provide a useful indication of the magnitude of the problem.<sup>5</sup> Similarly, the coalition of Transparency International Canada, Canadians for Tax Fairness, and Publish What You Pay Canada (whom I refer to as the Transparency Coalition) argues that understanding the scale of money laundering is necessary in order to appreciate its effects and to decide on the scale of resources that should be devoted to its suppression.<sup>6</sup>

Professor Brigitte Unger testified that money laundering estimation is very important in order to alert politicians that money laundering is a serious issue that must be tackled.<sup>7</sup> If policy-makers were to proceed only when they had measured, observed, or recorded cases – rather than estimates of the extent of money laundering – then nothing would be done, because they would not understand the scope of the problem.<sup>8</sup> Professor Peter Reuter said the principal utility in having an estimate of money that needs to be laundered is to help provide a sense of how important money laundering controls might be in impacting predicate offences (that is, the original and underlying offence, such as drug trafficking, that produced the illicit money).<sup>9</sup> If only a small amount of money is laundered, then taking steps to make money laundering more difficult does not provide much benefit. But if a great deal is laundered, then money laundering controls may be an effective way to target the underlying illegal market. Similarly, Simon Lord stated that “you have to be able to understand and make ... informed choices about the extent to which you’re going to ... try and regulate that informal economy.”<sup>10</sup>

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4 Evidence of B. Unger, Transcript, December 4, 2020, pp 9–10, 55; Exhibit 341, J. Cassara – Final Statement to the Cullen Commission, p 9; Evidence of S. Lord, Transcript, May 29, 2020, pp 29, 31, 60–61 and May 28, 2020, pp 86–87 (“... if anyone says that they can accurately quantify this, then they’re lying, quite frankly, because there are so many different things that emerge and there’s so many different systems and so many different ways of measuring it”); Evidence of S. Schneider, Transcript, May 26, 2020, pp 38–39 and Transcript, May 27, 2020, pp 24–25; Evidence of O. Bullough, Transcript, June 1, 2020, p 89; Evidence of M. Levi and P. Reuter, Transcript, June 5, 2020, pp 48–55; Evidence of R. Gilchrist, Transcript, June 9, 2020, p 40; Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 169–70; Evidence of B. Pereboom, Transcript, March 11, 2021, p 29; Evidence of H. McCarrell, Transcript, March 11, 2021, p 114; Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, “Combatting Money Laundering in BC Real Estate,” Expert Panel, March 31, 2019 [Maloney Report], pp 1–2, 114.

5 Closing submissions (other than gaming sector), Government of British Columbia, p 2.

6 Closing submissions, Transparency Coalition, p 4, para 1.

7 Evidence of B. Unger, Transcript, December 4, 2020, pp 9, 155.

8 Ibid, pp 10–11.

9 Evidence of P. Reuter, Transcript, December 8, 2020, pp 12–13.

10 Evidence of S. Lord, Transcript, May 28, 2020, p 19.

Second, reasonable estimates would help governments develop policy aimed at addressing money laundering most effectively. This would include deciding to prioritize attention on certain sectors or approaches and deciding how best to expend anti-money laundering resources and efforts. Estimating the quantity of money being laundered can assist government in focusing on specific problematic sectors, and in formulating a suitable policy or enforcement response.<sup>11</sup> Professor Reuter suggested that knowing the extent of money laundering in a specific market, like the fentanyl market, can help authorities decide their priorities.<sup>12</sup> As Mr. Lord said:

[T]he role of the NECC [the UK National Economic Crime Centre] is to understand the threat initially, and to a large extent that's where I come in because the understanding that comes out of the National Assessment Centre helps the NECC to understand the threat. Then, once you understand the threat, then you can define the priorities that you have in terms of tackling the threat and also what partnerships you have available to you which might help you work on your priorities.

Then you can task and coordinate the response ... getting other agencies on board, working in partnership with different people in order to address the issue. And then you have to essentially drive the delivery and assess the impact of what it is you've done.<sup>13</sup>

Third, having a baseline of the extent of the problem could provide a benchmark against which to assess the utility of steps taken to address money laundering.<sup>14</sup> Professor Michael Levi maintained that we need to measure the effectiveness of anti-money laundering strategies, because without measuring how much money laundering there was before or after certain policies are implemented, we may not actually be doing much about money laundering.<sup>15</sup> He testified:

Evaluation is the touchstone of contemporary policy making; good policy requires systematic and transparent evaluation and [anti-money laundering] is just the kind of broad policy intervention that requires evaluation to improve its design and operation, if not to justify its existence.<sup>16</sup>

I am of the view that if quantification of money laundering is possible, it would undoubtedly prove useful. It would equip government, regulators, and authorities – and the public – with important insights about money laundering and about how well countermeasures are working. The *value* of quantification is obvious. The challenge is *how*, and, indeed, whether it is possible to accurately quantify money laundering.

11 Evidence of B. Unger, Transcript, December 4, 2020, pp 155, 157.

12 Evidence of P. Reuter, Transcript, December 8, 2020, p 14.

13 Evidence of S. Lord, Transcript, May 28, 2020, p 22.

14 Ibid.

15 Evidence of M. Levi, Transcript, June 5, 2020, pp 21–22.

16 Exhibit 26, Michael Levi, Peter Reuter, and Terence Halliday, “Can the AML System Be Evaluated Without Better Data?” (2018) 69 *Crime, Law and Social Change*, p 310; Evidence of P. Reuter, Transcript, June 5, 2020, p 61.

## Previous Estimates of Money Laundering in British Columbia

I heard evidence about three previous efforts to quantify money laundering in British Columbia. I outline these here.

### The Expert Panel Report (Maloney Report)

In September 2018, the British Columbia Minister of Finance appointed Professors Maureen Maloney, Tsur Somerville, and Brigitte Unger to look at money laundering in the British Columbia real estate sector (I refer to their report as the Maloney Report, though it is also known as the Expert Panel Report).<sup>17</sup> My Terms of Reference specifically direct me to review and take into consideration this report. In the Maloney Report, the authors employed a method called the “gravity model” to estimate the amount of money laundered annually in Canada and British Columbia.

Using the Walker and Unger gravity model (which I discuss in more detail below), the Expert Panel estimated annual money laundering activity in Canada in 2015 at \$41.3 billion and in 2018 at \$46.7 billion.<sup>18</sup> For British Columbia, the estimates for 2015 and 2018 were \$6.3 billion and \$7.4 billion, respectively.

The authors could not get the data required to fine-tune the gravity model so that it could be applied properly to British Columbia.<sup>19</sup> When testifying at this Commission, Professor Unger told me that she does not know how good the model is when it is applied to sub-regions, such as a province rather than the entire country, because it has not yet been used in this way.<sup>20</sup> There was no way to test the results because the authors did not have the data needed to do so. Professor Unger said their effort was to divide Canada into six regions and treat each one like a nation. But without FINTRAC data, and having never compared intra-country regions, this proved challenging.<sup>21</sup>

The Expert Panel likewise went on to attempt an estimate of how much of the money was laundered in British Columbia and then invested in real estate.<sup>22</sup> In an appendix to Chapter 19, I describe the tentative analytical path used to generate the panel’s estimate of money laundering in real estate. Their conclusion was a wide range, *between \$800 million and \$5.3 billion per year*. The panel went on to estimate that using the upper range of illicit funds invested into real estate would result in an increase to housing prices, because of money laundering, of *3.7 to 7.5 percent higher*.<sup>23</sup>

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<sup>17</sup> Exhibit 330, Maloney Report.

<sup>18</sup> Ibid, pp 1, 47–48.

<sup>19</sup> Evidence of B. Unger, Transcript, December 4, 2020, pp 122–23.

<sup>20</sup> Ibid, pp 126–28.

<sup>21</sup> Ibid, pp 125–28.

<sup>22</sup> Exhibit 330, Maloney Report, pp 50–61.

<sup>23</sup> Ibid, p 61.

Professor Somerville testified that the Expert Panel's estimate of money laundering in the real estate sector was made cautiously, not because it was a conservative estimate, but because it was an estimate with a "very, very large number of assumptions and caveats" underlying those assumptions.<sup>24</sup>

The Maloney Report sought to use a "red flags" analysis – that is, looking at indicators consistent with money laundering to then identify certain transactions as suspicious. The hope was that such an analysis might help identify the amount of money laundering that was transpiring.<sup>25</sup> But it proved difficult to apply broad indicators associated with money laundering to existing data sets. This was because details of real estate transactions that might qualify as red flags were often found in disparate data sources or were not readily identifiable. The authors were also unable to identify a database that identified transaction characteristics proven to be related to money laundering.

Nevertheless, the Expert Panel conducted some sample calculations of money laundering using publicly available data from the Land Title Registry and from the British Columbia Property Assessment Roll.<sup>26</sup> They chose three indicators easily identified in these data sets. The chosen indicators, each of which was identified as a money laundering red flag by the Financial Action Task Force, were as follows: (1) ownership of real estate by legal persons (that is, not actual people but legal constructs like companies); (2) purchase or ownership of properties without a mortgage; or (3) financing of real estate with mortgages from individuals or unregulated lenders.<sup>27</sup>

The Maloney Report emphasized limitations on data and time available, but concluded that the indicators of money laundering were widespread in real estate. The authors wrote:

The overall findings are that the identified vulnerabilities occur with incidence across all geographies and property types. The incidence rate is typically higher for condominium units than for single family homes. Rates are also higher for properties with the highest assessed values. Whistler, where an extremely high share of properties are vacation properties and which draws skiers from all around North America, shows higher rates for all measures for all types of residential properties. In much the same way, commercial investment properties generally show demonstrably higher rates of incidence than do residential properties.<sup>28</sup>

The Expert Panel concluded that (1) beneficial ownership disclosure was needed to make ownership by legal persons a useful indicator, and (2) the other two indicators were unlikely to be useful because purchase / ownership without a mortgage was so

24 Evidence of T. Somerville, Transcript, February 18, 2021, p 90.

25 Exhibit 330, Maloney Report, pp 58–60.

26 Ibid, pp 58–60 and Appendix I, p 142.

27 Ibid, p 59.

28 Ibid, p 143.

common across the province, and there are *bona fide* legal reasons for using unregulated lenders. The authors suggested it might be necessary to combine indicators, including indicators based on data from other sources (e.g., like financial suspicious transaction reports) to narrow results.

## **RCMP Estimates in 2017 and 2018**

There are two partial estimates of money laundering in the province made by the RCMP. In November 2017, the RCMP tried to estimate Vancouver-area property transactions linked to criminality.<sup>29</sup> The RCMP study used data from the Real Estate Board of Greater Vancouver. The study looked at residential properties bought in 2015–16 and valued at more than \$3 million. Addresses were reviewed in the BC Online Land Titles database to identify property owners. The names of the property owners were then checked against the PRIME-BC database (a database of police records), to determine potential criminality and criminal involvement. Initial findings indicated about *10 percent of property purchasers were linked to some level of criminality* – including suspicious currency transactions, drugs (importation / production / trafficking), gaming activity, fraud, extortion, and proceeds of crime. The study did not cross-reference or validate its results against historical or current investigations, intelligence, or open or closed data sources.

In 2018, the RCMP's Federal and Serious Organized Crime unit produced a draft report estimating the value of transactions facilitated by one unlicensed, British Columbia-based money services business.<sup>30</sup> The data came from electronic and handwritten corporate financial ledgers, domestic bank accounts, and electronic devices (accessed by way of judicial authorization orders). The value of transactions flowing through the business approached *\$1 billion per year*, a striking figure for a single money services business in BC. The RCMP acknowledged that this study had methodological limitations, particularly because of information gaps and overlaps.

## **Quantification Methods in the Literature**

As I note above, because money laundering is an attempt to legitimize the proceeds of illegal activities, it is usually conducted in secret, which makes its estimation very difficult. Direct measurement is not possible. In this section, I briefly summarize the money laundering quantification methods from the Commission's literature review. These methods are also described in overview reports on quantification prepared by the Commission<sup>31</sup>

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<sup>29</sup> Exhibit 322, Overview Report: Simplified Text on Quantification of Money Laundering [OR: Quantification], para 84 and references therein.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid; Exhibit 323, Overview Report: Quantification of Money Laundering. As set out in the Commission's Rules of Practice and Procedure, overview reports are prepared by Commission staff, circulated to all participants (who have an opportunity to correct and comment on them), finalized, and filed as evidence before me.

and in my Interim Report.<sup>32</sup> They are (a) the International Monetary Fund (IMF) consensus range, (b) extrapolation from capital mobility data and discrepancies, (c) extrapolation from measurements of the shadow (or underground) economy, (d) extrapolation from suspicious transaction reports or other indicators of potential money laundering, and (e) extrapolation from proceeds-of-crime data.

I have briefly summarized these five methods below.

## The IMF Consensus Range

An oft-cited number in agency reports and the academic literature is that money laundering constitutes 2 to 5 percent of global GDP.<sup>33</sup> This range has, for some, attained the status of accepted wisdom, but on closer examination of its origin, it is more a product of rhetorical speculation than scientific rigour. The 2 to 5 percent of GDP figure originated in a 1998 speech by Michel Camdessus, who was then managing director of the IMF. Although frequently used as a reference point, the methodology used to arrive at that estimate has never been shared.<sup>34</sup> Questions have been raised about the applicability of the estimate in the Canadian context, as well as the continued relevance of this quantification method, given the evolution of both financial crime and the world economy in the years since Mr. Camdessus arrived at his estimation.

## Extrapolation from Capital Mobility Data and Discrepancies

Several quantification methods seek to use capital mobility data to estimate the total amount of money laundering activity worldwide.<sup>35</sup> “Capital” in this sense means money and liquid assets (that is, assets that can be converted into cash quickly and easily). “Capital mobility” is the ability of capital to move from one country to another. The movement of capital between countries can take a few forms – for example, foreign direct investment, movement of money through portfolio flows (short-term capital), and bank transfers. These money laundering quantification methods include:

- **the hot money method**, which relies on net errors and omissions in balance of payments accounts and recorded capital outflows from the private sector, in order to estimate the total amount of money laundering activity;
- **the residual method**, which seeks to measure capital flight by looking at the difference between unrecorded inflows and outflows of funds;
- **the Dooley method**, which uses capital outflows within a country’s balance of payments account and adjusts them to detect unrecorded capital outflows, using

<sup>32</sup> Interim Report, pp 68–70.

<sup>33</sup> Exhibit 322, OR: Quantification, paras 7–8; Interim Report, pp 68–69.

<sup>34</sup> Evidence of B. Unger, Transcript, December 4, 2020, pp 12–13, 17.

<sup>35</sup> For a more detailed discussion, see Exhibit 322, OR: Quantification, paras 9–18.

errors and omissions as well as changes in external debt and international market interest rates; and

- **the Global Financial Integrity method**, which uses a combination of the trade mispricing method (discussed in relation to extrapolation from suspicious transaction reports) and either the residual or the hot money method to estimate the extent of money laundering activity.

All of these methods seek to quantify the extent of money laundering using analyses of statistical discrepancies. They all suffer from data limitations and problematic assumptions that cast doubt on the reliability of the resulting estimates. The primary drawbacks of each method are as follows:

- **the hot money method:** (a) net errors and omissions data capture statistical errors in balance of payments that are difficult to separate from money laundering; (b) the method only captures a small part of illicit flows; and (c) data are missing for many countries;
- **the residual method:** (a) illegal outflows may be overestimated because some unrecorded government foreign debts come from legitimate sources; and (b) there are questions about how well the residuals reflect capital flight and to what extent capital flight (which includes, but is not limited to, money laundering and tax evasion) measures money laundering;
- **the Dooley method:** (a) data on short-term private sector capital flows required to generate the estimate are no longer available; (b) there are other data limitations and statistical problems; and (c) it may only reveal the inability of a country to attract foreign investment to compensate for external debt and may not explain the capital that has been transferred offshore for money laundering; and
- **the Global Financial Integrity method:** the same limitations that apply to the trade mispricing, residual, and hot money methods.<sup>36</sup>

## **Extrapolation from Estimates of the Shadow or Underground Economy**

A third approach to quantification seeks to estimate the extent of money laundering by extrapolating from the shadow or underground economy. Methods include:

- **the currency demand method**, which compares the amount of money printed with the amount of money circulating – or compares electrical consumption (or another indicator or overall economic activity) and GDP;

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<sup>36</sup> Exhibit 322, OR: Quantification, paras 13–14, 16, 19.

- **latent variable approaches** such as the Dynamic Multiple-Indicators Multiple Causes (DYMIMC) model, which seeks to use two sets of observable variables to estimate the total amount of money laundering within a particular jurisdiction; and
- **the two sector / general equilibrium model**, which uses economic theory to estimate the value of the underground economy as a measure of money laundering.

Among the criticisms of these approaches is the fact that not all activity in the shadow or underground economy constitutes money laundering. This can lead to a significant overestimate of the amount of money being laundered through the economy.<sup>37</sup> Further criticisms of these approaches include: (a) the currency demand model does not account for the use of the regular financial or trade systems to launder money even though cash is not the only way, or perhaps no longer the predominant way, of holding illegal money; (b) the DYMIMC model uses values from other estimations, and uses arbitrary variables, which are not empirically based; and (c) the theoretical reasoning underpinning the equilibrium model requires simplification and abstraction to such an extent that it is removed from reality, and the model relies on a variety of assumptions without observed data.<sup>38</sup>

## Extrapolation from Suspicious Transaction Reports and Other Indicators of Money Laundering

A fourth approach to quantification seeks to estimate the total amount of money laundering by extrapolating from suspicious transaction reports (STRs) and other indicators of money laundering.<sup>39</sup>

STRs are not always indicative of money laundering activity. In many cases, STRs are filed in respect of legitimate financial transactions that are not related to money laundering.<sup>40</sup> The method is also under-inclusive because it is well recognized that many suspicious transactions escape the notice of reporting entities. Another problem relates to the fact that multiple reports can be filed in respect of the same funds, leading to double or even triple counting.<sup>41</sup> Finally, STRs are subject to multiple interpretations, and may not always include the value of the transaction.<sup>42</sup> Professor Reuter offered the opinion that we cannot learn anything about the effectiveness of anti-money laundering controls by comparing volumes of financial STRs:

Q You raise the concept in this article of responsabilization, a shifting of the burden of crime control on the private sector and reporting entities. You review some figures in there about suspicious

37 Ibid, paras 20–21.

38 Ibid, paras 24–25, 29, 32.

39 Ibid, paras 33–35.

40 Ibid, para 35.

41 Ibid.

42 Ibid.

transaction reporting in the US and Europe and the UK. And I guess this is a question for both of you and it maybe touches on the quantification question, but also on the effectiveness question, which is: what can we learn, if anything, about the effectiveness of anti-money laundering controls by comparing volumes of suspicious transaction reporting?

- A PROF. REUTER: Okay. Well, I mean, the answer is, it is totally inappropriate to make such comparisons. I went back and read the article that Mike and I wrote with Terry Halliday about the ... role of data in assessing money laundering controls, and referred back to the mutual evaluation report for Germany 10 years ago. And Germany only had 7,000 suspicious activity reports whereas back in those days, already the UK had 200,000, something like that. And the FATF [Financial Action Task Force] assessment team said, yeah, they're not ... sending in enough suspicious activity reports, to which the Germans correctly said, we have a different process. That is, the bank does some preliminary investigation before sending this off, whereas in the UK system, which is what the FATF prefers, everything is sent to the Financial Investigative Unit and it's up to the FIU to sort through this very noisy set of reports. And you can say, well, why exactly would you want the public sector to take on this responsibility for the preliminary investigation? It could be done at private expense by the bank itself.<sup>43</sup>

### ***The Trade Mispricing Method***

Another quantification method is **the trade mispricing method**, which relies on trade data to identify anomalous transactions. (I use this term, trade mispricing, to refer to what John Zdanowicz calls over- and undervaluing and over- and under-invoicing.) I heard evidence from Dr. Zdanowicz who developed software that identifies anomalous pricing in trade data, which he says may be indicative of money laundering, tax avoidance, tax evasion, or capital flight.<sup>44</sup> The method estimates the extent of money laundering based on observations of abnormal pricing, such as the under-invoicing and over-invoicing of imports and exports. In 2009, Dr. Zdanowicz analyzed monthly data in the United States Merchandise Trade Data Base. He compared a country's average price of an export with the world average price for the same (as far as possible) product. He classified all transactions with a price below 5 percent or above 95 percent of the average prices as trade-based money laundering. In simple terms this approach took the farthest extremes of the transactions and considered them to indicate money laundering was occurring. The study assumed product prices were normally distributed, and that unusual prices had a criminal intention and were not

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43 Evidence of P. Reuter, Transcript, June 5, 2020, p 57.

44 John Zdanowicz, Transcript, December 11, 2020, pp 121–63; Exhibit 371, TBML in Canada and BC, 2015–2019 (undated); Exhibit 372, Slide Presentation by John Zdanowicz, TBML (undated).

just errors made by customs officials. No matter how great the price fluctuations were, the model classified 10 percent of all transactions as suspicious (the upper and lower 5 percent) even though pricing within that 10 percent might arise for other reasons, like evasion of trade duties.

The trade mispricing method has some limitations: (a) there are reasons unrelated to money laundering for mis-invoicing (e.g., terrorism financing, income tax avoidance, capital flight, avoiding export surcharges, concealing illegal commissions, increases in tax subsidies<sup>45</sup>); (b) not all mis-invoiced trade results in a difference between export and import values; (c) trade transactions concluded by word-of-mouth or using informal financial institutions are not represented; (d) collusion between importers and exporters to fake invoices is not accounted for; and (e) estimates do not include proceeds of smuggling.<sup>46</sup> Also, the trade mispricing method cannot detect service-based trade-based money laundering because there is no database of these transactions.<sup>47</sup>

Dr. Zdanowicz says that, while some analyses of trade-based money laundering start at the macro level and then drill down to specifics (i.e., a top-down approach),<sup>48</sup> his method starts with the micro level and looks at every single suspicious transaction, working up to an estimate. He thinks this is a better way to estimate money laundering because it does not just measure the macro variables, but identifies actual transactions. “You’re looking for a needle in a haystack, and the best thing is to start with the needles and see which needles are strange, and so I take it from that perspective.”<sup>49</sup>

## Extrapolation from Proceeds-of-Crime Data

A fifth approach to quantification involves extrapolation from proceeds-of-crime data.<sup>50</sup> The basic idea is that one can use proceeds-of-crime estimates reported by police and law enforcement to determine the total amount of money laundered in that jurisdiction.

No matter the specific quantification method, extrapolation from proceeds-of-crime data has three primary problems: (a) it is not known how representative police data on proceeds of crime actually are, in relation to the total amount of money laundering; (b) it depends on access to reliable quantitative data about the amount of crime and the amount of money generated by different crimes; and (c) it depends on being able to accurately estimate the percentage of the proceeds of crime that are laundered for each type of crime considered.<sup>51</sup>

45 Evidence of J. Zdanowicz, Transcript, December 11, 2020, pp 122, 124, 126; Exhibit 341, J. Cassara – Final Statement to the Cullen Commission, p 11.

46 Exhibit 322, OR: Quantification, para 18.

47 Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 195.

48 Ibid, p 174.

49 Ibid.

50 Exhibit 322, OR: Quantification, paras 36–57.

51 Ibid, para 36.

In Professor Reuter’s opinion, proceeds-of-crime estimates are *not* good proxies for estimating the volume of money laundering.<sup>52</sup> Despite his 2004 work, discussed in his 2007 book, Professor Schneider says that estimates of the volume of money laundering are invariably flawed, and the full extent of money laundering in Canada remains unknown.<sup>53</sup>

### **The Gravity Model**

The Walker and Unger gravity model – the approach used by the authors of the Maloney Report – is a more sophisticated attempt to quantify money laundering activity using proceeds-of-crime data. The model uses this data, and econometric modelling, to estimate the total amount of money laundering activity within a particular jurisdiction.<sup>54</sup> The model was first developed by John Walker in 1999 using Australian crime data.<sup>55</sup> The basic approach is to first estimate the quantity of money laundered in each country using proceeds-of-crime data, and then model the quantity of illicit money flowing to each country.<sup>56</sup> The model’s estimate of the amount of money laundered in each country is dependent upon its estimates of:

- the nature and extent of crime in a country;
- the proceeds of crime per reported crime and the amount laundered for each type of crime;
- the economic environment in which crimes and laundering take place; and
- variables of attractiveness and distance used in the model (meaning, attractiveness to money launderers, and distance from the source or destination country).

The first (Walker 1999) version of the model did not produce accurate estimates of money laundering flows.<sup>57</sup>

In 2006, Professor Unger and her colleagues modified the gravity model’s distance and attractiveness indices. The model uses these variables to estimate money flowing into and out of a country to and from all other countries.<sup>58</sup> This version of the model was used in a 2009 paper co-authored by Professor Unger and Mr. Walker.<sup>59</sup> The model assumes:

- there is a global amount of crime;

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52 Evidence of P. Reuter, Transcript, June 5, 2020, p 53.

53 Evidence of S. Schneider, Transcript, May 27, 2020, p 24.

54 Exhibit 322, OR: Quantification, paras 43–57.

55 Exhibit 327, John Walker, “How Big is Global Money Laundering?” (1999) 3(1) *Journal of Money Laundering Control*.

56 Exhibit 326, John Walker and Brigitte Unger, “Measuring Global Money Laundering – The Walker Gravity Model” (2009) 5 *Review of Law and Economics* [Walker Gravity Model], pp 836–37; Evidence of B. Unger, Transcript, December 4, 2020, pp 71–72.

57 Evidence of B. Unger, Transcript, December 4, 2020, pp 27–28.

58 Exhibit 326, Walker Gravity Model, pp 841–42; Evidence of B. Unger, Transcript, December 4, 2020, p 36.

59 Exhibit 326, Walker Gravity Model; Evidence of B. Unger, Transcript, December 4, 2020, p 35; Exhibit 331, United Nations Office on Drugs and Crime Research Report, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes* (October 2011).

- some proceeds of crime stay in a country, and some are sent to one or more countries;
- income from crime depends on the prevalence of different types of crime and the average proceeds per crime;
- not all money is laundered; and
- there are reasons why money is kept in a country or moved to another country.<sup>60</sup>

The Walker 1999 gravity model used physical distance between countries, but the Walker and Unger gravity model now considers physical distance less important for money laundering. The current model uses “distance” measures such as each country’s language and colonial background, as well as geographical distance (later, religion was also added).<sup>61</sup> The attractiveness index was changed to include a country’s financial deposits and another measure of anti-money laundering effort (whether a country is a member of the Egmont Group).<sup>62</sup> The Walker and Unger gravity model was used in the Maloney Report.<sup>63</sup>

The gravity model can be applied to all countries and jurisdictions in the world. It combines expertise from criminology, economics, and finance. But it also has several limitations.<sup>64</sup>

First, using proceeds of crime to estimate money laundering depends on access to reliable and abundant crime data.<sup>65</sup> There is likely a large margin of error in model estimates because of the lack of measured and reliable crime data. Crime reporting is uneven across countries – particularly for bribery, corruption, and tax evasion – and some transactions are not typically included in crime statistics.<sup>66</sup> Professor Unger spoke about this issue at the hearing. She said the use of police files and statistics as sources for proceeds-of-crime data is not feasible because the stricter the fight against money laundering, the more eagerly police record money laundering cases.<sup>67</sup> This dynamic means that, perversely, the more the police do to tackle money laundering, the bigger the problem will appear to be – on paper, though not in reality. Indeed, if one were to look at the number of money laundering cases pursued in British Columbia, one might incorrectly conclude that there is not a problem.

60 Exhibit 326, Walker Gravity Model, pp 835–36; Evidence of B. Unger, Transcript, December 4, 2020, pp 60–61, 64, 66, 68–69.

61 Exhibit 326, Walker Gravity Model, p 842; Evidence of B. Unger, Transcript, December 4, 2020, pp 38, 40.

62 Exhibit 326, Walker Gravity Model, pp 841–42; Evidence of B. Unger, Transcript, December 4, 2020, pp 36, 38.

63 Exhibit 330, Maloney Report, p 45.

64 Exhibit 322, OR: Quantification, paras 50–57.

65 Ibid, para 52.

66 As one example, environmental crimes may result in illegal savings that are not captured by conventional crime statistics.

67 Evidence of B. Unger, Transcript, December 4, 2020, pp 57–59.

Professor Unger also acknowledges the model's reliance on *reported* crime remains problematic.<sup>68</sup> She notes that even where data are available, they only reflect reported aspects of money laundering. Reported crime is different from the total amount of crime. And it stands to reason that unlike the sorts of crimes that are likely to lead to police reports (such as stolen cars, in which there are good reasons to call the police and very few reasons not to), with money laundering, it is not obvious that the police will be called even when it is suspected or detected. In addition, to be able to extrapolate from reported crime to total crime, one must know the probability of being caught.<sup>69</sup> Professor Unger says this is not a problem if one knows the probability of a crime being recorded; the Walker 1999 paper tried to do this.<sup>70</sup> Professor Reuter said reliance on crime statistics from enforcement actions (or reports by financial institutions) is not a problem if we know what fraction this represents of total money laundering. But because there is no systematic way of assessing this, he testified, we are “in the realm of making up numbers.”<sup>71</sup> In his opinion, it is unclear with existing data how we can estimate how much money is laundered.<sup>72</sup> If “all we know is what’s reported by enforcement agencies and financial institutions, we cannot credibly estimate the amount of money that’s laundered.”<sup>73</sup>

Second, the reliability and accuracy of the gravity model are contingent on the accuracy of the percentage of proceeds laundered for various types of crimes.<sup>74</sup> As noted above, the Walker and Unger gravity model uses “percent-money laundered of total proceeds of crime” estimates from Walker 1999. Using these percentages to estimate money laundered is not likely to be accurate for other countries; it may not even be accurate for Australia any longer (if it ever was). Also, some researchers have faulted Walker’s use of experts (usually police officers) to estimate how much money is generated by particular crimes, and how much of it is laundered, because of their potential bias.<sup>75</sup> Police officers may tend to give estimates that are shaped by their training and experiences, and sometimes by their biases, rather than detached scientific estimations. And the people interviewed may have perception biases (for example, the authorities who fight money laundering may tend to overestimate it, or law enforcement and regulators who feel they are effective and efficient at combatting money laundering may tend to underestimate it). As such, the calibration of proceeds of crime for a particular offence may be flawed because the expert sample is not representative and the data sources are prone to influence.

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68 Ibid, pp 28–29, 50–51, 107, 159–60.

69 Ibid, pp 51–52.

70 Ibid, pp 52, 109–10.

71 Evidence of P. Reuter, Transcript, June 5, 2020, p 49.

72 Ibid, p 50.

73 Ibid, p 50.

74 Exhibit 322, OR: Quantification, para 53.

75 Evidence of P. Reuter, Transcript, June 5, 2020, p 54.

Professor Unger acknowledged at the hearings that a crucial shortcoming with the model is its continued reliance on the Walker 1999 estimates of proceeds of crime and the amount of money laundered per crime.<sup>76</sup> She says that such data are non-existent outside of the Walker 1999 estimates, and so these estimates continue to be used (although now there is an adjustment for each country according to its purchasing power). Professor Reuter says the Walker 1999 estimates of total revenues – generated by drug sales and the proportion requiring laundering – has no empirical foundation.<sup>77</sup> In his view, one needs at least a series of case studies where drug dealers talk about how they handle their money, and he has never seen any such database.<sup>78</sup> This means that weak data and a series of assumptions and approximations serve as the foundation for proceeds of crime-based money laundering estimates. Professor Michael Levi agrees.<sup>79</sup> He says the Walker and Unger gravity model is not useful in terms of estimating money laundering, although it may be useful for thinking about the process of where money goes, what jurisdictions are attractive to money launderings, and the extent to which money launderers and criminals simply move countries and carry on.

Third, the Walker and Unger gravity model is not underpinned by any economic theory. An economic foundation requires understanding the behaviour of money launderers, including what makes them send their money to a specific country.<sup>80</sup>

Fourth, there are problems with the model's mathematical specifications when they are applied domestically.<sup>81</sup> Model parameters that may work when applied across a range of countries in the world may be less accurate when applied to a subset of countries or regions. For example, while parameters based on economic data will vary across Canada, other parameters (e.g., the rule of law and the banking system) do not differ. In the Expert Panel Report, this meant parameters like provincial GDP and crime rates end up having greater weight than do non-economic parameters. There is a further problem of a statistical nature: the frequency distribution of criminal income is skewed. There are likely to be many low-income criminals but only a few high earners. Extrapolating from the arithmetic mean, in this situation, is likely to prove inaccurate.

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76 Evidence of B. Unger, Transcript, December 4, 2020, pp 28–29, 50–51, 53, 72, 159–60.

77 Evidence of P. Reuter, Transcript, June 5, 2020, p 53.

78 Ibid, pp 53–54.

79 Evidence of M. Levi, Transcript, June 5, 2020, pp 54–55.

80 Exhibit 322, OR: Quantification, para 54.

81 Ibid, paras 55–56.

Finally, the gravity model does not work for estimating trade-based money laundering.<sup>82</sup>

Despite the criticisms, Professor Unger thinks the Walker and Unger gravity model performs well in estimating money laundering activity.<sup>83</sup> She acknowledged that some people believe that estimates have nothing to do with the truth. But, she said, if you focus only on “the truth,” that is, the specific counts of measured money laundering, you can make a bigger mistake than trying to estimate the total size of the problem.<sup>84</sup> Professors Reuter and Levi disagree.<sup>85</sup> They say that the range of plausible estimates is so large that it will not provide guidance to decision-makers. If one cares about whether the amount of money laundering is getting larger or smaller, given the margins of error with the gravity model, you cannot answer such questions about expansion or shrinkage.<sup>86</sup>

In a 2020 study with Utrecht University colleagues, Professor Unger estimated there was US\$37.8 billion laundered annually in Canada.<sup>87</sup> The largest component was domestic criminal money.<sup>88</sup> While flowthrough was also high, money from foreign countries that settles in Canada is lower than Professor Unger would have thought.<sup>89</sup> However, she thought the results for Canada are not realistic because proceeds-of-crime data from China are heavily underestimated.<sup>90</sup>

## The Commission’s Quantification Efforts

Quantification, despite its obvious challenges, holds out promise. If achieved with some measure of accuracy, quantification offers a way of understanding the scope of the money laundering problem. It also provides a useful yardstick with which to

82 Evidence of B. Unger, Transcript, December 4, 2020, p 146; Exhibit 332, Joras Ferwerda, Mark Kattenberg, Han-Hsin Chang, Brigitte Unger, Loek Groot and Jacob A. Bikker, “Gravity Models of Trade-Based Money Laundering” (2013) 45(22) *Applied Economics*. I would also comment on one further criticism of the Walker and Unger gravity model: its dependence on “attractiveness” and “distance” indicators to refer to how appealing the foreign jurisdiction will be as a destination, because of cultural and linguistic similarity and proximity. These indicators were said to be arbitrarily weighted and not based on facts. In response to such criticisms, Professor Unger and her colleagues published a 2020 paper that instead used a data set of Dutch suspicious transactions to serve as a proxy for the amount of money laundering to estimate the coefficients of “attractiveness” and “distance.” See Exhibit 329, Slides – Scientific Reports 2020 (B. Unger, J. Ferwerda, M. Getzner, A. van Saase); Exhibit 328, Joras Ferwerda, Alexander van Saase, Brigitte Unger, and Michael Getzner, “Estimating Money Laundering Flows with a Gravity Model-Based Simulation” (2020) 10 *Scientific Reports*; Evidence of B. Unger, Transcript, December 4, 2020, pp 25, 30, 34, 40; Exhibit 326, Walker Gravity Model, pp 849–50; Exhibit 322, OR: Quantification, para 57.

83 Evidence of B. Unger Transcript, December 4, 2020, pp 105, 107.

84 Ibid, pp 110–11.

85 Evidence of P. Reuter, Transcript, June 5, 2020, pp 53–54; Evidence of M. Levi, Transcript, June 5, 2020, p 54–55.

86 Evidence of P. Reuter, Transcript, June 5, 2020, p 54.

87 Exhibit 328, Ferwerda et al, “Estimating Money Laundering Flows with a Gravity Model-Based Simulation,” p 6; Exhibit 329, Slides – Scientific Reports 2020 (B. Unger, J. Ferwerda, M. Getzner, A. van Saase); Evidence of B. Unger, December 4, 2020, p 90.

88 Exhibit 328, Ferwerda et al, “Estimating Money Laundering Flows with a Gravity Model-Based Simulation,” p 6; Evidence of B. Unger, December 4, 2020, p 90.

89 Evidence of B. Unger, December 4, 2020, pp 90–91.

90 Ibid, pp 91–92.

assess the success of anti-money laundering initiatives. With a view to ascertaining if quantification of money laundering in this province could be done, the Commission undertook some independent research, which I turn to next.

## Bouchard Report

The fentanyl crisis in this province is a matter of grave concern to British Columbians. This pernicious drug trade has generated staggering levels of criminal proceeds for those engaged in the trade, just as it has put the lives of British Columbians at risk. Given the close connection of this crisis to British Columbia and its obvious role in generating significant criminal proceeds that must be laundered, the Commission enlisted the assistance of Dr. Martin Bouchard, a professor of criminology at Simon Fraser University, to supervise a study. He sought to quantify the illicit proceeds derived from the sale of fentanyl in British Columbia.<sup>91</sup> His team analyzed data collected by the British Columbia Centre on Substance Use, in order to calculate the proceeds derived from the sale of fentanyl in British Columbia. In a simple way, he sought to determine the size of the fentanyl trade in terms of dollars spent. An estimate of money laundering requires real data, and this study had as its goal to furnish a data point. (From this figure, it may be possible to then determine what amount of money from fentanyl dealing would be laundered in a given year.)

In this study, Dr. Bouchard and his colleagues calculated the size of the fentanyl market based on data as to the frequency of use of fentanyl (or fentanyl-contaminated opioids or stimulants) in Vancouver’s Downtown Eastside. Then, these results were extrapolated to the entire province.<sup>92</sup> The study estimates the amount (in grams) of fentanyl use per day. Next, using prices for fentanyl obtained from the Vancouver Police Department, it calculates a “dollar amount spent per day” for each type of user.

Bouchard et al. estimate retail expenditures at \$200 to \$300 million per year.<sup>93</sup> They conclude this amount is quite conservative, and it may be a “floor” to market size estimates.<sup>94</sup> In particular, the authors could not determine the extent to which bartering for drugs may have altered the estimate.<sup>95</sup> At the hearings, Dr. Bouchard and Dr. Michael-John Milloy explained to me that, in order to improve estimates of fentanyl market size, they would need more information: specific spending behaviour data; data from other regions in British Columbia; purity data on fentanyl; better measures of drug consumption; and information on what dealers are doing with their revenues.<sup>96</sup> (Both

91 Exhibit 335, Martin Bouchard, Mitch Macdonald, Carlos Ponce, M-J Milloy, Kanna Hayashi, and Kora DeBeck, Research Report: Estimating the Size of the Fentanyl Market in British Columbia (October 26, 2020) [Bouchard Report], p 1; Evidence of M. Bouchard and M-J Milloy, Transcript, December 7, 2020, pp 6–7.

92 Exhibit 335, Bouchard Report, p 1; Evidence of M. Bouchard, Transcript, December 7, 2020, pp 8–10.

93 Exhibit 335, Bouchard Report, p 5; Evidence of M. Bouchard, Transcript, December 7, 2020, pp 10, 95.

94 Evidence of M. Bouchard, Transcript, December 7, 2020, pp 102–3.

95 Evidence of M-J Milloy, Transcript, December 7, 2020, pp 105–6.

96 Evidence of M. Bouchard, Transcript, December 7, 2020, pp 111–14; Evidence of M-J Milloy, Transcript, December 7, 2020, p 121.

Dr. Bouchard and Dr. Milloy were frank to say there was absolutely no data available about what dealers are doing with their sales proceeds.<sup>97)</sup>

## Reuter and Caulkins White Paper

As outlined, the Bouchard Report sought to determine expenditures on (or, put differently, revenue from) fentanyl drug use in British Columbia. The authors were clear that obtaining *revenue* figures would not indicate how much of that revenue would be *laundered*<sup>98</sup> – in other words, how much of the revenue could be counted to measure the quantum of money laundering arising from this drug trade.

With a view to helping tackle that question, the Commission obtained an expert opinion from Professor Reuter and Professor Jonathan Caulkins. Their paper, which I refer to as the White Paper, sought to answer how one might determine the percentage of illegal drug trade proceeds that are laundered.<sup>99</sup> To be clear, the White Paper does not (and did not try to) estimate the share or percentage of the British Columbia illegal drug market that is laundered. Rather the authors came up with a computational framework. The idea was that, once it was possible to obtain empirical estimates of key parameters, they could be inserted into their framework.<sup>100</sup> And the framework would then produce dollar values of money laundered per year in that drug market.

The framework is a way to model the relationship of a drug market's total retail sales to the amount of money at various levels of the distribution chain, which may need laundering. The aim is to identify the key variables for a specific market, and likewise to identify the sources of data that could be used to try to estimate those variables.<sup>101</sup>

Before coming up with their model, the authors canvassed the literature to identify studies that addressed the proportion of illegal drug revenue that is ultimately laundered.<sup>102</sup> However, they could not find any systematic effort to distinguish between drug revenues and drug money laundering.<sup>103</sup>

The model developed by Professors Reuter and Caulkins suggests that only 25 to 50 percent of what heroin users spend in British Columbia would need to be laundered.<sup>104</sup> Their paper suggests that the laundering needs vary depending on the position or level of the drug dealer. The model suggests that most street-level dealer revenue is laundered by paying the everyday living expenses of the dealer, and by higher-level dealers by paying

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97 Evidence of M. Bouchard, Transcript, December 7, 2020, pp 113–14.

98 Exhibit 335, Bouchard Report, pp 5–6.

99 Exhibit 337, Jonathan Caulkins and Peter Reuter, White Paper on Relating the Size of Illegal Markets to Associated Amounts of Money Laundered (November 19, 2020) [White Paper]; Evidence of J. Caulkins, Transcript, December 8, 2020, p 10.

100 Exhibit 337, White Paper, p 3.

101 Evidence of J. Caulkins, Transcript, December 8, 2020, p 10.

102 Evidence of P. Reuter, Transcript, December 8, 2020, pp 21–22.

103 Ibid.

104 Exhibit 337, White Paper, p 3.

their employees.<sup>105</sup> In some instances the amount of money left in the hands of dealers may be even less than the White Paper assumed, because of in-kind purchases using stolen goods, trades for services, self-dealing, and less than full-time dealing.<sup>106</sup> First-level wholesaler earnings may be laundered without recourse to highly skilled specialists.<sup>107</sup> A relatively small number of people at the top of British Columbia's drug distribution networks earn enough money to need more formal money laundering approaches; this may not be more than 10 percent of what users spend on drugs. (This figure refers to the upper echelon of dealers, whose profits are big enough to justify more sophisticated money laundering techniques.) A further 10 percent of what users spend on drugs may be paid to foreign suppliers, and this money is prime for laundering through the "Vancouver model."<sup>108</sup> However, the authors acknowledge the amounts wholesalers or importers may need to launder is very much in the "realm of guessing."<sup>109</sup>

While the model's numbers are not exact, they serve the White Paper's goal of showing what information is needed in order to estimate money laundering demand as a proportion of the money users spend on drugs.<sup>110</sup> The authors suggest this information can be learned from undercover purchases, forensic lab testing, police wiretaps, court documents, and interviews with higher level traffickers.<sup>111</sup> Other sources of data include surveys of drug users, as well as ethnographic studies, and interviews of retail drug sellers.

The authors assessed the relationship between how drug dealers must launder cash and their ability to spend it.<sup>112</sup> This analysis showed that if criminals have trouble spending cash, then most of the demand for money laundering services will come from the large number of lower-level dealers and staff.<sup>113</sup> Conversely, if it is easy to spend cash, then only the relatively small number of higher-level dealers – the big timers – will make so much money they need to purchase money laundering services. The study also emphasized the need to determine how drug prices change when one moves up or down the ladder of dealers: how does the price change when it goes from the mid-level supplier or "road boss" to a low-level street dealer, and hence, how much profit does each level of dealer make?

Overall, the authors say the "take home" message from their model and analyses is that a modest research program to better understand prices at each market level can pay big dividends. It can improve our understanding about how much money is retained at each market level, and in turn shed light on how much money might need to be laundered informally (for retailers and wholesalers) and professionally (for importers and suppliers).<sup>114</sup>

105 Exhibit 337, White Paper, p 7; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 40–41.

106 Evidence of J. Caulkins, Transcript, December 8, 2020, pp 41–42.

107 Exhibit 337, White Paper, p 7.

108 Ibid, pp 7 and 12.

109 Evidence of J. Caulkins, Transcript, December 8, 2020, p 44.

110 Exhibit 337, White Paper, p 7.

111 Ibid, p 7, 21–23.

112 Ibid, pp 7–13; Evidence of J. Caulkins, Transcript, December 8, 2020, p 47–48.

113 Exhibit 337, White Paper, p 9; Evidence of J. Caulkins, Transcript, December 8, 2020, p 48.

114 Exhibit 337, White Paper, p 13.

Professors Reuter and Caulkins also discuss a theoretical model that explains what they see with their computational framework.<sup>115</sup> This is the “risks and prices” model. The model suggests that most of the cash dealers receive, above their business and labour expenses, represents *compensation for risks*.<sup>116</sup> The model assumes that mature drug markets are typically in equilibrium (i.e., prices at each market level are reasonably stable and uniform); prices are justified (i.e., increments in prices from one level to the next represent fair compensation for effort and risks); and the market is not “free entry,” with anyone bidding down prices (because of non-monetary costs such as the risk of arrest or violence).<sup>117</sup>

The “risks and prices model” helps explain why so much of illegal drug trade proceeds remain at the retail levels. It can inform how we think about ways of changing the demand for money laundering services.<sup>118</sup>

The White Paper suggests prescription opioid abuse and dependence probably has very little direct effect on the demand for money laundering.<sup>119</sup> Generally, there are no higher levels in the distribution chain, because drugs are sourced at low levels in the chain. The more people who use prescription opioids, the more likely they will “trade down” and go to the illegal market for opioids like heroin or fentanyl, so the increase in prescription opioids may over time increase the total demand and size of the “down” (heroin plus other depressant hard drugs) market.<sup>120</sup> The White Paper computational framework can account for this change, which is just an increase in total demand, which would scale up all the output numbers.<sup>121</sup> The proportions of user spending that need to be laundered does not change.

The impact of the fentanyl and synthetic opioid market on the White Paper model is not yet clear. To date, there is not a noticeable difference in the user price of heroin as compared to fentanyl.<sup>122</sup> However, fentanyl is about 25 times more potent per unit mass than heroin and may be about 90 percent less expensive per unit mass, so, according to the White Paper authors, there should be an impact on the heroin supply chain.<sup>123</sup> The authors look at two possible ways the entry of fentanyl into the opioid market might impact their computational framework.<sup>124</sup>

Under an additive model, with the entry of fentanyl into the opioid market, importers do not have to pay foreign suppliers as much money, but there are no other

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115 Ibid, pp 14–16.

116 Ibid, p 15.

117 Ibid, p 14.

118 Ibid, pp 15–16; Evidence of P. Reuter, Transcript, December 8, 2020, pp 64–65.

119 Exhibit 337, White Paper, p 17; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 71, 73.

120 Evidence of J. Caulkins, Transcript, December 8, 2020, pp 72–73.

121 Ibid, p 73.

122 Ibid, pp 77, 82, 84–85.

123 Ibid, p 78.

124 Ibid, pp 86–87.

price changes.<sup>125</sup> This means there are no changes for wholesalers or retailers in terms of their demand for money laundering. The amount of money going to foreign suppliers is less, so they have less demand for money laundering and importers' net income increases sizably, as does their need for money laundering.<sup>126</sup> This outcome would not be likely five to 10 years from now because eventually the market would respond, although this could be particularly slow at the importer level because there are relatively few players, and these people have some specialized skills.<sup>127</sup>

Under a multiplicative model, all prices in the supply chain fall by the same amount and retailers, wholesalers, and importers are back to where they were in terms of the proportions of user money that each retains.<sup>128</sup> As total cash revenues for everyone decrease, the total market worth is much smaller, and everyone can spend more of the cash they get. This means the demand for money laundering largely goes away, especially at the dealer level.<sup>129</sup> Foreign suppliers would get 12 to 25 percent of what users spend on drugs, but that amount in absolute dollars would be much smaller.<sup>130</sup>

The authors briefly canvass other illegal markets (cocaine and other traditional expensive drug markets, drug markets in other provinces, prostitution and human trafficking, and wildlife trafficking) and consider whether their computational framework would have to be modified if it were to be used in understanding money laundering in these markets.<sup>131</sup> Professors Reuter and Caulkins conclude their model would likely apply to cocaine, crack cocaine, and methamphetamine markets, but not to the illegal cannabis market.<sup>132</sup>

Whether British Columbia launders much of the criminal cash generated in central or eastern Canada might depend on whether the cost to move cash cross-country is more like the cost of shipping everyday items, or more like the cost of transporting illegal cannabis during prohibition.<sup>133</sup> The initial analysis of prostitution and human trafficking markets suggests the structure of money flows is different than for heroin or other expensive drugs, and the authors speculate there may be a greater demand for money laundering services from pimps, rather than from higher-level traffickers.<sup>134</sup>

Finally, Professors Reuter and Caulkins say that if the challenges in converting the illegal drug market to a cashless system are overcome, and net revenues are in electronic form, it might change the type of money laundering occurring, but not the amount of money laundering.<sup>135</sup> Going cashless would convert the money laundering

125 Ibid, pp 87–88.

126 Exhibit 337, White Paper, p 19; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 87–88.

127 Evidence of J. Caulkins, Transcript, December 8, 2020, p 88.

128 Exhibit 337, White Paper, p 19; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 89, 92.

129 Exhibit 337, White Paper, p 19; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 89, 92.

130 Exhibit 337, White Paper, p 19.

131 Ibid, pp 24–28.

132 Ibid, pp 24–26.

133 Ibid, pp 26–27.

134 Ibid, pp 27–28.

135 Ibid, p 32.

problem of drug dealers into the money laundering problem already typical of most other beneficiaries of large and regular criminal revenues. One impact of this would be to increase the demand for money laundering services at lower levels of the illegal drug supply chain.<sup>136</sup>

The authors conclude the two central insights from the White Paper are: (1) only a minority of the money that drug users spend in British Columbia needs to be laundered in the more professional sense because street-level dealers spend most illegal drug market revenue; and (2) the proportions of the money retained at each level in the distribution chain are driven by the prices at each level and/or the price markups from one level to the next.<sup>137</sup> Professor Reuter suggests the first insight indicates that anti-money laundering efforts would have more of an effect at the higher levels of the supply chain.<sup>138</sup> Another insight from the White Paper is that each specific market must be considered separately.<sup>139</sup> The model also gives a general sense of the potential scale of money laundering in the heroin market.<sup>140</sup>

To populate the White Paper computational framework with real numbers, the following is required:

- total value of the drug market (e.g., by demand-side estimates like the Bouchard Report; supply-side estimates if available; waste water monitoring methods<sup>141</sup>);<sup>142</sup>
- prices at various market levels;<sup>143</sup>
- cash spending by various actors in the supply chain;<sup>144</sup> and
- branching factors – how many people are involved with each level of the distribution chain and how many levels are in the chain.<sup>145</sup>

To obtain good information, in addition to the sort of interviewing work noted earlier, Professor Reuter thinks it would be very useful to have research criminologists working for the RCMP, because law enforcement priorities are different than what economists or criminologists would prioritize for information gathering.<sup>146</sup> For spending

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136 Evidence of P. Reuter, Transcript, December 8, 2020, pp 122–23.

137 Evidence of J. Caulkins, Transcript, December 8, 2020, pp 26, 28.

138 Ibid, pp 45–46.

139 Ibid, p 107.

140 Exhibit 337, White Paper, p 3.

141 Waste water monitoring is, as the name suggests, a method that tests sewage and waste water chemically, to measure the prevalence of drug-use by-products or residue. (It has been used recently to determine COVID-19 exposure.) In this context, such studies give data about the use of various drugs in a particular area or community.

142 Exhibit 337, White Paper, pp 3, 20–21; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 95, 97.

143 Exhibit 337, White Paper, pp 3, 20–21; Evidence of P. Reuter, Transcript, December 8, 2020, pp 97, 99.

144 Exhibit 337, White Paper, pp 3, 20–21; Evidence of P. Reuter, Transcript, December 8, 2020, pp 101, 103.

145 Exhibit 337, White Paper, pp 3, 20–21; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 103–4.

146 Evidence of P. Reuter, Transcript, December 8, 2020, pp 98–100, 105.

habits at different levels of the distribution chain, such information would have to come from investigations and perhaps from interviews. However, Professor Reuter is not sure these data would allow for generalizations.<sup>147</sup> Professor Caulkins is more optimistic.<sup>148</sup>

### **Zdanowicz Trade Mispricing Estimates**

Dr. John Zdanowicz is Professor Emeritus of Finance at Florida International University, and a pioneer in the research of illicit financial flows through international trade. He is a consultant working for various government, law enforcement, and financial organizations.<sup>149</sup> As noted above, he developed a method to examine US trade data to detect and measure the flow of illicit funds or trade-based money laundering.<sup>150</sup> The Financial Action Task Force and Dr. Zdanowicz define trade-based money laundering as the process of disguising the proceeds of crime and moving value using trade.<sup>151</sup> I discuss trade-based money laundering, and indeed Dr. Zdanowicz's work, in considerably more detail in Chapter 38.

There are no known official estimates of the global or country-specific magnitude of trade-based money laundering.<sup>152</sup> In John Cassara's opinion, because the issue impacts national security, the integrity of the global financial system, law enforcement, and the collection of national revenue, it is remarkable that trade-based money laundering has not been systematically examined.<sup>153</sup> According to Global Financial Integrity, trade mis-invoicing accounts for nearly 80 percent of all illicit financial outflows that can be measured with available data.<sup>154</sup>

The Commission was able to obtain Canadian trade data from Statistics Canada for between 2015 and October 2020. The Commission provided this data to Dr. Zdanowicz, who applied his trade mispricing method to it. Dr. Zdanowicz produced several reports for the Commission and testified before me. He explained how, in order to move money *out of a country* undetected, a person can undervalue exports or overvalue imports. To move money *into a country* undetected, one can overvalue exports and undervalue imports. When Dr. Zdanowicz's trade mispricing method detects a suspicious export or import price, there are three plausible and mutually exclusive explanations: (1) the price is right, (2) the price is wrong, or (3) the price is abnormal.<sup>155</sup> If abnormal, then the price anomaly likely indicates money laundering.

147 Ibid, pp 101–102.

148 Evidence of J. Caulkins, Transcript, December 8, 2020, pp 102–3.

149 Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 106.

150 Ibid, p 111.

151 Ibid, pp 121–22.

152 Exhibit 341, J. Cassara – Final Statement to the Cullen Commission, p 11.

153 Ibid, p 11.

154 Ibid, p 11, citing “The Economist Highlights the Scourge of Trade Mis-invoicing,” *Global Financial Integrity* (May 2, 2014), online: <https://financialtransparency.org/the-economist-highlights-the-scourge-of-trade-misinvoicing/>.

155 Evidence of J. Zdanowicz, Transcript, December 11, 2020, pp 161–62.

Dr. Zdanowicz produced “macro reports” showing the amount of money potentially moved in and out of Canada and each province from 2015 to 2019.<sup>156</sup> For example, his 2019 macro report shows undervalued exports from Canada totalling \$45 billion and overvalued imports into Canada totalling \$44 billion, for a total of \$90 billion moved out of Canada.<sup>157</sup> Total money moved into Canada through overvalued exports and undervalued imports was \$144 billion. For British Columbia, he estimates \$8 billion in undervalued exports and overvalued imports moving out of the province<sup>158</sup> and \$16.5 billion moved into the province.<sup>159</sup>

Dr. Zdanowicz’s “micro reports” look at the annual data in detail.<sup>160</sup> This involved examining all the transactions falling into the 5th and 95th percentiles of average country price (his “international price profiling system”) and drilling down to the product being shipped, its description, province, quantity, units of measure, and total value of the shipment. By determining the price per unit of suspicious transactions, and generating the difference between this amount and the average price per unit for that type of product, he estimated the amount of suspicious money being moved into or out of British Columbia.<sup>161</sup> The micro report for 2019 identifies 10,000 suspicious transactions of overvalued imports, undervalued exports, undervalued imports, and overvalued exports.<sup>162</sup>

Dr. Zdanowicz concludes there are quite a few suspicious trade transactions in Canada and British Columbia, which would concern a bank in terms of financing and would be something regulatory or law enforcement should look at.<sup>163</sup> In his opinion, those interested in preventing money laundering should be looking at statistical analyses of the trade database because this can help detect, investigate, and mitigate trade-based money laundering.<sup>164</sup> The data can allow law enforcement to evaluate in real time the nature of a transaction and determine whether it is anomalous.<sup>165</sup> For example, Canada has trade data with exporter and importer names (names that can be ascribed to the data and transactions identified through the Zdanowicz method), and so Canada could run an analysis to identify companies and individuals routinely conducting anomalous trade transactions or even generate

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156 Ibid, pp 114–15; Exhibit 362, Canada International Trade Pricing Analysis 2015; Exhibit 363, Canada International Trade Pricing Analysis 2016; Exhibit 364, Canada International Trade Pricing Analysis 2017; Exhibit 365, Canada International Trade Pricing Analysis 2018; Exhibit 366, Canada International Trade Pricing Analysis 2019 [Trade Analysis 2019].

157 Exhibit 366, Trade Analysis 2019; Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 167.

158 Exhibit 366, Trade Analysis 2019; Evidence of J. Zdanowicz, Transcript, December 11, 2020, pp 168–69.

159 Exhibit 366, Trade Analysis 2019.

160 Evidence of J. Zdanowicz, Transcript, December 11, 2020, pp 116–17; Exhibit 367, Excel Spreadsheet, BC Money In – Exports Over 2019; Exhibit 368, Excel Spreadsheet, BC Money In – Imports Under 2019; Exhibit 369, Excel Spreadsheet, BC Money Out – Imports Over 2019; Exhibit 370, Excel Spreadsheet, BC Money Out – Exports Under 2019.

161 Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 117.

162 Ibid, pp 170, 189.

163 Ibid, pp 114–15.

164 Ibid, pp 143, 172.

165 Ibid, pp 176–77.

a list of companies and individuals with the highest dollar value of anomalous transactions for British Columbia.<sup>166</sup>

While Dr. Zdanowicz's trade mispricing work yields significant insights and information – as I discuss in detail in Chapter 38 – it does not (and does not try to) produce a total amount of money laundered in British Columbia, and it does not consider illicit funds generated in this province. Nonetheless, this sort of analysis has relevance to quantification, as it may furnish a strong indication of the magnitude of trade-based money laundering activity engaging this province and Canada generally.

## Conclusion on Extent of Money Laundering in BC

I conclude that it is not possible to determine with precision the amount of money laundered in British Columbia in terms of a dollar value. Each quantification method has its own challenges and limitations. No single method on its own provides a reliable and accurate estimate. All the methods are based on multiple assumptions and generally lack reliable data.

Nevertheless, considering collectively all the information from these various imperfect methods, together with the body of evidence before me and the literature, I am left with no uncertainty about whether money laundering is a problem. Very substantial amounts of illicit funds are laundered through, and in, the British Columbia economy. The problem warrants significant attention at a number of levels. To my mind, it would be foolish to wait, doing nothing in the vain hope that someday a formula will yield a precise calculation and hoping things are not as serious as they appear to be. Without being able to say how large the money laundering problem is in this province, I have no hesitation concluding that it is large indeed, and it merits strong and immediate action.

Based on the evidence and analyses described above, there is consistent support for the general conclusion that vast amounts of money are laundered in British Columbia every year. Even though the methods of quantifying money laundering are diverse (they differ both in method of analysis and data inputs), they share in common the basic point: this is a large problem.

To put it the other way around, none of the attempted estimates suggest that this is a non-issue – or that the amount of money laundered in the province is miniscule, such that the problem is not worth focusing on.

In support of this, I would highlight these conclusions from the quantification attempts I have discussed in this chapter:

- **As a matter of inexorable logic**, given the manner in which organized crime occurs, profitable crimes generate dirty money that needs to be cleaned. If there are

<sup>166</sup> Ibid, pp 189, 177–178.

proceeds of crime beyond what can be spent on daily living and so-called “business” expenses, then excess monies will be laundered in some way. These “excess earnings” are illicit, but the criminal will seek to have the dirty money acquire the appearance of legitimacy, and that means he or she will launder it. It is not hard to conclude that, for numerous profitable crimes like drug dealing, money laundering will result, and it goes hand-in-hand with the crime itself.

- **Combining the Bouchard Report with the Reuter and Caulkins White Paper**, it becomes apparent that a large amount of drug money will be laundered every year in British Columbia.
  - First, the Bouchard Report illustrates the magnitude of the money generated in just one product in one corner of the criminal economy. The study conservatively estimates that expenditures in the province’s fentanyl market amount to \$200 to \$300 million per year.<sup>167</sup>
  - Secondly, the White Paper work on the province’s heroin market, and the amount of money moving through the provincial heroin distribution lane, can be layered onto the fentanyl estimates. If 25 to 50 percent of the expenditures (revenue) from fentanyl dealing need to be laundered, then taking the \$200 to \$300 million figure, the result ranges from \$50 to \$150 million per year that will be laundered from fentanyl sales alone.<sup>168</sup> That figure relates to only one product amid a wide array of drugs, as well as other criminal activities in this province. While that is a broad range, it demonstrates that a significant volume of money is laundered, all the more so when one steps back to think not just about fentanyl, but other drugs, other profit-driven crimes, and proceeds of crime from outside the province.
- **The gravity model**, despite its flaws and assumptions, suggests a massive problem – an iceberg largely under the waterline. Although Professor Somerville testified the Maloney Report estimates of money laundering in British Columbia (and in real estate) are very uncertain, in my view, although imprecise, they do provide some insight into the order of magnitude of the problem, and they suggest it is massive. The Maloney Report estimated annual money laundering activity in Canada in 2015 at \$41.3 billion and in 2018 at \$46.7 billion.<sup>169</sup> For British Columbia, estimates for 2015 and 2018 were \$6.3 billion and \$7.4 billion, respectively.<sup>170</sup>
- To similar effect, **RCMP estimates** in 2017 and 2018 suggest the same conclusion: that the extent of money laundering in BC is significant.<sup>171</sup> With respect to

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167 Exhibit 335, Bouchard Report, p 5; Evidence of M. Bouchard, Transcript, December 7, 2020, pp 10, 95.

168 Exhibit 337, White Paper, p 3.

169 Exhibit 330, Maloney Report, pp 1, 47–48.

170 Interestingly, to go back to the “finger in the wind” estimate of 2 to 5 percent of GDP (the IMF figure), out of a provincial GDP of approximately \$309 billion per year in 2019, the 2018 gravity model estimates the amount to more than 2 percent of the province’s GDP.

171 Exhibit 322, OR: Quantification, para 85 and references therein.

Silver International and RCMP Project E-Pirate, there is a body of evidence that I have outlined above and detailed elsewhere in this Report suggesting that a single British Columbia money services business was handling questionable transactions approaching a staggering \$220 million per year.<sup>172</sup> This computation about one gaming-related investigation does not establish the extent of money laundering in the province generally involving gaming or money services businesses. But it certainly supports the conclusion that a very significant amount of illicit funds may be moved through sophisticated money laundering schemes operating in this province.

- **Dr. Zdanowicz's work** focusing on trade transactions supports this point too. It indicates that in 2019 there were suspicious trade transactions of up to \$8 billion moved out of the province and \$16.5 billion moved into the province.<sup>173</sup> His micro report for 2019 identifies 10,000 suspicious trade transactions in the province that may be related to money laundering.<sup>174</sup>
- **The 2020 Ferwerda et al. study** estimates that US\$37.8 billion is laundered every year in Canada.<sup>175</sup> The largest component is domestic criminal money.<sup>176</sup>

All these very different studies and analyses support the same basic conclusion: that *the amount of money laundered in this province is enormous.*

In Chapter 5, I address the question of whether money laundering is a problem worth addressing. It is. There are innumerable ways that money laundering has a severe negative impact on the social and economic well-being of our communities – as well as on the province's reputation.<sup>177</sup>

Our federal and provincial governments appear to be in agreement with these points. Canada, in its submission to me, says that, while a precise quantification of the money laundering threat has proven elusive, there is a strong international consensus that it is an important policy problem, and that it requires a coordinated international response.<sup>178</sup> The Province submits:<sup>179</sup>

172 Ibid; Exhibit 663, Affidavit of Cpl. Melvin Chizawsky made on February 4, 2021, paras 98–106; Evidence of M. Chizawsky, Transcript, March 1, 2021, pp 94–98; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 66–70. For a full discussion of these numbers and projections, including the manner in which they were generated, see Chapter 3.

173 Exhibit 366, Canada International Trade Pricing Analysis 2019; Evidence of J. Zdanowicz, Transcript, December 11, 2020, pp 168–69.

174 Evidence of J. Zdanowicz, Transcript, December 11, 2020, pp 170, 189.

175 Evidence of B. Unger, December 4, 2020, p 90.

176 Ibid.

177 Exhibit 330, Maloney Report, p 1; Exhibit 821, A Resourcing Overview of Major Money Laundering Investigations in BC, prepared by RCMP "E" Division in partnership with CFSEU-BC's Strategic Research Office, p 6; Exhibit 803, Doug LePard and Catherine Tait, Review of the Joint Illegal Gaming Investigation Team (JIGIT) (November 2020), pp 131–32.

178 Closing submissions, Government of Canada, p 4, para 11.

179 Closing submissions (other than gaming sector), Government of British Columbia, p 2, para 3.

While the scope of money laundering is difficult to measure, the social and economic harms caused by money laundering and its underlying predicate crimes are well-known and wide-reaching. There is a human cost to money laundering, and it undoubtedly impacts the lives of British Columbians.

Ultimately, though evasive of any precise quantification, I find it inarguable that money laundering in British Columbia is a significant problem. Canada says that the lack of an exact dollar value assigned to money laundering should not prevent action.<sup>180</sup> The Province urges that risks and vulnerabilities need to be addressed. I agree.

## Improving Money Laundering Estimates

Many witnesses spoke about the problem, and indeed the impossibility, of accurate money laundering estimates. For example, the Criminal Intelligence Service Canada has not tried to quantify money laundering in Canada because it has proven to be “extremely difficult.”<sup>181</sup> The agency closely follows estimates made by others, but only for contextual background given uncertainty in the estimates.<sup>182</sup> Below, I offer comments as to how to improve estimates of money laundering.

Although scientific precision may be unattainable, even partial success in determining the quantity of money laundering in the province is worth pursuing. Having an understanding of the volume of money laundering will be useful – both to appreciate the size of the problem, and to assess the effectiveness of policy and operational reforms.

Emerging from the evidence, there are a few avenues for quantifying money laundering that, I conclude, hold promise, and which I encourage the Province (and Canada) to pursue.

One course is to focus on developing market-specific estimates of money laundering. An example of this is the Walker 2011 work for the United Nations Office on Drugs and Crime, which estimates illicit financial flows resulting from drug trafficking and other transnational organized crimes.<sup>183</sup>

Another route worthy of attention is to develop the work described in the Reuter and Caulkins White Paper. In Professor Reuter’s opinion, it is unclear, based on existing data, how we can estimate how much money is laundered.<sup>184</sup> However, if we restrict estimates to specific activities, then there *are* indirect ways of estimating the problem – such as by estimating the size of the drug market, using price data to estimate revenue and then, making use of data on spending, working out how much of illegal revenues

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180 Closing submissions, Government of Canada, p 8, para 24.

181 Evidence of R. Gilchrist, Transcript, June 9, 2020, p 40.

182 Ibid.

183 Exhibit 331, UNODC, *Estimating Illicit Financial Flows* (October 2011).

184 Evidence of P. Reuter, Transcript, June 5, 2020, p 50.

need to be laundered.<sup>185</sup> The White Paper may provide a roadmap for further attempts at quantification with respect to profits derived from the drug trade in British Columbia and other predicate offences.

Another possible approach to quantifying money laundering in a specific sector is illustrated in the work done by the British Columbia-Canada Real Estate Working Group (Working Group, discussed in Chapter 18). The Working Group suggests that systematically identifying instances of money laundering in real estate through data can generate insights to drive policy and enforcement efforts.<sup>186</sup> It came up with an anti-money laundering framework that defines indicators of money laundering by enumerating money laundering schemes and the ways the schemes are visible within data.<sup>187</sup> The group assessed the availability of the data that would be required to construct each indicator. Eight schemes and 23 sub-schemes for money laundering in the real estate sector were broken down into 160 individual data points required for their detection.

The Working Group's work indicates that, in order to use indicators to identify money laundering in the real estate sector, one would need to have comprehensive coverage of real estate transactions and ownership arrangements within a given geographic area over time.<sup>188</sup> Several data gaps in current data holdings would need to be filled before an anti-money laundering framework in real estate would be able to produce indicators for most of the money laundering schemes and sub-schemes.<sup>189</sup>

I should add that there is real merit in pursuing more promising quantification efforts, one example being the trade mispricing analysis of Dr. Zdanowicz.

Such efforts will require access to data. As the Province noted in its closing submissions to me, a broad theme from the evidence is that understanding the nature and scope of the money laundering in any sector requires good data and analytical capabilities.<sup>190</sup> Witnesses were unanimous in their view that, no matter the method, the data to estimate money laundering are lacking.

In Chapter 39, I recommend a new approach by law enforcement agencies engaged in the investigation of profit-oriented criminal activity. I expect that significantly more data will become available if that recommendation is followed.

The AML Commissioner, a new office that I recommend in Chapter 8, will be well placed to help advise on what sort of quantification efforts should be undertaken by

<sup>185</sup> Ibid; Evidence of J. Caulkins, Transcript, December 8, 2020, pp 38, 58, 107.

<sup>186</sup> Exhibit 725, Work Stream 1 – Data Collection and Sharing Work Stream Report, Executive Summary (PowerPoint by BC Canada Real Estate Working Group) [Work Stream 1], p 5.

<sup>187</sup> Exhibit 725, Work Stream 1, p 5.

<sup>188</sup> Ibid, pp 5–6.

<sup>189</sup> Ibid, p 5 and see Recommendation 7 on p 14; Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 169–70; Evidence of B. Pereboom, Transcript, March 11, 2021, pp 29–30.

<sup>190</sup> Closing submissions (other than gaming sector), Government of British Columbia, p 2.

the Province. The commissioner's office will develop expertise that will enable the commissioner to give knowledgeable input on quantification.

As the Province (and Canada) engages in reforms to combat money laundering, it should always have its eye on the ball. Even if an exact measurement or quantification may be elusive, the government should always consider:

- Are there imperfect or inexact – but still insightful – ways to understand the extent of money laundering and the effect of policy reforms?
- When a new policy or operational change is made, what are the goals of that measure, and are there strategies that can be used to measure outcomes, to see if the goals were achieved, and to assess the costs and benefits?
- Can better data be developed to allow for measurement and comparisons over time?

In this chapter I have described the various ways that quantification of money laundering can be attempted. One theme emerging from this survey of quantification is that there *are* examples, where data are available, that offer real insight into how much money laundering is occurring. Quantification efforts appear to be particularly successful where a money laundering operation that typically lurks in the shadows is forced into view. For example, one aspect of the Vancouver model of money laundering – the purchase of casino chips with cash – could only occur in plain sight, in a highly regulated and monitored environment, which produced detailed data. This data – what was observable in the visible phase of the money laundering method – provides a real lens into the activity and the impact of anti-money laundering measures designed to target the illicit activity. Similarly, the Zdanowicz method of analyzing trade mispricing information, is especially effective, because import / export records exist and such trade data provide real insights into both the activity and the measures taken to stem such activity. To be effectively laundered, dirty money needs to be exposed in bulk to some public scrutiny at some point. The key to identifying and quantifying it lies in determining when and where that point is, through some objectively reliable process (such as trade data).

The Province should look for opportunities to develop data wherever possible, as such data may lend real insight into the nature and extent of money laundering and the movement of illicit funds.

## Chapter 5

# Is Money Laundering a Problem Worth Addressing?

The utility of addressing the problem of money laundering was raised as an issue in the Commission’s Interim Report issued in November 2020. The question posed by the Interim Report – whether money laundering was a problem worth addressing – was answered provisionally after a summary review of some of the important policy and political considerations at play in the national and international conversations about the benefit of adopting a robust anti–money laundering regime to counter money laundering’s impact on a country’s economic and political regime.

In broad terms, after acknowledging there are limitations on measuring the scope and the effect of money laundering in British Columbia, the Interim Report concluded that to not take meaningful action against money laundering would “[leave] custodians of the political and economic system open to criticism that they are complicit in that enterprise of criminality”<sup>1</sup> and that their quiescence would encourage those involved in that type of criminality to continue their unlawful behaviour, whether in relation to money laundering or the offences that create the need to launder illicit funds.

Before reaching that conclusion in the Interim Report, I outlined some of the views expressed by the expert witnesses whom I heard from. These witnesses addressed some of the issues that surround money laundering and the anti–money laundering regime that has grown up in response to its perceived threat to “financial markets, on economies, on companies, or society as a whole.”<sup>2</sup> In particular, I noted that Professor Stephen Schneider “provided a critical perspective on what he termed the ‘dominant

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1 Commission of Inquiry into Money Laundering in British Columbia, Interim Report, November 2020 (Interim Report), p 68.

2 Ibid, p 65, footnote 16.

narratives on the effects of money laundering,”<sup>3</sup> which he described as “a very small proportion of [the Canadian economy], very tiny, and really doesn’t have an impact.”<sup>4</sup>

I also noted that Professor Schneider was skeptical of the claim that money laundering “‘perpetuates’ organized crime and argued that it is demand (rather than the ability to launder the proceeds of crime) which drives ‘consensual crimes’ such as drug trafficking, bookmaking, prostitution, or human smuggling.”<sup>5</sup>

I noted that Professor Schneider cast doubt on a study by J. McDowell and G. Novis entitled “The Consequences of Money Laundering and Financial Crime.” That paper posited that “[M]oney laundering has potentially devastating economic, security, and social consequences,” and “[l]eft unchecked, it can ‘erode the integrity of a nation’s financial institutions,’” including by “adversely [affecting] currencies and interest rates.”<sup>6</sup>

I also referred to Professor Schneider’s testimony where he based his skepticism about money laundering’s impact on the lack of rigorous models that show economies are seriously affected by money laundering.<sup>7</sup>

Finally, I quoted from Professor Schneider’s evidence in which he attributed the most dire arguments about the devastating effects of money laundering to “government and law enforcement agencies that ‘have a clear vested interest in ... drawing attention to the high ... threat of a particular problem.’”<sup>8</sup> Professor Schneider described the United States as “[inflating] the scope of the problem” while “trying to impose their anti–money laundering system ... for years.”<sup>9</sup>

I also noted in the Interim Report that Professor Schneider’s views about the lack of reliable data to support the view that money laundering caused significant negative consequences were shared by Professors Michael Levi, Peter Reuter, and Terence Halliday in an article marked as Exhibit 26: “Can the AML System Be Evaluated Without Better Data?” (2018) 69 *Crime, Law and Social Change* pp 307–328.

In the article, the authors contend that there has been “minimal effort at AML evaluation at least in the sense in which evaluation is generally understood by public policy and social science researchers, namely, how well an intervention does in achieving its goals.”<sup>10</sup>

As I noted in the Interim Report, the authors “[expressed] the view that anti–money laundering systems ‘will continue to reflect faith and process rather than build upon reliable evidence of actual positive impacts on institutions and social wellbeing.’”<sup>11</sup>

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3 Ibid, p 65, footnote 16.

4 Ibid, p 65, footnote 16.

5 Ibid, p 65, footnote 17.

6 Ibid, p 65, footnote 20.

7 Ibid, p 65.

8 Ibid, p 65.

9 Ibid, p 65, footnote 22.

10 Exhibit 26, p 310.

11 Interim Report, p 66, footnote 25.

Professor Peter Reuter testified before the Commission. In the Interim Report I noted that his evidence reflected the view that anti-money laundering was useful “not because it could reduce money laundering, but [because] it could reduce the activities that generate money laundering.”<sup>12</sup> As I noted in the Interim Report, Professor Reuter cited the contention of one author, Joras Ferwerda, that there were “25 distinct possible harms from money laundering.”<sup>13</sup> But Professor Ferwerda went on to opine that there is “no evidence of any of them, ‘in the sense that nobody has done a study which has shown that money laundering has generated these specific harms to any large extent.’”<sup>14</sup>

Professor Michael Levi, who also testified before the Commission, expressed the view that “we need to think much more clearly about the harms of money laundering than we often do.”<sup>15</sup>

An important question confronting the Commission is whether (and if so, to what extent) money laundering has affected the province’s institutional integrity. Has it resulted in a political and/or economic regime that has, at least, some historical complicity with those seeking to disguise their tainted wealth as legitimately acquired?

That question involves considering the quantum of criminalized money that needs to be laundered in British Columbia and the extent to which it is laundered with or without the knowing assistance of those positioned and obliged to prevent it.

The quantum of money in British Columbia that needs to be laundered is the subject of the previous chapter in this Report. The extent to which it is laundered with the knowing or unknowing participation of those with some responsibility to resist it, although a different question, is hard to separate in the context of the issue raised in this chapter: “Is money laundering worth addressing?” Both the amount of money laundering taking place in British Columbia and the extent to which it is enabled, knowingly or not, by those responsible for resisting it, are important questions that underpin the fundamental question posed by this chapter.

If the question is whether money laundering is worth addressing, the instinctive response is that it is, because tackling money laundering will reduce crime. This answer is premised on the logical assumption that thwarting money laundering would weaken the criminal organizations that rely on it. As Professor Levi put it in his evidence:

[Y]ou could see that without the possibility of laundering money, organized crime would be much weaker and would not find its way into the tentacles of some parts of the ... political system, though they didn’t think of that in a very high-up way.<sup>16</sup>

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12 Ibid, p 66, footnote 26.

13 Ibid, p 66.

14 Ibid, p 66, footnote 28.

15 Evidence of M. Levi, Transcript, June 8, 2020, p 27; Interim Report, p 67.

16 Evidence of M. Levi, Transcript, June 5, 2020, p 17.

Despite that instinctive response, there are some doubts expressed by those who study money laundering as to the efficacy of combatting it.

As is apparent from previous chapters in this Report, the main form of resistance to money laundering internationally, nationally, and in British Columbia is guided by the Financial Action Task Force (FATF) rules. However, academics have raised issues about the effectiveness of those rules in combatting money laundering.

As Professor Reuter expressed it in his evidence before the Commission:

And so every country basically follows the FATF rules. As we argued, there's very little evidence that the rules have been effective, and the interesting question is: why is it that this particular transnational legal order is subject to ... so little criticism? It's very modest.<sup>17</sup>

Even the effectiveness of gauging the quantification of money laundering in a particular jurisdiction (which seems important as a measure of the effectiveness of remedial action taken) is called into question. In his testimony, Professor Reuter put it thus:

It is not clear how, with the existing data, you get to estimate how much money is laundered ... you can estimate the size of drug markets through a combination of different kinds of surveys and indicators, and from that with some price data you can establish how much revenue there is, and then with some other data you can work out how much might need to be laundered as opposed to just plain money that low level retailers ... spend on staying alive, and you might be able to come up with some ... estimate of how much money is being laundered from drug markets.

...

[I]f all we know is what's reported by enforcement agencies and financial institutions, we cannot credibly estimate the amount of money that's laundered.<sup>18</sup>

Professor Reuter emphasized that the size of the drug and fraud markets is not a good proxy for measuring the volume of money laundering, describing it only as “a starting point.”<sup>19</sup>

As to the gravity model, Professor Reuter testified that “the range of plausible estimates [at each step] is just so large that they're not going to give you any guidance.”<sup>20</sup> He described the gravity model's assumptions not as “heroic assumptions,” but rather as “hubristic assumptions.”<sup>21</sup>

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17 Evidence of P. Reuter, Transcript, June 5, 2020, p 14.

18 Ibid, p 50.

19 Ibid, p 54.

20 Ibid, p 54.

21 Ibid, p 54.

Professor Reuter identified the problem as one of uncertainty. He noted that the drug market in the US is “something between \$50 billion and \$200 billion ... [which is] a huge range of potential estimates.”<sup>22</sup> You have to learn “how to ... make policy here without numbers because the numbers are going to be so crude you couldn’t possibly tell whether things have gotten better or worse, just with a set of numbers.”<sup>23</sup>

It was Professor Reuter’s contention that anti–money laundering has no assessment of effectiveness. He asserted:

I think I know this field reasonably well and I cannot think of anything, any study that has claimed to show that as a result of AML in Canada or AML in Australia, crime has been reduced by X or that it has generated a thousand additional convictions ... do we know how much AML has contributed to the accomplishment of these objectives? And the answer is that there are no such studies.<sup>24</sup>

Professor Reuter opined that “measuring the volume of money laundering doesn’t serve as a useful measure of effectiveness because money laundering itself does not cause harm.”<sup>25</sup> Acknowledging that was “a controversial statement,” Professor Reuter went on to describe money laundering as being “a part of the activity of a set of criminal activities that we do care about”; he said that “[we] can use AML to reduce those activities, whether they be crime or terrorism.”<sup>26</sup>

Professor Reuter acknowledged that despite his contrary assertion, “there may indeed be serious consequences of money laundering, but we have no empirical evidence to say that they’re substantial enough to be worth mentioning.”<sup>27</sup>

Professor Levi pointed out that “one of [the] social objectives in controlling money laundering might be to stop [criminal] organizations [from] getting more powerful.”<sup>28</sup>

Professor Reuter estimated the banks in Europe spend in the tens of billions of dollars on anti–money laundering. “AML is clearly very important and [learning] how to do it better matters.”<sup>29</sup>

The Criminal Intelligence Service Canada (CISC) assesses the threat of serious and organized crime impacting Canada. It has 10 provincial intelligence bureaus and comprises approximately 400 member agencies.<sup>30</sup>

<sup>22</sup> Ibid, p 52.

<sup>23</sup> Ibid, p 52.

<sup>24</sup> Ibid, p 62.

<sup>25</sup> Ibid, pp 65–66.

<sup>26</sup> Ibid, pp 62–63.

<sup>27</sup> Ibid, p 25.

<sup>28</sup> Evidence of M. Levi, Transcript, June 8, 2020, p 39.

<sup>29</sup> Evidence of P. Reuter, Transcript, June 8, 2020, p 26.

<sup>30</sup> Evidence of R. Gilchrist, Transcript, June 9, 2020, p 3.

CISC issued a public report on organized crime in 2019. According to that report, there are 1,850 organized crime groups operating in Canada. Of those, 680 have been assessed by CISC using its integrated threat assessment process. Of the 680, 176 are believed to be involved in money laundering activities, although that number may be under-reported. Chief Superintendent Robert Gilchrist testified that

quantification [of money-laundering] has proven to be extremely difficult. There's a number of estimates that are out there, provided by other organizations. However, in general, CISC has not undertaken a study to try to quantify the exact amount of money laundering in dollar terms. We do follow the estimates that are provided by others ... And we rely upon it for contextual background ... beyond [serving] as a general ... background point, it's limited to that use by CISC.<sup>31</sup>

Chief Superintendent Gilchrist elaborated on the focus of organized crime groups in Canada:

the highest number of organized crime groups thought to be involved in money laundering ... are reported primarily in three provinces. Ontario, followed by British Columbia, and then followed by Québec, with all three of those provinces collectively representing more than 76 percent of the ... assessed organized crime groups involved in money laundering.<sup>32</sup>

As to the impact of money laundering on the social and political order of the countries in which it appears most persistently, mainly the most affluent countries in the world, Sir Robert Wainwright was asked “why ... money laundering is a problem for society and [what are] the harms it causes that motivate the action to confront it.”<sup>33</sup>

Mr. Wainwright spent a significant time as the executive director of Europol from 2009 until 2018. Europol is “constituted to act as facilitator and a supporter of international police cooperation in Europe.”<sup>34</sup> There are approximately 40 different countries that are part of a coordinated information sharing network through Europol.<sup>35</sup> His response to the question posed to him concerning the harms and problems for society that money laundering presents was as follows:

Yes. In Europol ... we described it as an engine of organized crime because it was at the heart of – of – is at the heart of the criminal economy, because it's about, of course, as I said earlier, for criminals finding ways to make crime pay essentially. And that in itself, if they can do that in an effective way is of course a huge incentive to engage in crime in the first place, a stimulus for exponential increase, and it also acts, importantly, as a funding source for

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31 Ibid, p 40.

32 Ibid, p 53.

33 Evidence of R. Wainwright, Transcript, June 15, 2020, p 18.

34 Ibid, p 7.

35 Ibid, p 7.

further illicit activities, and not only for drug traffickers, not only in drugs but in other very important offences that impact society, such as terrorism and modern slavery.

I think its intrinsic role as a key enabler of organized crime is important. Why is it a problem? Also because of the scale and the way ... in which the globalized criminal economy has grown. Our conservative estimates while I was at Europol was that around 120 billion euros were produced in annual revenue relating to the criminal economy in Europe. Actually global estimates – the one most reliably quoted, most often quoted from the UN points to something like two trillion U.S. dollars, which is over three percent of global GDP. And of course, when it's at that scale, it has a serious polluting effect on the integrity of our financial markets, on our economies. And of course, it has this very adverse societal impact because not only does it fuel the crime itself, it fuels corruption around that to enable the crime. It drives illicit labour markets. And we've seen all of that – a microcosm of all of that in the last three months with the COVID impact, for example. We've seen certain sectors that have declined as a result of the economic downturn associated with COVID. Some of those sectors have become more vulnerable to criminal exploitation and even takeover.

And where we see, for example, difficulty in accessing capital because of that, they turn unknowingly maybe to loan sharks involved in processing criminal profits. And of course, a rise in investment scams.

So I think money laundering, the scale of it, the impact of it, has in driving this global criminal economy is a serious problem actually on many levels to our interests in society.<sup>36</sup>

Although, academically, a case might be made for treating money laundering as not worthy or capable of being addressed, as I see it, some academic commentary on the subject has missed important considerations. As I noted in Chapter 4, some experts contend that quantification may be vital to understand the scope and nature of the money laundering problem and to measure the success of initiatives aimed at combatting it. Moreover, given the acknowledged “enormous” difficulties associated with determining quantification, it may be difficult, if not impossible, for those with the responsibility to resist money laundering to make informed choices about the extent to which – and how – they will try to regulate it.

In the Interim Report, I explained the Commission's approach to the question that underlies this chapter: whether a robust anti-money laundering regime is justifiable. In addressing that question in the Interim Report, I noted that:

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36 Evidence of R. Wainwright, Transcript, June 15, 2020, pp 18–19.

Ultimately, the question of whether combatting money laundering is an important priority can be definitely answered only by increasing our understanding of its nature, its extent, the implications of addressing it, and how it can be addressed most effectively.<sup>37</sup>

I also noted that despite “the problems associated with measuring the size and impact of money laundering activity as well as the effectiveness of the proposed solutions,”<sup>38</sup> there is importance in recognizing “that it may be necessary to take action against the threat [of money laundering] even though it cannot be empirically measured.”<sup>39</sup>

There is, in my view, considerable evidence of serious problems arising from the tolerance of money laundering. In the face of that, to sit idly by insisting on incontrovertible proof, is untenable. The risks are, at this point, clear and identifiable, even if evasive of precise measurement. I do not consider it prudent or responsible to be passive about money laundering. Citizens, experts, and governments have rightfully become concerned about the continuing prevalence of money laundering, and there is much room for improvement in this area.

In his report to the Commission titled *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, Jason Sharman, the Sir Patrick Sheehy Professor of International Relations at the University of Cambridge noted, “[the fact] that in a 16-year period, Canada has had only 316 money laundering convictions, while in 2017 alone Britain has had 1,435, is a staggering contrast. Money launderers in BC and Canada more generally face an open goal.”<sup>40</sup>

The relative paucity of prosecutions and convictions for money laundering in Canada and British Columbia is not a reflection that we are relatively free of money laundering activity. Rather, it is a reflection of regimes that have relied too heavily on building up formal anti-money laundering structures and not heavily enough on building a substantive enforcement component to those structures to come to grips with the challenges of tracking the proceeds of crime as they are integrated into the legitimate economy. In that sense, the prevailing anti-money laundering regime can be likened to a Potemkin village, which relies on the appearance of effective structures rather than their reality.

Nevertheless, as is apparent from the previous chapter, and, indeed from the evidence called at the Inquiry generally, although the extent of money laundering in British Columbia is not presently conducive to quantification, I am satisfied that there is a “substantial” body of money in British Columbia that requires laundering on an ongoing basis, either informally or through professional money laundering services.

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37 Interim Report, pp 67–68.

38 Ibid, p 68.

39 Ibid, p 68.

40 Exhibit 959, p 5.

Even though the adequacy of the different measurement models may be difficult to assess and the “estimates [and extrapolations] of money laundering [remain] wild and imprecise, if not downright wrong,”<sup>41</sup> there is a strong rationale for invoking anti-money laundering measures to take a principled stand against allowing money laundering to infect the political and economic integrity of the province.

Money laundering has an impact on British Columbians. That impact occurs collectively and individually. The introduction of illicit money into the economy distorts markets. It courts imbalance and inequity among those seeking economic footholds for their businesses and for themselves and their families.<sup>42</sup>

British Columbians rightfully expect a governance system in which there are equal and fair opportunities to grow and prosper. There can be few things more destructive of a community’s sense of well-being than a governing regime that fails to resist those whose opportunities are unfairly gained and come at the expense of others.

Money laundering is not the only activity that profits from that form of unfairness, but it does stand out. It allows the predatory to use the money gained at the expense of the vulnerable, by disguising it with a patina of legitimacy, and permits them to compete in the marketplace with those who feel constrained to earn their money honestly and pay their fair share of the burden of maintaining the benefits of living in a community.

Perhaps even more importantly, as I noted in the Interim Report, resisting money laundering resists those who would engage in activities

[t]hat strike at the heart of our collective values. Money laundering is a crime that occurs in the aftermath of other, more overtly and directly destructive offences: drug trafficking, human trafficking, prostitution, extortion, theft, fraud, and trafficking in child pornography. Deterring money laundering thwarts those for whom the crime is motivated by profit and repudiates the evils of the offences that produce the demand for it.<sup>43</sup>

In my view, the failure to respond to the money laundering activity, which is undoubtedly occurring in numerous sectors of the BC economy, would send a message that unlawful and socially destructive behaviour will be tolerated and allow those who prey on the most vulnerable in society to continue if not expand their operations and reap the rewards of their unlawful conduct. It would also result in a lost opportunity to target and disrupt the activities of organized crime groups and other criminal actors operating within the province.

41 Exhibit 322, Overview Report: Simplified Text on Quantification of Money Laundering, p 2.

42 On this point see Evidence of S. Cassella, May 10, 2021, p 63; Evidence of G. Clement, April 9, 2021, pp 56–57; Evidence of S. Cassella, May 10, 2021, pp 63–64; and Exhibit 396, Department of Finance Canada, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada* (2015), p 67.

43 Interim Report, p 68. See also Evidence of N. Maxwell, Transcript, January 14, 2021, pp 45–47.

## Part II

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# Legal and Regulatory Framework

Having considered the basics of money laundering – what it is, who is involved in it, and difficulties with quantifying it – I now turn to the legal and regulatory frameworks that are implicated when considering improvements to the anti–money laundering regime. In Chapter 6, I review the international framework, which centres largely on the Financial Action Task Force’s 40 recommendations for an effective anti–money laundering and terrorist financing regime. Chapter 7 considers the Canadian framework – which is largely set out in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 – as well as critiques that have been levelled at that regime. Finally, Chapter 8 discusses the provincial framework, which is not centralized in the same way as the foregoing two and is instead spread out among various economic sectors. Chapter 8 also introduces a key recommendation in this Report: the creation of an independent office of the Legislature, which I refer to as the AML Commissioner.

## Chapter 6

# The International Anti-Money Laundering Regime

Since at least the 1980s, the international community has recognized that money laundering does not respect borders. It is a problem that requires coordinated responses at the local, national, and international levels. For this reason, the anti-money laundering regime in Canada has been, and continues to be, heavily influenced and shaped by the international regime. Understanding the international regime is therefore crucial to understanding our domestic measures.

The international community has taken various steps to increase awareness of money laundering and to “promote the effective implementation of legal, regulatory and operational measures to combat the laundering of the proceeds of crime.”<sup>1</sup> One of the key steps taken by the international community was the creation of the Financial Action Task Force (FATF), which is widely seen as the leading global authority on money laundering and anti-money laundering measures. FATF’s work has not been without criticism. However, it plays a vital role in identifying and providing guidance to its member countries on emerging money laundering risks and best practices for addressing those risks. For example, its list of 40 recommendations is the foundation of most modern anti-money laundering regimes and has heavily influenced and shaped the development of the Canadian regime over the past 25 years.

In what follows, I review the history and evolution of international efforts to address money laundering, including the creation of FATF and the development of its list of 40 recommendations. I then discuss FATF’s current activities, with a particular focus on the “mutual evaluation process” it has adopted to evaluate the anti-money laundering measures put in place by its member countries. I conclude with a discussion of Canada’s performance in the mutual evaluation process to date, along with some brief comments on other international efforts to address money laundering.

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1 Exhibit 19, Report of Professor William Gilmore, May 2020, p 5, para 4.

## Treaties and Declarations

Actions that could be considered money laundering today have occurred for centuries. Over 2,000 years ago, merchants took steps such as sending money abroad or purchasing assets to conceal acquired wealth from government, and moneylenders used various methods to conceal illegally obtained interest.<sup>2</sup> In the early 20th century, the concept of money laundering started to gain prominence in the United States because of concerns about international banks moving funds to evade tax, the use of cash-intensive businesses to conceal the origins of proceeds of crime, and practices by which gangsters such as Al Capone would attempt to conceal their “ill-gotten gains.”<sup>3</sup> It appears that the first use of the term “money laundering” can be traced to 1973, when it was used during the Watergate scandal in relation to the “laundering” of President Richard Nixon’s illegal campaign funds.<sup>4</sup>

Similar concerns arose on the international stage because of the significant expansion of the illegal drug trade, a fear that attempts to mask the illicit origins of proceeds were leading to large amounts of capital being transferred between jurisdictions (with tax consequences), and a perception that money laundering was posing a considerable threat to the integrity and stability of legitimate financial systems.<sup>5</sup> In the late 1980s, the international community began taking concrete steps to address money laundering as a problem in its own right. Arguably, the most important of these steps were the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*<sup>6</sup> (Vienna Convention) and a 1989 G7 Economic Declaration.<sup>7</sup>

### The Vienna Convention

The Vienna Convention was the culmination of extensive international efforts to address global concerns about drug trafficking. These efforts included the *Single Convention on Narcotic Drugs, 1961*,<sup>8</sup> and the *1971 Convention on Psychotropic Substances*.<sup>9</sup> The Vienna Convention was adopted on December 20, 1988, and came into force on November 11, 1990.<sup>10</sup> Article 2 sets out its purpose:

- 2 Exhibit 218, Katie Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response” (DPhil, University of Manchester, School of Law, 2016) [unpublished], p 26.
- 3 Ibid.
- 4 Ibid.
- 5 Ibid, pp 26–27.
- 6 20 December 1988, 1582 United Nations *Treaty Series* (UNTS) 95 (entered into force 11 November 1990), online: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-19&chapter=6&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en).
- 7 G7 Economic Declaration, Paris, 16 July 1989, online: <http://www.g8.utoronto.ca/summit/1989paris/com-muniqué/index.html>.
- 8 30 March 1961, 520 UNTS 557 (entered into force 13 December 1964), online: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-15&chapter=6](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-15&chapter=6).
- 9 21 February 1971, 1019 UNTS 175 (entered into force 16 August 1976), online: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-16&chapter=6&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&clang=_en).
- 10 United Nations General Assembly (UNGA) Res 39/141, UNGA Res 42/111; Peter German, *Proceeds of Crime and Money Laundering* (Toronto: Thomson Reuters, 1998) (loose-leaf updated 2019, release 3), 1A-5.

The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

The Vienna Convention was a milestone in international efforts to tackle money laundering because of its recognition that money laundering is a problem in its own right requiring distinct measures to address. The preamble states that “illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels.” It also notes the parties’ determination “to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing.”

The Vienna Convention requires parties – that is, countries that have signed and ratified the treaty – to establish certain offences. Most of these relate to the production, sale, possession, transport, etc., of narcotic drugs and psychotropic substances (see arts 3(1)(a)(i)–(iv), 3(2)). However, it also requires parties to criminalize the following:

- the organization, management, or financing of specified offences (art 3(1)(a)(v));
- the conversion or transfer of property known to be derived from specified offences for the purpose of concealing or disguising its illicit origin (art 3(1)(b)(i)); and
- the concealment or disguise of various aspects of property, such as its true nature, source, or ownership, knowing that it is derived from specified offences (art 3(1)(b)(ii)).

Article 5 requires the parties to adopt measures for confiscating proceeds of crime and property derived from it (arts 5(1)(a), 5(2)), confiscating the substances themselves (art 5(1)(b)), and seizing financial records (art 5(3)). The Convention also deals with extradition (art 6), mutual legal assistance (art 7), and international co-operation and training (art 9).

Canada signed the Vienna Convention on December 20, 1988, and ratified it on July 5, 1990.<sup>11</sup> It is implemented primarily through the *Controlled Drugs and Substances Act*, SC 1996, c 19, and the *Criminal Code*, RSC 1985, c C-46. Consistent with the Vienna Convention’s commitment to criminalize money laundering, Canada enacted section 462.31 of the *Criminal Code*, which prohibits laundering the proceeds of crime. Specifically, it is an offence to use, transfer possession of, or otherwise deal with property with the intent to conceal or convert it knowing that the property derives from

<sup>11</sup> 20 December 1988, 1582 UNTS 95 (entered into force 11 November 1990), online: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-19&chapter=6&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en).

a designated offence. Similarly, section 354(1) of the *Criminal Code* makes it an offence to possess any property that is derived from the commission of a designated offence (defined below).

## **The G7 Economic Declaration and Creation of the Financial Action Task Force**

In 1989, a year after the Vienna Convention was adopted, the G7 met in Paris and released an economic declaration stating that the “drug problem has reached devastating proportions” and calling for urgent action, including two concrete measures:

- concluding further treaties and supporting initiatives and co-operation to facilitate the identification, tracing, freezing, seizure, and forfeiture of drug crime proceeds; and
- convening a financial action task force with a mandate to “assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field.”<sup>12</sup>

Consistent with the second call to action, FATF was established following the G7’s 1989 summit meeting. I elaborate on the task force below.

Since the Vienna Convention, various other treaties have refined the international approach to money laundering. A few are worth highlighting for our purposes. The *Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime*<sup>13</sup> is notable in that it did not limit money laundering to drug-related offences.<sup>14</sup> The *United Nations Convention Against Transnational Organized Crime*<sup>15</sup> came into force in 2003 and importantly requires states to:

- institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions, and other bodies susceptible to money laundering, emphasizing customer identification, record keeping, and the reporting of suspicious transactions; and

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12 *Economic Declaration*, G7, para 53 (Paris, July 16, 1989), online: <http://www.g8.utoronto.ca/summit/1989paris/communique/index.html>.

13 Council of Europe *Treaty Series* (CETS) 141.

14 This approach was highlighted once more in the *United Nations Convention Against Corruption*, 2349 UNTS 41, which came into force in 2005. Article 23(2)(a) specifies that money laundering offences should be applied to “the widest range of predicate offences.” Further, the non-binding Legislative Guide to the Convention encourages parties to ensure that money laundering offences are not contingent on convictions for predicate offences: United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the United Nations Convention Against Corruption*, 2nd ed (New York: United Nations, 2012), para 248, online: [https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC\\_Legislative\\_Guide\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf).

15 2225 UNTS 209, online: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en).

- ensure that administrative, regulatory, law enforcement, and other authorities have the ability to co-operate and exchange information and, to that end, consider establishing a financial intelligence unit to serve as the national centre for the collection, analysis, and dissemination of information regarding potential money laundering.<sup>16</sup>

A final important development was the G20's High-Level Principles on Beneficial Ownership Transparency,<sup>17</sup> adopted by the G8 following its 2013 Annual Meeting Final Communiqué.<sup>18</sup> These principles address concerns surrounding a lack of knowledge about who ultimately controls, owns, and profits from companies and legal arrangements. I address beneficial ownership in Chapters 23 and 24.

## The Financial Action Task Force

As Professor William Gilmore put it, FATF is “without doubt, the most influential body in terms of the formulation of anti-money laundering policy and in the mobilisation of global awareness of the complex issues involved in countering this sophisticated form of criminality.”<sup>19</sup> It was created in 1989 with a mandate to consider the adequacy of international efforts to address drug trafficking and the very substantial proceeds derived from it. The G7 asked experts in their member countries to consider these issues and deliver a report at the next G7 meeting. The resulting report contained 40 recommendations relating to anti-money laundering and confiscation of proceeds of crime.<sup>20</sup> These recommendations have come to represent the gold standard in the international fight against money laundering and have played a key role in the development of Canada's domestic regime.

Initially envisioned as having a limited term, FATF's mandate was extended a few times, and it has now become an established institution.<sup>21</sup> Its objectives are “to protect financial systems and the broader economy from threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security.”<sup>22</sup>

<sup>16</sup> Ibid, art 7(1).

<sup>17</sup> “G20 High-Level Principles on Beneficial Ownership Transparency,” Brisbane, Australia, 2014, online: [http://www.g20.utoronto.ca/2014/g20\\_high-level\\_principles\\_beneficial\\_ownership\\_transparency.pdf](http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf).

<sup>18</sup> “G8 Lough Erne Leaders Communiqué,” Lough Erne, Northern Ireland, UK, June 18, 2013, online: <http://www.g7.utoronto.ca/summit/2013lougherne/lough-erne-communique.html>.

<sup>19</sup> Exhibit 19, Report of Professor William Gilmore, May 2020, p 4, para 2.

<sup>20</sup> Evidence of W. Gilmore, Transcript, June 3, 2020, p 13.

<sup>21</sup> Ibid, pp 13–14.

<sup>22</sup> As articulated in its open-ended mandate approved April 12, 2019: Financial Action Task Force, *Mandate*, April 12, 2019, p 4(I)(2) available online: <https://www.fatf-gafi.org/media/fatf/content/images/FATF-Ministerial-Declaration-Mandate.pdf>.

At the time of writing, the task force had 37 member jurisdictions and two regional organizations.<sup>23</sup> Canada was one of the 16 founding members.<sup>24</sup> Professor Gilmore explained that several jurisdictions that are not currently members would like to be part of FATF, given its important standard-setting function; in other words, countries “wish to be inside the tent rather than outside the tent.”<sup>25</sup> Similarly, UK money laundering expert Simon Lord testified that, although there are only 39 official members of FATF, “virtually all countries in the world comply with FATF’s recommendations. Less so, Iran, and not so, North Korea.”<sup>26</sup>

There are nine “associate members” of FATF known as FATF-style regional bodies. These are separate and independent regional entities that have accepted FATF’s 40 recommendations and agreed to monitor their implementation using their common methodology.<sup>27</sup> They also participate in the development of the task force’s standards, guidance, and other policy relating to money laundering and terrorist financing.<sup>28</sup> Their associate member status allows them to attend FATF meetings and intervene on policy and other matters. They cover the following regions: Asia/Pacific, the Caribbean, Council of Europe members, Eurasia, Eastern and Southern Africa, Latin America, West Africa, the Middle East and North Africa, and Central Africa.<sup>29</sup>

The Council of Europe body, known as MONEYVAL,<sup>30</sup> is among the oldest, most firmly established, and best known of the FATF-style regional bodies.<sup>31</sup> Canada is a member of the Asia/Pacific Group and is a “coordinating and supporting nation” of the Caribbean Group.

## FATF’s 40 Recommendations

FATF’s 40 recommendations were promulgated in 1990 to “set standards and promote the effective implementation of legal, regulatory and operational measures to combat

23 The member jurisdictions are Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Israel, Italy, Japan, Republic of Korea, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Portugal, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The regional organizations are the European Commission and the Gulf Co-operation Council. See Financial Action Task Force, “FATF Members and Observers” (2019) online: <https://www.fatf-gafi.org/about/membersandobservers/>.

24 Financial Action Task Force, Countries, “Canada”, online: <https://www.fatf-gafi.org/countries/#Canada>.

25 Transcript, June 3, 2020, p 16.

26 Transcript, May 28, 2020, p 45.

27 Exhibit 19, Report of Professor William Gilmore, May 2020, p 18, para 30; Evidence of W. Gilmore, Transcript, June 3, 2020, pp 46–47.

28 See FATF’s open-ended mandate at p 6, paras 9–12: Financial Action Task Force, *Mandate* April 12, 2019, online: <https://www.fatf-gafi.org/media/fatf/content/images/FATF-Ministerial-Declaration-Mandate.pdf>.

29 Financial Action Task Force, “Members and Observers,” online: <https://www.fatf-gafi.org/about/membersandobservers/>.

30 Its full name is the “Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.”

31 Exhibit 19, Report of Professor William Gilmore, May 2020, p 19, para 31.

the laundering of the proceeds of crime.”<sup>32</sup> As Mr. Lord explained, “the idea ... is to make sure that everyone has a more or less coordinated approach to the way in which money laundering and terrorism financing is addressed in terms of legislation, operational response and all the other ways.”<sup>33</sup>

Initially, the recommendations had three central strands. The first called for the strengthening of domestic criminal justice systems, with an emphasis on the development of legislative and enforcement techniques, such as the confiscation of the proceeds of crime, designed to undermine the financial power of trafficking networks and similar crime groups.<sup>34</sup> Countries were to criminalize drug-related money laundering and provide for confiscation or forfeiture of proceeds of crime, which relatively few countries had done at the time.<sup>35</sup>

The second strand called for the mobilization of participants in the financial sector to assist in the prevention and detection of money laundering through measures such as customer identification and verification, record-keeping, and reporting. Professor Gilmore describes these measures as an “innovative” and “bold” attempt to move beyond the normal range of criminal justice actors in an attempt to address what was seen as a criminal justice problem.<sup>36</sup> I agree that these measures were a novel and creative approach to addressing money laundering. They depart significantly from a more traditional criminal law response of criminalizing conduct and instead require private actors to be actively engaged in identifying suspicious behaviour and to proactively collect information that may assist with future investigations. In Canada, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) imposes these measures on a range of private actors including financial institutions, insurance brokers, securities dealers, money services businesses, accountants, real estate professionals, and casinos.<sup>37</sup>

The third strand of the recommendations recognized that the success of any strategy to combat money laundering would depend, to a significant extent, on the range, scope, and quality of international co-operation. It contains recommendations aimed at improving such co-operation.<sup>38</sup>

In 1996, FATF conducted a “major stocktaking” of the recommendations, which led to two significant changes: (a) the extension of predicate offences beyond drug trafficking; and (b) the expansion of preventive measures to cover non-financial businesses. Suspicious transaction reporting was also made mandatory rather than permissive.<sup>39</sup>

<sup>32</sup> Ibid, p 5, para 4.

<sup>33</sup> Transcript, May 28, 2020, p 47.

<sup>34</sup> Exhibit 19, Report of Professor William Gilmore, May 2020, p 5, para 4.

<sup>35</sup> Evidence of W. Gilmore, Transcript, June 3, 2020, pp 20–21.

<sup>36</sup> Exhibit 19, Report of Professor William Gilmore, May 2020, p 5, para 4; Transcript, June 3, 2020, pp 21–22.

<sup>37</sup> *PCMLTFA*, s 5. See **Chapter 7** for a more detailed explanation of the Canadian regime.

<sup>38</sup> Exhibit 19, Report of Professor William Gilmore, May 2020, pp 5–6, para 4; Evidence of W. Gilmore, Transcript, June 3, 2020, p 21.

<sup>39</sup> Exhibit 19, Report of Professor William Gilmore, May 2020, p 6, paras 5–6.

Following 9/11, FATF’s mandate was expanded to include the prevention, detection, and suppression of terrorist financing. FATF added eight “special recommendations” relating to terrorist financing in 2001 and a ninth in 2004.<sup>40</sup> It also did a thorough review of the recommendations in 2002–3.<sup>41</sup> A key change from that review was the concept of a financial intelligence unit,<sup>42</sup> which, as discussed below, was envisioned as a national financial intelligence centre that would review suspicious transaction reports and gather other information relevant to money laundering and terrorist financing.

Another key change was applying customer due diligence and reporting requirements to “designated non-financial businesses and professions,” which comprise casinos; real estate agents; dealers of precious metals and stones; accountants; lawyers, notaries, and independent legal professionals; and trust and company service providers.<sup>43</sup> Professor Gilmore described these changes as a “bold and a controversial extension of the remit of the imposition of obligations on non-governmental actors.”<sup>44</sup> As I discuss further in Chapter 27, the extension of requirements to legal professionals in particular has not been without controversy and has led to difficulties because of issues like solicitor-client privilege.<sup>45</sup> There has also been pushback from some industry groups as they become subject to reporting obligations.<sup>46</sup>

In 2012, the recommendations were revised again to fully integrate the nine special recommendations adopted after 9/11 and to incorporate a further extension to FATF’s mandate in 2008 relating to the proliferation of weapons of mass destruction.<sup>47</sup> In October 2020, FATF made two additional modifications relating to the proliferation of weapons of mass destruction.<sup>48</sup> I set out some key recommendations below.

## **Recommendation 1**

Recommendation 1 states that countries should adopt a “risk-based approach” to their anti-money laundering and terrorist financing measures.<sup>49</sup> In basic terms, a risk-based approach requires each country to “identify, assess, and understand” the money

40 Evidence of W. Gilmore, Transcript, June 3, 2020, pp 22–23.

41 Exhibit 19, Report of Professor William Gilmore, May 2020, p 7, para 8.

42 Evidence of W. Gilmore, Transcript, June 3, 2020, pp 24–25.

43 Ibid, p 24; Exhibit 4, Overview Report: FATF, Appendix E, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Updated June 2019) [FATF Recommendations 2019], pp 116–17, “General Glossary”.

44 Transcript, June 3, 2020, p 24.

45 Ibid, pp 51–52.

46 Ibid, p 51.

47 Exhibit 19, Report of Professor William Gilmore, May 2020, p 9.

48 *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Updated March 2022), Annex 2, p 138, online: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>.

49 The risk-based approach is distinct from the “standards-based” and “rules-based” approaches, which describe different ways regulators can address issues such as money laundering. A standards-based approach gives registrants a set of high-level objectives to achieve, but with flexibility as to how to do so. In contrast, a rules-based approach involves setting prescriptive requirements that all registrants must follow.

laundering and terrorist financing risks arising in its jurisdiction and take action to ensure that measures to prevent or mitigate money laundering are commensurate with the risks identified.

Former executive director of Europol Sir Robert Wainwright testified that the premise of a risk-based approach is to direct “your control efforts ... to the best effect ... to bring maximum impact on identifying and reducing the problem of money laundering ... [It] implies ... that you are indeed being a bit more laser-like about where you should really focus your attention on rather than trying to cover everything with everyone.”<sup>50</sup>

Although not specifically required, countries often conduct “national risk assessments” to demonstrate their identification, assessment, and understanding of money laundering risks (see Chapter 2 for a discussion of Canada’s 2015 risk assessment).<sup>51</sup> Professor Peter Reuter testified that these assessments are useful exercises in that they bring together the various sectors involved in anti-money laundering, allowing them to build expertise and a community that improves communication among stakeholders.<sup>52</sup>

Risk is generally understood as a function of the level of threat, the vulnerability, and the consequences of money being laundered.<sup>53</sup> Messrs. Levi, Reuter, and Halliday explain the relationship between these concepts as follows:

Risk is seen as the intersection of threats, vulnerabilities and consequences. A particular sector (banks, casinos, accountants) might be seen as high risk if it faced serious threats (many efforts to launder money), had weak controls and/or the consequences of a money laundering violation in that sector had particularly serious consequences.<sup>54</sup>

Although these assessments provide a useful starting point, the lack of quantitative data in the money laundering and terrorist financing field makes it difficult to conduct a reliable risk assessment. For example, there is a danger that risk assessment relying heavily on available quantitative information may be biased toward risks that are easier to measure and discount than those for which quantitative information is not readily available.<sup>55</sup>

<sup>50</sup> Transcript, June 15, 2020, p 43.

<sup>51</sup> Evidence of W. Gilmore, Transcript, June 4, 2020, p 14. FATF has produced a guidance document to assist countries with these assessments. Professor Reuter explained that this document is properly non-prescriptive, as risk assessments often need to be adapted to the specific phenomenon and institutional setting: Evidence of P. Reuter, Transcript, June 8, 2020, p 4. Risk-based approaches are also applied within specific industries (such as the gaming industry) to ensure that the relevant actors understand the risks arising in that sector and take measures to prevent or mitigate those risks.

<sup>52</sup> Evidence of P. Reuter, Transcript, June 8, 2020, pp 15–16.

<sup>53</sup> *Ibid*, pp 4–5.

<sup>54</sup> Exhibit 26, Michael Levi, Peter Reuter, and Terence Halliday, “Can the AML System Be Evaluated Without Better Data?” (2018) 69 *Crime, Law and Social Change*, p 321.

<sup>55</sup> Financial Action Task Force, *Guidance: National Money Laundering and Terrorist Financing Risk Assessment* (February 2013), p 17, online: [http://www.fatf-gafi.org/media/fatf/content/images/National\\_ML\\_TF\\_Risk\\_Assessment.pdf](http://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf).

Adding to the difficulties of accurately measuring money laundering risk, countries have used different kinds of data. Some rely only on expert opinion, while others use suspicious activity reports, prosecutions for money laundering, and/or vignettes. Although these are all legitimate sources of data, countries do not, in Professor Reuter’s view, sufficiently explain their methodology or the nature and limitations of the experts’ expertise.<sup>56</sup>

### **Recommendation 3**

Recommendation 3 requires<sup>57</sup> countries to criminalize money laundering and to apply the crime of money laundering “to all serious offences, with a view to including the widest range of predicate offences.” The interpretive note explains that the criminalization of money laundering can be done in different ways: on an all-crimes basis, on a threshold basis linked to a category or serious offences or penalties, to a list of predicate offences, or a mix of these.<sup>58</sup> At a minimum, however, the offence should apply to the “designated categories of offences,” which are listed in the glossary and include offences such as participation in organized crime, terrorism, human trafficking, drug trafficking, fraud, and tax crime.<sup>59</sup>

In Canada, the *Criminal Code* attaches the crime of money laundering to all designated offences, which are defined to include most offences punishable by indictment.<sup>60</sup>

### **Recommendation 4**

Recommendation 4 requires countries to adopt measures for freezing, seizing, and confiscating proceeds of crime and illicit property. Notably, it states that countries should either adopt measures allowing for such confiscation without requiring a criminal conviction or consider measures requiring an offender to demonstrate the lawful origin of the property.

In Canada, various statutes provide for forfeiture of offence-related property and the proceeds of crime, including the *Criminal Code*; the *Controlled Drugs and Substances Act*; the *Fisheries Act*, RSC 1985, c F-14; the *Excise Act*, RSC 1985, c E-14; the *Customs Act*, RSC 1985, c 1 (2nd Supp); the *Cannabis Act*, SC 2018, c 16; and the *Immigration and Refugee Protection Act*, SC 2001, c 27. I return to the topic of asset forfeiture in Chapters 42 and 43.

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56 Transcript, June 8, 2020, pp 11–14, and 18. See also Exhibit 26, Michael Levi, Peter Reuter, and Terence Halliday, “Can the AML System Be Evaluated Without Better Data?” (2018) 69 *Crime, Law and Social Change*, pp 322–23.

57 Professor Gilmore highlighted that the use of “should” in the Recommendations is to indicate a mandatory requirement, as “should” is defined in the glossary to mean “must”: Exhibit 19, Report of Professor William Gilmore, May 2020, p 10, para 12.

58 See Exhibit 4, Appendix E, *FATF Recommendations 2019*, beginning at p 29, for all the interpretive notes.

59 Exhibit 4, Appendix E, *FATF Recommendations 2019*, “General Glossary,” pp 115–16.

60 *Criminal Code*, s 462.3(1), “designated offence.”

### **Recommendations 10, 11, and 22**

Recommendations 10 and 11 deal with customer due diligence and record-keeping requirements for financial institutions. By virtue of Recommendation 22, these also apply to designated non-financial businesses and professions.

### **Recommendations 24 and 25**

Recommendations 24 and 25 relate to the transparency and beneficial ownership of legal persons and arrangements. Countries should take measures to prevent the misuse of legal persons and arrangements for money laundering. There should also be adequate, accurate, and timely information on beneficial ownership and control that can be obtained by competent authorities.

I discuss beneficial ownership in Chapters 23 and 24.

### **Recommendations 20, 23, and 29**

Recommendations 20 and 23 require financial institutions and designated non-financial businesses and professions to report suspicious transactions to the central financial intelligence unit. The latter is contemplated by Recommendation 29, which states:

Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative, and law enforcement information that it requires to undertake its functions properly.<sup>61</sup>

Recommendation 29 is accompanied by an interpretative note that provides additional guidance with respect to the mandate and operation of the financial intelligence unit. Among other things, it states that:

- The receipt of suspicious transaction reports is a minimum; the unit should also receive and analyze the other documents contemplated by national legislation.<sup>62</sup>
- The unit's analysis should "add value" to the information that it receives and holds. Specifically, it should conduct:
  - **operational analysis** to identify specific targets, follow the trail of activities and transactions, and identify links between targets, possible proceeds, money laundering, predicate offences, or terrorist financing; and

<sup>61</sup> Exhibit 4, Appendix E, *FATF Recommendations 2019*, "Operational and Law Enforcement: Financial Intelligence Units," p 24, Recommendation 29.

<sup>62</sup> Interpretive note 2 to Recommendation 29, Exhibit 4, Appendix E, *FATF Recommendations 2019*, p 97.

- **strategic analysis** to identify trends, patterns, threats, and vulnerabilities related to money laundering and terrorist financing and to establish policies and goals for the unit and/or other entities in the regime.<sup>63</sup>
- The unit should “be able to disseminate, spontaneously and upon request, information and the results of its analysis to relevant competent authorities.”<sup>64</sup>
- Countries should consider whether it is feasible and useful to require financial institutions and designated non-financial businesses and professions to report all domestic and international currency transactions above a fixed amount.<sup>65</sup>

### **Recommendation 30**

Recommendation 30 relates to the role of a country’s law enforcement and investigative authorities. Countries must ensure that these authorities have responsibility for investigating money laundering and terrorist financing. Importantly, these authorities should consider these issues proactively while investigating predicate offences:

At least in all cases related to major proceeds-generating offences, these designated law enforcement authorities should develop a pro-active parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing. This should include cases where the associated predicate offence occurs outside their jurisdictions ...

A “parallel investigation” is defined in interpretive note 3 to Recommendation 30 as “conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s).” I consider this recommendation to be essential to the effective investigation and disruption of money laundering. Unfortunately, it has become apparent to me throughout the Commission process that, in British Columbia, money laundering offences have not been regularly investigated alongside predicate offences, with the result that money laundering offences are rarely charged in British Columbia and law enforcement agencies have secured very few convictions. I return to this subject in Part XI.

## **Criticisms of the 40 Recommendations**

Although the 40 recommendations have been generally well received, they are not without their critics. In his testimony, Professor Reuter explained that there has been a “heated dialogue” at times at FATF as to whether members must follow all the rules or if they can be judged by their results – in other words, whether members can adopt other

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63 Interpretive note 3 to Recommendation 29, *ibid*.

64 Interpretive note 4 to Recommendation 29, *ibid*, p 98.

65 Interpretive note 14 to Recommendation 29, *ibid*, p 99.

measures to achieve the desired results. FATF has typically responded that its rules are mandatory. In Professor Reuter's view, there is some value in allowing for some flexibility, though within limits:

[I]n an area where nobody knows what works, which is true of AML [anti-money laundering] – no one knows whether they have a good AML system or a bad one – you'd want to encourage experiments rather than lay down a set of arbitrary rules. I think the response to that is, it's too dangerous to allow experiments. There are countries, and certainly are governments which, if given any discretion, would abuse it. I mean, there are kleptocratic regimes that would love nothing better than to run awful AML regimes. There are some that actually, under the guise of conforming with the set FATF rules, do run awful AML regimes, and regimes that go after their enemies and not after their friends, et cetera.

So I understand why they emphasize rules, but I think that they could allow ... responsible governments that have demonstrated responsibility, to experiment with different ways of approaching a problem. And I think it's fair to say that FATF has been quite discouraging of that.<sup>66</sup>

I agree that FATF has, at times, been slow to adapt to evolving money laundering techniques and can be seen to impose a singular approach to money laundering when it can often be addressed in multiple ways. However, it is equally clear that FATF is committed to reviewing its recommendations regularly and, as I discuss next, has also been prolific in producing typologies and guidance documents for its members. It is also important to recall that the creation of FATF was a true turning point in the international fight against money laundering and one without precedent. I fully expect that FATF will continue to adapt to new and evolving money laundering threats and continue its important work in rallying its members to do the same.

## **FATF Typologies and Best Practice Papers**

In addition to its 40 recommendations, FATF also produces typologies and best practice papers to guide its members. Typologies are “exercises through which the FATF has sought to chart the sophistication, complexity and professionalism of money laundering options in particular sectors.”<sup>67</sup> They address practical concerns about money laundering methods in a particular sector or industry or with particular attributes. They tend to be led by governments with a background or interest in the subject matter, and they often involve contributions from law enforcement and

<sup>66</sup> Transcript, June 8, 2020, pp 54–55.

<sup>67</sup> Exhibit 19, Report of Professor William Gilmore, May 2020, p 12, para 16.

regulatory and supervisory authorities. Topics have ranged from money laundering in casinos to the sports industry to the diamond trade.<sup>68</sup>

Mr. Lord testified that the creation of typologies is an “entirely collaborative process” in which FATF member countries can work with each other and with FATF-style regional bodies.<sup>69</sup> The drafting process can involve distributing questionnaires, soliciting case examples, and analyzing various sources of data.<sup>70</sup> These typologies are supplemented by guidance and best practice papers, which are “intended to assist national authorities, relevant private sector actors and other interested bodies with the implementation of FATF standards and expectations.” FATF also produces reports intended to assist authorities and private sector actors on applying the risk-based approach.<sup>71</sup>

## The Mutual Evaluation Process

FATF initially monitored its members’ implementation of the recommendations through a self-assessment process – essentially a questionnaire. In recent years, however, it has adopted a process known as the “mutual evaluation process,” which is essentially a peer-review system evaluating member countries’ adherence to the recommendations:

FATF mutual evaluations are in-depth country reports analysing the implementation and effectiveness of measures to combat money laundering and terrorist financing. Mutual evaluations are peer reviews, where members of different countries assess another country. A mutual evaluation report provides an in-depth description and analysis of a country’s system for preventing criminal abuse of the financial system as well as focused recommendations to the country to further strengthen its system.<sup>72</sup>

The evaluation process involves a form of on-site examination, which is done by an interdisciplinary team of experts drawn from FATF members. In many cases, it also involves members from the regional FATF body.<sup>73</sup>

FATF has completed three rounds of mutual evaluations, and the fourth is currently ongoing.<sup>74</sup> Before the third round of evaluations, FATF developed a new methodology

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68 Evidence of W. Gilmore, Transcript, June 3, 2020, p 30. See also Exhibit 4, Overview Report: FATF, Appendices O to XX, for reports by FATF on money laundering in various settings, including casinos, real estate, securities, currency exchange, the illicit tobacco trade, the football industry, the diamond industry, and many others.

69 Transcript, May 28, 2020, p 51.

70 Ibid, pp 51–53.

71 Exhibit 19, Report of Professor William Gilmore, May 2020, p 12, para 16.

72 Financial Action Task Force, “Mutual Evaluations,” online: <https://www.fatf-gafi.org/publications/mutualevaluations/documents/more-about-mutual-evaluations.html>.

73 Evidence of W. Gilmore, Transcript, June 3, 2020, pp 32, 48; Exhibit 19, Report of Professor William Gilmore, May 2020, pp 12–13, para 17.

74 Canada was evaluated early in the fourth round. I discuss its evaluation below.

with the intention of producing reports that are more objective and accurate, and easier to compare.<sup>75</sup> This methodology involves producing two reports:

- a **technical compliance assessment**, which considers whether the member has formally complied with each recommendation and assigns a rating ranging from “compliant” (no shortcomings) to “non-compliant” (major shortcomings); and
- an **effectiveness assessment**, which considers how effectively the standards are being implemented.<sup>76</sup>

Professor Gilmore explained the difference between these as follows:

[T]he basis for both of these assessments is somewhat different. The technical compliance assessment is, in essence, largely a technical question, to what extent have these requirements been met, and only thereafter, to what extent, if at all, [are] some of these negative outcomes within the criteria of an individual technical compliance recommendation [important in terms of context and materiality, which] I suppose, [goes] to judgment rather than technical assessment.

The effectiveness considerations are quite different. The 11 immediate outcomes identify what the FATF regards as the key components of an effectively operating AML system ... [W]ithin the methodology the evaluators are required to look at a range of core issues ... for each of those immediate outcomes and to apply their background experience and judgment to an assessment of the extent to which the country subject to assessment meets the expectations set out in the methodology for that particular immediate outcome. So there is more of a subjective judgment element inherent in the effectiveness assessment component.<sup>77</sup>

In theory, the two reports are meant to provide an “integrated view” of the jurisdiction. In practice, however, it appears that the FATF Plenary<sup>78</sup> affords a greater

<sup>75</sup> Exhibit 19, Report of Professor William Gilmore, May 2020, p 13, para 19.

<sup>76</sup> Ibid, p 14, para 20; Evidence of W. Gilmore, Transcript, June 3, 2020, p 39. As Mr. Lord explains, with the addition of the effectiveness assessment, “you’re talking about not only the extent to which your money laundering law, for example, complies with the recommendations, but the extent to which you actually apply it in practice, so whether you are actually prosecuting people for that type of thing”: Transcript, May 28, 2020, p 47.

<sup>77</sup> Transcript, June 4, 2020, pp 12–13.

<sup>78</sup> The FATF Plenary consists of member jurisdictions and organizations. It is the decision-making body of FATF, and its decisions are made by consensus. It is responsible for matters such as appointing the president, vice-president, and steering group; approving FATF’s work program and budget; adopting standards, guidance, and reports prepared by FATF; deciding on membership, status of FATF-style regional bodies, and observer status; and establishing working groups as necessary. All members have the right to attend plenary meetings, which happen at least three times a year: see FATF’s open-ended mandate approved April 12, 2019, at paras 18–25, available online: <https://www.fatf-gafi.org/media/fatf/content/images/FATF-Ministerial-Declaration-Mandate.pdf>.

focus to the effectiveness review.<sup>79</sup> Professor Gilmore explained in his testimony that he was not keen on the shift to rating compliance on a scale (from highly compliant to non-compliant), noting that this has led to members focusing, especially in plenary meetings, on the ratings that were received rather than more productive discussions of how the country got into its good or poor position and how to move forward.<sup>80</sup>

A member that receives a poor technical compliance score on a particular recommendation will likely receive a low effectiveness score as well; however, the reverse is not necessarily true. For example, a member may criminalize money laundering (addressing Recommendation 3), “tick all the boxes” required by that recommendation, and therefore receive a good technical compliance rating. However, if the jurisdiction does not, in practice, investigate money laundering offences because it does not prosecute potential offenders and secures no convictions, then the effectiveness rating would likely be low.<sup>81</sup>

The effectiveness review involves looking at 11 **immediate outcomes**, “each of which is said to represent one of the key goals which an effective anti-money laundering scheme should achieve.”<sup>82</sup> Members can receive one of four “grades” that range from “high level of effectiveness” to “low level of effectiveness.”<sup>83</sup> The immediate outcomes consider questions such as money laundering risk, policy, and coordination (immediate outcome 1); international co-operation (2); supervision (3); and preventive measures (4).<sup>84</sup>

Depending on the outcome of a mutual evaluation, members are usually placed on either the “regular” or “enhanced” follow-up stream.<sup>85</sup> Regular follow-up is the “default monitoring mechanism for all countries.” It requires the country to report back to the Plenary after three years from the adoption of the mutual evaluation. Meanwhile, enhanced follow-up applies to members with “significant deficiencies (for technical compliance or effectiveness) in their [anti-money laundering / combating the financing of terrorism] systems” and requires more frequent reporting to the Plenary, as well as possible other compliance measures.<sup>86</sup>

The fourth round of evaluations introduced follow-up assessments for the first time. Countries under both the regular and enhanced review process receive a follow-up assessment after five years.<sup>87</sup> Follow-up assessments were introduced in recognition of the fact that countries can suffer reputational damage from their mutual evaluations

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79 Exhibit 19, Report of Professor William Gilmore, May 2020, p 16, para 24.

80 Transcript, June 3, 2020, pp 35–36.

81 Evidence of W. Gilmore, Transcript, June 4, 2020, pp 13–14.

82 Exhibit 19, Report of Professor William Gilmore, May 2020, pp 14–15, para 21.

83 Ibid, p 15, para 22.

84 Evidence of W. Gilmore, Transcript, June 3, 2020, p 42.

85 Exhibit 19, Report of Professor William Gilmore, May 2020, p 16, para 26.

86 Exhibit 4, Overview Report: FATF, Appendix G, *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations* (Paris: 2019), paras 84, 88–91.

87 Ibid, para 85.

being posted on the FATF website and from the lengthy gap between evaluations.<sup>88</sup> Failure to make satisfactory progress in addressing deficiencies can lead to a suspension or termination of membership.<sup>89</sup>

Countries can also request a “re-rating” for technical compliance with recommendations for which they received a “non-compliant” or “partially compliant” rating before or after the follow-up assessment. FATF’s expectation is that countries will have addressed most if not all technical compliance deficiencies by the end of the third year and the effectiveness shortcomings by the time of the follow-up assessment.<sup>90</sup>

FATF also has a separate process for countries it considers to suffer from strategic anti-money laundering or terrorist financing system deficiencies. These countries are subject to enhanced review by the International Co-operation Review Group.<sup>91</sup> There are several routes through which a country can become subject to that group’s review, the most common being particularly poor ratings in either the technical compliance or effectiveness assessments.<sup>92</sup> Such countries are also publicly placed on “grey” or “black” lists: the former includes countries who are actively working with FATF to address deficiencies, while the latter is used to advise members that they should apply enhanced due diligence to transactions in which listed countries are involved and introduce other specified countermeasures.<sup>93</sup> At the time of writing, 23 jurisdictions were on the grey list,<sup>94</sup> while two (North Korea and Iran) were on the black list.<sup>95</sup>

## Critiques of the Mutual Evaluation Process

Although the mutual evaluation process has great potential to ensure that countries continually evaluate their anti-money laundering approaches, stay up to date on developing money laundering techniques, and implement new measures to address new risks, it has been subject to some important critiques.

To begin with, the evaluations are not always done by expert assessors. Instead, they are completed by individuals who may not be experts in such risk assessments but are trained in the methodology. As a result, there is “a considerable variation in the backgrounds and strengths of assessment teams and not all variations or weaknesses in

88 Exhibit 19, Report of Professor William Gilmore, May 2020, pp 16–17, para 27.

89 Ibid, p 22, para 40.

90 Exhibit 4, Overview Report: FATF, Appendix G, *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations* (Paris: 2019), para 86.

91 Exhibit 19, Report of Professor William Gilmore, May 2020, p 17, para 28.

92 Ibid, para 29.

93 Ibid.

94 Financial Action Task Force, “Jurisdictions under Increased Monitoring – March 2022,” online: <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-march-2022.html>.

95 Financial Action Task Force, “High-Risk Jurisdictions subject to a Call for Action – 21 February 2020,” online: <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html>.

the resulting reports can or will be addressed through the quality control mechanisms which have been put in place.”<sup>96</sup>

Professor Reuter adds that many assessors do not have expertise in crime statistics and therefore use them inexpertly. For example, they might compare the number of drug offences with robbery offences, without accounting for the reality that whereas there is every incentive to report robberies, nobody reports drug offences, and as such, the drug statistics come almost exclusively from arrests.<sup>97</sup>

Messrs. Levi, Reuter, and Halliday also have significant concerns about the data used in mutual evaluations. In their article entitled “Can the AML System Be Evaluated Without Better Data?” they note that there are significant difficulties in obtaining useful data:

For AML, relevant quantitative data on serious crimes for gain is rare, though administrative and criminal justice data on AML processing have improved over time. The ideal evaluation would take some measure of the target activity, such as the total amount of money laundered, and estimate how much that has been reduced by the imposition of AML controls. However, as frequently repeated in [mutual evaluation reports] and other documents, there are no credible estimates of the total amount of money laundered, either globally or nationally ... Nor are there any clear international or even national measures of most of the harms that AML aims to avert, such as frauds or drugs/human trafficking. The ultimate targets of FATF itself, as articulated in its 2012 Goals and Objectives[,] appear to be to strengthen financial sector integrity and to contribute to safety and security (i.e. to reduce the harms from crime and terrorism), but these are goals on which progress is hard to assess ...<sup>98</sup>

Professor Reuter also noted a related problem in his testimony. He explained that, in the third round of mutual evaluations, predicate offences were not dealt with consistently. Evaluators took whatever data was available, such that they could be comparing homicide statistics in one country with cannabis-growing offences in another. Similarly, they failed to consider that some countries have better reporting rates than others; for example, a country like Germany that does very well in reporting may falsely appear to have a higher crime rate than a developing country with worse reporting records.<sup>99</sup>

Mutual evaluations have also been criticized for failing to take account of the fact that countries can use different approaches to address a problem. Professor Reuter

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96 Exhibit 19, Report of Professor William Gilmore, May 2020, p 24, para 45.

97 Transcript, June 5, 2020, p 65.

98 Exhibit 26, Michael Levi, Peter Reuter, and Terence Halliday, “Can the AML System Be Evaluated Without Better Data?” (2018) 69 *Crime, Law and Social Change*, p 310.

99 Transcript, June 5, 2020, pp 64–65; see also Exhibit 26, Michael Levi, Peter Reuter, and Terence Halliday, “Can the AML System Be Evaluated Without Better Data?” (2018) 69 *Crime, Law and Social Change*, pp 315–17.

provided an example relating to suspicious transaction reporting. He noted that some countries, such as Germany and Switzerland, require financial institutions to do a preliminary investigation before submitting their suspicious transaction reports. This practice led to Germany being criticized by FATF for having far fewer reports (around 7,000) than the United Kingdom (around 200,000), when it simply used a different approach.<sup>100</sup> Professor Levi similarly noted that evaluators should be aware of the information to which financial intelligence units have access. Some are police intelligence units and have access to a fair bit of criminal intelligence information; others are civilian units and may not have access to any criminal intelligence, although they may have access to commercial data.<sup>101</sup>

Professor Gilmore states that there have been some critiques about the available effectiveness ratings. Specifically, the ratings and their descriptors have been criticized for being “inadequate for the range and complexity of circumstances which are encountered.”<sup>102</sup> He also explained that the role of plenary bodies in the ultimate rating might be open to criticism:

One [criticism] could also go to issues surrounding the role of the plenary bodies in the ultimate determination of ratings in cases where the change, even a minor change in one rating on effectiveness, can have a profound impact on the subsequent treatment of that jurisdiction in follow-up and related kinds of terms.

And again, impressionistically, a case could be made but probably couldn't be proved, that on occasion, voting patterns in these bodies on some of those particularly problematic issues may not have been entirely influenced by technical considerations. The sort of Eurovision Song Contest group. But, so there is a space for non-technical considerations to come into play in any such body. I'm not saying it happens all the time. I'm not saying it happens systematically. But one is sometimes left with a feeling that broadening the considerations beyond the technical may be the only way of fully understanding the decision which has just been made.<sup>103</sup>

On the whole, Professor Gilmore suggests that mutual evaluations should be approached with some caution, as they are not perfect. He notes, however, that the continued use of the evaluations by countries suggests that they find them to be a credible snapshot of the country's position at a particular time. He also believes that the efforts to improve the quality and establish consistent processes are promising, even though they have not eliminated the issues.<sup>104</sup>

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100 Evidence of P. Reuter, Transcript, June 5, 2020, pp 57–58. See also Exhibit 26, Michael Levi, Peter Reuter, and Terence Halliday, “Can the AML System Be Evaluated Without Better Data?” (2018) 69 *Crime, Law and Social Change*, pp 319–20.

101 Transcript, June 5, 2020, p 59.

102 Exhibit 19, Report of Professor William Gilmore, May 2020, pp 24–25, para 45.

103 Transcript, June 3, 2020, p 53.

104 *Ibid*, pp 53–54.

I agree with Professor Gilmore that mutual evaluations should be approached with caution but not completely discounted. Although it is clear that there is much room for improvement and refinement in the mutual evaluation process, it is important that countries have an incentive to continually evaluate and improve their anti-money laundering measures.

## Canada's Mutual Evaluations

Canada's first evaluation was done in 1992–93. In that evaluation, Canada was held to be substantially in compliance with the recommendations and did especially well on criminalizing money laundering, introducing confiscation and forfeiture legislation, international co-operation, and the introduction of preventive measures.<sup>105</sup>

Canada's second evaluation was similarly positive. It was found to be substantially compliant with almost all the recommendations and was praised for the scope and implementation of penal legislation and international co-operation. However, it received some criticisms with respect to its suspicious transaction reporting regime, the scope of coverage for non-bank financial institutions, and measures relating to legal persons and beneficial owners.<sup>106</sup>

The third round of evaluations was based on heavily modified standards from 2003 and the nine special recommendations. It also involved, as noted above, the new ratings ranging from “compliant” to “non-compliant.” Canada was found to be largely compliant with most standards; however, its performance in 19 of 49 recommendations was found to be suboptimal. Particular concerns were raised about customer due diligence<sup>107</sup> and the role of the financial intelligence unit<sup>108</sup> – in this country, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). However, the methodology that existed at the time did not allow the assessors to take account of the fact that several measures had been enacted but had not yet come into force.<sup>109</sup>

FATF conducts mutual evaluations in cycles – that is, a certain number of countries per year.<sup>110</sup> Canada's fourth round evaluation came early in the cycle, which led to it

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105 Evidence of W. Gilmore, Transcript, June 3, 2020, p 33.

106 Ibid, pp 33–34.

107 Among other issues, the assessors expressed concerns that customer due diligence requirements did not extend to all financial institutions; that there was no requirement to conduct due diligence when there was only a suspicion of money laundering or doubts about the veracity or accuracy of documentation; and that there were no requirements for ongoing due diligence throughout the business relationship: Exhibit 4, Overview Report: FATF, Appendix L, *Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism: Canada* (Paris: 2008), pp 142–43. Further, the assessors were concerned that not all reporting entities (including lawyers) were subject to customer due diligence: *ibid*, p 224.

108 Among other concerns, the assessors noted that FINTRAC has insufficient access to intelligence information from administrative and other authorities (including CRA, CSIS, and Customs), that it had insufficient staff, and that, so far, very few convictions had resulted from FINTRAC's disclosures to law enforcement: *ibid*, p 90.

109 Evidence of W. Gilmore, Transcript, June 3, 2020, pp 37–38.

110 Exhibit 4, Overview Report: FATF, Appendix G, FATF, *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations* (Paris: 2019), para 5.

being evaluated against the 40 recommendations as updated in February 2012 rather than the more recent amendments. The evaluation was discussed and adopted by the FATF Plenary<sup>111</sup> in June 2016.<sup>112</sup>

Professor Gilmore explained that Canada's technical compliance scores in its fourth evaluation were mixed. Some areas of strength included anti-money laundering and terrorist financing policies and coordination (Recommendations 1 and 2), money laundering and confiscation legislation (3 and 4), and international co-operation (36 to 40).<sup>113</sup> However, it received "non-compliant" and "partially compliant" ratings in 11 areas, including "preventive measures" (Recommendations 9 to 23), "powers and responsibilities of competent authorities and other institutional measures" (26 to 35), and "transparency and beneficial ownership of legal persons and arrangements" (24 and 25).<sup>114</sup> Although there were some improvements from 2008, all but one recommendation that received a non-compliant or partially compliant rating in 2016 were also areas of weakness in 2008.<sup>115</sup>

Although Canada improved in suspicious transaction reporting, moving from "low compliance" in 2008 to "partially compliant" in 2016, this is one of the key recommendations in which a negative rating leads to enhanced follow-up.<sup>116</sup> The report noted a "[m]inor deficiency that financial leasing, finance, and factoring companies are not required to report suspicious activities to FINTRAC" and a "lack of a prompt timeframe for making reports."<sup>117</sup>

On effectiveness, Canada received six out of 11 ratings that were "moderate" or "low." These ratings were with respect to preventive measures (i.e., the recommendations relating to reporting entities and their obligations); transparency of legal persons and arrangements (measures to determine beneficial ownership); financial intelligence (the use of financial information by FINTRAC and law enforcement); money laundering investigation and prosecution; confiscation of proceeds of crime; and financial sanctions related to proliferation.<sup>118</sup> This result was likely disappointing to officials, in Professor Gilmore's view, as it was just shy of requiring enhanced follow-up on

111 The mutual evaluation process is lengthy, requiring an initial stage where the evaluated country provides information to the evaluators, who conduct a "desk review" based on that information. Later, the evaluators conduct on-site visits in the country, involving further information gathering and meetings. The mutual evaluation team then prepares a report, which is ultimately discussed and adopted at a plenary meeting: *ibid*, app 1. See also Evidence of S. Lord, Transcript, May 28, 2020, pp 50–51.

112 Exhibit 19, Report of Professor William Gilmore, May 2020, p 25, para 47.

113 *Ibid*, p 27, para 51.

114 *Ibid*, pp 27 and 29 at paras 52 and 57.

115 *Ibid*, pp 27–28, paras 54–55. I am mindful of Professor Gilmore's caution about comparing the 2008 and 2016 reports, given that the FATF standards were both restructured and amended in 2012 and that the current evaluations are now split into technical and effectiveness evaluations. I agree with him, however, that there is still value in comparing the results: *ibid*, p 27 at para 53.

116 Exhibit 19, Report of Professor William Gilmore, May 2020, pp 28–29, paras 56–57.

117 Exhibit 4, Overview Report: FATF, Appendix N, *Anti-Money Laundering and Counter-Terrorist Financing Measures, Fourth Round Mutual Evaluation Report: Canada* (Paris: 2016), p 206.

118 Exhibit 19, Report of Professor William Gilmore, May 2020, p 31, app.

effectiveness (which occurs with seven low or moderate ratings).<sup>119</sup> Canada received five ratings indicating a “substantial level of effectiveness,” demonstrating that the immediate outcome has been achieved “to a large extent” and that “moderate” improvements are needed.<sup>120</sup> It received no “high level of effectiveness” ratings. However, in Professor Gilmore’s estimation, a rating of substantial effectiveness is “clearly above the line, and impressionistically, is the positive rating most frequently given”; he did not find the lack of high effectiveness ratings surprising.<sup>121</sup>

Professor Gilmore states that the “single most important negative feature” of the report was Canada’s failure to mitigate risks relating to the legal profession following the Supreme Court of Canada’s decision in *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7, which held that several provisions of the *PCMLTFA* were unconstitutional insofar as they applied to lawyers.<sup>122</sup> The report explained:

50. The legal profession in Canada is especially vulnerable to misuse for ML/TF [money laundering / terrorist financing] risks, notably due to its involvement in activities exposed to a high ML/TF risk (e.g. real estate transactions, creating legal persons and arrangements, or operation of trust accounts on behalf of clients). Following a 13 February 2015 Supreme Court of Canada ruling legal counsels, legal firms and Quebec notaries are not required to implement [anti-money laundering / counterterrorist financing] measures, which, in light of the risks, raises serious concerns.<sup>123</sup>

As Professor Gilmore puts it, the weaknesses relating to legal professionals had a “cascading effect” on other parts of the evaluation. In particular, it had effects on ratings for supervision and preventive measures.<sup>124</sup> I address the topic of lawyers and the *PCMLTFA* in detail in Chapter 27.

Another notable area in which Canada received a low rating was the investigation and prosecution of money laundering offences. The report stated:

21. LEAs [Law Enforcement Agencies] have adequate powers and cooperation mechanisms to undertake large and complex financial investigations. This has notably resulted in some high-profile successes in neutralizing ML [money laundering] networks and syndicates. However, current efforts are mainly aimed at the predicate offenses, with inadequate focus on the main ML risks other than those emanating

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119 Transcript, June 4, 2020, p 12.

120 Exhibit 19, Report of Professor William Gilmore, May 2020, p 31, para 61.

121 Transcript, June 4, 2020, p 11.

122 Exhibit 19, Report of Professor William Gilmore, May 2020, p 34, para 66.

123 Exhibit 4, Overview Report: FATF, Appendix N, *Anti-Money Laundering and Counter-Terrorist Financing Measures, Fourth Round Mutual Evaluation Report: Canada* (Paris: 2016), p 15.

124 Exhibit 19, Report of Professor William Gilmore, May 2020, pp 34–35, para 67; Transcript, June 4, 2020, p 16. In addition to the critiques in the 2016 mutual evaluation, Canada has received significant criticism from other sources for a perceived “gap” in its money laundering regime as it applies to legal professionals. I return to this topic in Chapter 27.

from drug offenses, i.e. standalone ML, third-party ML and laundering of proceeds generated abroad. Some provinces, such as Quebec, appear more effective in this respect. LEAs' prioritization processes are not fully in line with the findings of the NRA [national risk assessment] and LEAs generally suffer from insufficient resources and expertise to pursue complex ML cases. In addition, legal persons are not effectively pursued and sanctioned for ML, despite their misuse having been identified in the NRA as a common ML typology. Criminal sanctions applied are not sufficiently dissuasive. The majority of natural persons convicted for ML are sentenced in the lower range of one month to two years of imprisonment, even in cases involving professional money launderers.<sup>125</sup>

I agree with FATF's view that there has been a dearth of law enforcement action with respect to money laundering in British Columbia and return to this topic in Part XI.

On the whole, Professor Gilmore characterizes the evaluation as a "suboptimal outcome" that was likely a "cause of disappointment both within the Canadian delegation and among the wider FATF membership" given that Canada was an original member of FATF.<sup>126</sup> Some of Canada's results led to a requirement for enhanced follow-up. However, Professor Gilmore notes that enhanced follow-up is not unusual, especially given the new evaluation system.<sup>127</sup>

The United States had a similar result to Canada, with 10 suboptimal technical compliance ratings (compared to 11 for Canada) and is also subject to enhanced follow-up.<sup>128</sup> At the same time, the United States performed better in its effectiveness evaluation than Canada did, and the United Kingdom and Italy had outcomes that were "substantially better" than Canada's on both technical compliance and effectiveness.<sup>129</sup>

Canada received its first regular follow-up report and technical compliance re-rating in October 2021.<sup>130</sup> The evaluators concluded that Canada had made progress to address some technical compliance deficiencies identified in the fourth mutual evaluation report. Among other things, Canada saw improvements in relation to Recommendation 20, which deals with the promptness of suspicious transaction reporting (moving from "partially compliant" to "largely compliant"),<sup>131</sup>

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125 Exhibit 4, Overview Report: FATF, Appendix N, *Anti-Money Laundering and Counter-Terrorist Financing Measures, Fourth Round Mutual Evaluation Report: Canada* (Paris: 2016), pp 5–6.

126 Exhibit 19, Report of Professor William Gilmore, May 2020, p 29, para 57.

127 Transcript, June 4, 2020, p 6.

128 Ibid, p 7.

129 Ibid, pp 6–7.

130 Exhibit 1061, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures, Canada, 1st Regular Follow-up Report and Technical Compliance Re-Rating* (October 2021).

131 Ibid, p 3.

and Recommendation 22, which deals with customer due diligence measures for designated non-financial businesses and professions (moving from “non-compliant” to “partially compliant”).<sup>132</sup> However, the evaluators again noted the fact that lawyers and Quebec notaries are not covered by the *PCMLTFA* regime, which “affects the overall outcome.”<sup>133</sup>

The re-rating also noted with approval that Canada had brought virtual asset service providers into the *PCMLTFA* regime and had imposed obligations on other reporting entities that deal with virtual assets. Canada was accordingly re-rated as “largely compliant” with Recommendation 15.<sup>134</sup> I discuss the virtual asset regime further in Chapter 35.

## Other International Efforts to Address Money Laundering

It is important to recognize that FATF is not the sole forum in which money laundering is addressed on the international stage. FINTRAC is a member of the Egmont Group of Financial Intelligence Units, which comprises financial intelligence units from 164 jurisdictions and seeks to foster communication and improve the exchange of information, intelligence, and expertise on money laundering and terrorist financing.<sup>135</sup>

Similarly, the Five Eyes Law Enforcement Group comprises the main law enforcement bodies from the “Five Eyes” countries – Canada, the USA, the United Kingdom, Australia, and New Zealand. As Mr. Lord explained, “[e]ssentially it’s a forum whereby the practitioners from those groups can come together, share information about financial crime, talk about ways to tackle it, and ... leverage each other’s capabilities in tackling transnational problems.”<sup>136</sup>

Finally, it is important to note that international non-profits also take an interest in anti-money laundering initiatives. For example, Transparency International advocates for legal and policy reform on issues such as whistle-blower protection, public procurement, corporate disclosure, and beneficial ownership, with an overall mandate targeting anti-corruption.<sup>137</sup>

The presence of these other entities on the international stage is encouraging and reinforces the importance of international anti-money laundering initiatives.

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132 Ibid.

133 Ibid.

134 Ibid, p 5.

135 Opening statement of the Government of Canada, Transcript, February 24, 2020, p 50.

136 Transcript, May 28, 2020, p 7.

137 Opening statement of Mr. J. Cohen (Transparency International, informally known as the “End Snow Washing” Coalition), Transcript, February 26, 2020, pp 2–3.

## Conclusion

The international anti-money laundering regime has heavily shaped and influenced the Canadian regime – and continues to do so. The international regime has developed significantly since its beginnings in the 1980s. The international community now appreciates that money laundering can occur through a myriad of offences (beyond drug trafficking) and that it is crucial to stay current on new and emerging techniques.

The Vienna Convention and the creation of FATF were watershed moments in the international fight against money laundering. Although the task force has not been free of criticism, notably with respect to its mutual evaluation process, it remains an important source of guidance for countries in developing their anti-money laundering regimes and for holding countries accountable for their actions to combat money laundering. Other international actors apart from FATF also contribute to this global network.

Although a strong international anti-money laundering regime is important, it is not a substitute for dedicated resources and efforts to combat money laundering at the local level. As I elaborate throughout this Report, a strong anti-money laundering regime requires efforts from both the federal government – given its jurisdiction over criminal law and the inherently transnational and international aspects of money laundering – and the provincial governments. Both levels of government should continue to draw inspiration from the international regime as they refine their approaches to anti-money laundering regulation.

## Chapter 7

# The Canadian Anti–Money Laundering Regime

Over the past two decades, the federal government has enacted increasingly complex legislation aimed at addressing money laundering activity. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) is the centrepiece of the federal anti–money laundering regime. Broadly speaking, it creates mandatory record-keeping and reporting requirements for financial institutions and other non-financial businesses and professions and establishes a financial intelligence unit – the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) – which is responsible for receiving and analyzing that information.<sup>1</sup> However, a number of legitimate questions have been raised about the effectiveness of the federal regime. One highly qualified international expert suggested it is “deficient,” “unable to demonstrate an effective impact relative to the likely scale of economic crime” and “very costly to implement.”<sup>2</sup>

In what follows, I review the key components of the federal anti–money laundering regime, including the *PCMLTFA* and associated Regulations. This review is detail-oriented, but an understanding of the federal regime is, in my view, necessary to understand how money laundering activity in British Columbia has, to date, been addressed. Having described the federal regime, I then discuss some of the criticisms of that regime. While I appreciate that constitutional constraints

- 1 Note, however, that there are other relevant statutes that form part of the federal anti–money laundering regime, for example, among others, the *Criminal Code*, RSC 1985, c C-46; the *Privacy Act*, RSC 1985, c P-21; the *Canada Business Corporations Act*, RSC, 1985, c C-44; the *Immigration and Refugee Protection Act*, SC 2001, c 27; the *Income Tax Act*, RSC 1985, c 1 (5th Supp); and the *Seized Property Management Act*, SC 1993, c 37. For a full review of the federal anti–money laundering regime, including the various statutes and agencies making up that regime, see Exhibit 1019, Affidavit #1 of Lesley Soper, affirmed May 11, 2021, exhibit B, pp 8–15.
- 2 Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 5, 2021, updated December 11, 2021), p 12.

prevent me from making recommendations with respect to the internal management and administration of federal entities, it is important to understand the gaps and weaknesses in the federal regime in order to make effective recommendations to the Province concerning the measures that must be taken to address money laundering in British Columbia.

## The *PCMLTFA*

The *PCMLTFA* was enacted on June 29, 2000, to deter and detect money laundering and, later, terrorist financing activities. The stated objectives of that legislation are:

- a) to implement specific measures to detect and deter money laundering and the financing of terrorist activities, and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences[;]
- ...
- b) to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves;
- c) to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity; and
- d) to enhance Canada's capacity to take targeted measures to protect its financial system and to facilitate Canada's efforts to mitigate the risk that its financial system could be used as a vehicle for money laundering and the financing of terrorist activities.<sup>3</sup>

The *PCMLTFA* is divided into six parts. It is supplemented by various regulations made by the Governor in Council, which include the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 (*PCMLTF Regulations*); the *Cross-Border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412; the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*, SOR/2007-292; the *Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations*, SOR/2007-121; and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, SOR/2001-317.

<sup>3</sup> *PCMLTFA*, s 3.

## Record-Keeping, Client Identification, and Reporting

Part 1 of the *PCMLTFA* creates client identification, record-keeping, and reporting requirements for various businesses and professions that are susceptible to money laundering. These businesses and professions are often referred to as “reporting entities” and include:

- financial institutions such as banks, savings and credit unions, and trust and loan companies;
- life insurance companies, brokers, and agents;
- securities dealers;<sup>4</sup>
- money services businesses;<sup>5</sup>
- accountants and accounting firms;
- the provincial government or provincial government entity responsible for the conduct and management of lottery schemes within the province;<sup>6</sup>
- notary corporations and notaries public;
- real estate brokers or sales representatives;
- real estate developers; and
- dealers in precious metals, stones, and jewellery.

While the precise obligations imposed by the *PCMLTFA* vary from industry to industry, there are three main duties imposed by that legislation.<sup>7</sup> First, reporting entities are required to take certain measures to verify the identity of their clients before opening an account or otherwise processing a financial transaction on their behalf. The primary purpose of this requirement is to ensure that those seeking to launder illicit funds cannot open an account in a fictitious name in order to avoid scrutiny. Typically, reporting entities will confirm the identify of a client by examining government-issued photo identification; however, there are many other methods of verification.<sup>8</sup>

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4 Securities dealers are defined as persons and entities authorized to engage in the business of dealing in securities or any other financial instruments, or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity.

5 Money services businesses are defined as persons and entities that are engaged in the business of providing at least one of the following services: (a) foreign exchange dealing; (b) remitting funds or transmitting funds by any means or through any person, entity, or electronic funds transfer network; (c) issuing or redeeming money orders, traveller’s cheques, or other similar negotiable instruments, except for cheques payable to a named person or entity; (d) dealing in virtual currencies; or (e) any other prescribed service.

6 Section 7 of the *Gaming Control Act*, SBC 2002, c 14, provides that the BC Lottery Corporation is responsible for the conduct and management of gaming in British Columbia.

7 The *PCMLTF Regulations* set out the special measures that must be taken in section 157. Part 1 of the *PCMLTFA* also contains a number of specific provisions aimed at certain sectors, such as the requirement that money services businesses register with FINTRAC (s 11.1).

8 Section 105 of the *PCMLTF Regulations* sets out the various ways a reporting entity can verify a person’s identity.

Second, the *PCMLTFA* requires reporting entities to maintain certain records relating to the services it provides to its customers. For example, the *PCMLTF Regulations* require financial institutions such as banks and credit unions to maintain detailed records concerning the accounts they open and the transactions conducted through those accounts. Such records include:

- signature cards;
- a record of each account holder and every other person who is authorized to give instructions in respect of the account – containing their name, address, date of birth, and the nature of their business or occupation;
- if the account holder is a corporation, a copy of the part of its official corporate records that contain any provision relating to the power to bind the corporation in respect of the account or transaction;
- a record that sets out the intended use of the account;
- a record of every application in respect of the account;
- every operating agreement that is created or received in respect of the account;
- a deposit slip in respect of every deposit made into the account;
- with one exception, every debit and credit memo that is created or received in respect of the account;
- a copy of every statement sent to the account holder;
- with certain exceptions, every cleared cheque that is drawn on, and a copy of every cleared cheque that is deposited into the account;
- a foreign currency exchange transaction ticket in respect of every foreign exchange currency transaction;
- records relating to the issuance of traveller's cheques, money orders, or similar negotiable instruments of \$3,000 or more – including the person's name, date of birth, address, and occupation, the amount, and whether the funds are received or redeemed in virtual currency (among other things);
- records relating to international electronic funds transfers of \$1,000 or more – including the person's name, date of birth, address, occupation, the amount of the transfer, and the name and address of each beneficiary (among other things);
- records relating to the transfer of virtual currency in an amount of \$1,000 or more – including the person's name, date of birth, address, and occupation, the amount of the transfer, and the transaction identifier.<sup>9</sup>

<sup>9</sup> *PCMLTF Regulations*, s 12. Note that the list set out above is intended to provide an overview of the types of record-keeping requirements imposed by the *PCMLTFA* and that the actual record-keeping requirements are considerably more detailed.

As part of their record-keeping and client identification requirements, reporting entities are required to determine whether they are dealing with a politically exposed person, the head of an international organization, or a family member of or a person closely associated with a politically exposed person or head of an international organization.<sup>10</sup> Where a reporting entity determines that it is dealing with such a person, it is required to take enhanced measures to mitigate the attendant money laundering risk.<sup>11</sup>

Third, the *PCMLTFA* requires that reporting entities file reports with FINTRAC in certain prescribed circumstances. These reports include:

- **suspicious transaction reports**, which must be filed where there are reasonable grounds to suspect that a transaction is related to the commission or the attempted commission of a money laundering or terrorist financing offence;<sup>12</sup>
- **large cash transaction reports**, which must be filed when a reporting entity receives an amount of \$10,000 or more in cash in the course of a single transaction, or when it receives two or more cash amounts totaling \$10,000 or more in a 24-hour period;<sup>13</sup>
- **electronic funds transfer reports**, which must be filed when certain reporting entities, such as financial institutions and money services businesses, process an international electronic funds transfer of \$10,000 or more in the course of a single transaction or in two or more transactions in a 24-hour period;<sup>14</sup> and
- **casino disbursement reports**, which must be filed when a casino makes a disbursement of \$10,000 or more in the course of a single transaction or in two or more transactions within a 24-hour period.<sup>15</sup>

In order to ensure that they comply with their obligations under these provisions, every reporting entity is required to establish and implement a compliance program. The program must include “the development and application of policies and procedures for the person or entity to assess, in the course of their activities, the risk of a money laundering or terrorist activity financing offence.”<sup>16</sup>

## Ministerial Directives

The *PCMLTFA* also gives the federal Minister of Finance the authority to issue a directive to any reporting entity requiring them to take “any measure specified in the directive with respect to any financial transaction ... originating from or bound for any foreign

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<sup>10</sup> *PCMLTFA*, s 9.3.

<sup>11</sup> *PCMLTF Regulations*, ss 121–23, 157. Politically exposed persons are discussed in Chapter 3.

<sup>12</sup> *PCMLTFA*, s 7; Exhibit 733, *FINTRAC Annual Report 2019–20*, p 39.

<sup>13</sup> *PCMLTFA*, s 9; Exhibit 733, *FINTRAC Annual Report 2019–20*, p 39.

<sup>14</sup> *PCMLTFA*, s 9; Exhibit 733, *FINTRAC Annual Report 2019–20*, p 39.

<sup>15</sup> *PCMLTFA*, s 9; Exhibit 733, *FINTRAC Annual Report 2019–20*, p 39.

<sup>16</sup> *PCMLTFA*, s 9.6(2).

state or entity” where there are concerns about the effectiveness or adequacy of the foreign state’s (or entity’s) anti-money laundering or anti-terrorist financing measures.<sup>17</sup> The Minister of Finance may only issue a directive in certain circumstances, including where he or she is of the opinion “there could be an adverse impact on the integrity of the Canadian financial system or a reputational risk to that system.”<sup>18</sup> The measures specified in such a directive may include:

- the verification of the identity of any person or entity;
- the exercise of customer due diligence, including ascertaining the source of funds in any financial transaction, the purpose of any financial transaction, or the beneficial ownership or control of any entity;
- the monitoring of any financial transaction or account;
- the keeping of any records;
- the reporting of any financial transaction to FINTRAC; and
- compliance with the client identification, record-keeping, and reporting requirements in Part 1 of the *PCMLTFA*.<sup>19</sup>

Part 1.1 also allows the Governor in Council, on the recommendation of the Minister of Finance, to make regulations that limit or prohibit a reporting entity from entering into or facilitating any financial transaction originating from or bound for any foreign state or entity.<sup>20</sup>

## Importation and Exportation of Currency and Monetary Instruments

Part 2 of the *PCMLTFA* deals with the importation or exportation of currency or monetary instruments. Section 12(1) requires that every person who is importing or exporting currency or monetary instruments equal to or in excess of \$10,000 to report that fact to a customs officer. It provides, in relevant part:

**12 (1)** Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation

of currency or monetary instruments of a value equal to or greater than the prescribed amount.

...

<sup>17</sup> Ibid, s 11.42.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, s 11.49.

**(3)** Currency or monetary instruments shall be reported under subsection (1)

- (a)** in the case of currency or monetary instruments in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance ... ;
- (b)** in the case of currency or monetary instruments imported into Canada by courier or as mail, by the exporter of the currency or monetary instruments or, on receiving notice under subsection 14(2), by the importer;
- (c)** in the case of currency or monetary instruments exported from Canada by courier or as mail, by the exporter of the currency or monetary instruments;
- (d)** in the case of currency or monetary instruments, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and
- (e)** in any other case, by the person on whose behalf the currency or monetary instruments are imported or exported.<sup>21</sup>

Section 12(5) of the *PCMLTFA* requires that any reports received by the Canadian Border Services Agency under that provision be forwarded to FINTRAC. Moreover, a customs officer has the power to search any person who has recently arrived in Canada – or is about to leave the country – where the customs officer has reasonable grounds to suspect that the person is carrying cash or monetary instruments in excess of \$10,000.<sup>22</sup>

Where a person has not complied with section 12(1), the officer may “seize as forfeit” the currency or monetary instrument.<sup>23</sup> However, the currency or monetary instrument *must* be returned to the individual, upon payment of a penalty, unless the customs officer has reasonable grounds to suspect it is proceeds of crime within the meaning of section 462.31(1) of the *Criminal Code*.<sup>24</sup> The customs officer who seizes the currency or monetary instrument must report the seizure to FINTRAC without delay.<sup>25</sup>

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21 Ibid, ss 12(1) and (3).

22 Ibid, s 15(1).

23 Ibid, s 18(1).

24 Ibid, s 18(2).

25 Ibid, s 20.

The *PCMLTFA* also contains an appeal mechanism for the return of currency or monetary instruments seized by a customs officer under these provisions.<sup>26</sup>

Section 36 of the *PCMLTFA* governs the circumstances in which information obtained by a customs officer, while exercising his or her duties under Part 2, may be disclosed to law enforcement.<sup>27</sup> A customs officer may disclose any such information to the appropriate police force where he or she has reasonable grounds to suspect that it would be relevant to the investigation or prosecution of a money laundering or terrorist financing offence.<sup>28</sup>

A customs officer can also disclose that information to FINTRAC where he or she has reasonable grounds to suspect that it would be of assistance to FINTRAC in the detection, prevention, or deterrence of money laundering or terrorist financing activity.<sup>29</sup>

## FINTRAC

Part 3 of the *PCMLTFA* establishes FINTRAC and governs the use and disclosure of the information it receives from reporting entities and other sources. Unlike many countries, where the central financial intelligence unit is part of the enforcement arm of government, FINTRAC is part of the federal Ministry of Finance and significant efforts have been made to ensure it remains independent from law enforcement. Section 40 provides that the object of Part 3 is to establish a financial intelligence unit that:

- acts at arm's length and is independent from law enforcement agencies and other entities to which it is authorized to disclose information;
- collects, analyzes, assesses, and discloses information in order to assist in the detection, prevention, and deterrence of money laundering and of the financing of terrorist activities;
- ensures that personal information under its control is protected from unauthorized disclosure;
- operates to enhance public awareness and understanding of matters related to money laundering and the financing of terrorist activities; and
- ensures compliance with Parts 1 and 1.1 of the *PCMLTFA*.<sup>30</sup>

In order to balance these competing objectives, Part 3 contains a detailed regime that governs the collection and disclosure of information to law enforcement.

<sup>26</sup> *Ibid*, ss 24–35.

<sup>27</sup> While not entirely clear, it appears that section 36 is broader than section 12(5) insofar as it applies not only to information contained in a section 12(1) report but also to other information obtained by the Canada Border Services Agency for the purposes of Part 2.

<sup>28</sup> *PCMLTFA*, s 36(2).

<sup>29</sup> *Ibid*, s 36(3).

<sup>30</sup> *Ibid*, s 40.

Sections 54(1)(a) and (b) contain a list of the information that can be collected by FINTRAC in performing its intelligence functions. That information includes:

- reports made by reporting entities under sections 7, 7.1, 9, 12, or 20 (e.g., suspicious transaction reports and large cash transaction reports);
- information provided to FINTRAC by agencies of other countries that have powers and duties similar to those of FINTRAC;
- information provided to FINTRAC by law enforcement agencies and other government institutions and agencies;
- information voluntarily provided to FINTRAC;
- information that is publicly available, including information in commercially available databases; and
- information stored in databases maintained by the federal government, a provincial government or by the government of a foreign state, or an international organization provided that FINTRAC has entered into a contract, memorandum of understanding, or other agreement with that government or organization.<sup>31</sup>

Any identifying information contained in a report submitted to FINTRAC (other than publicly available information or information stored in databases maintained by the federal government, a provincial government, the government of a foreign state, or an international organization) must be destroyed 15 years after the day on which the report was received, unless the report was disclosed to law enforcement under sections 55(3), 55.1(1), or 56.1(1) or (2) (discussed below).<sup>32</sup>

FINTRAC is also required to destroy any information contained in a report submitted under sections 7, 7.1, 9, 12, or 20 where it determines that it relates to a financial transaction or circumstance that is not required to be reported (e.g., where the transaction is below the monetary threshold for filing a report). It is also required to destroy information voluntarily submitted to FINTRAC where it determines that it is not about suspicions of money laundering or the financing of terrorist activities.<sup>33</sup>

### ***Use and Disclosure of Information***

Sections 55 to 61 govern the use and disclosure of the information received by FINTRAC. Section 55(3) governs the disclosure of *tactical* information to law enforcement for use in the investigation and prosecution of money laundering and terrorist financing offences. In basic terms, tactical information is specific information about individuals or entities (such as their name, date of birth, and

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31 Ibid, ss 54(1)(a) and (b).

32 Ibid, s 54(1)(e).

33 Ibid, s 54(2).

activities). It is often contrasted with strategic information, which is generally understood as high-level information about money laundering typologies and trends.

Under section 55(3), FINTRAC must disclose certain “designated” information to law enforcement agencies if, on the basis of its analysis and assessment of that information, it has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering or terrorist financing offence.<sup>34</sup> A list of the “designated information” that must be provided to law enforcement is set out in section 55(7) and includes information such as the name of any person or entity that is involved in the transaction, the name and address of the place of business where the transaction occurred, and the amount and type of currency or monetary instruments involved in the transaction.<sup>35</sup>

Section 56.1 allows FINTRAC to disclose information to an institution or agency of a foreign state or international organization that has powers and duties similar to FINTRAC, where it has reasonable grounds to suspect the information would be relevant to the investigation or prosecution of a money laundering offence and there is an information sharing agreement in place.<sup>36</sup>

I pause here to note that the “reasonable suspicion” requirement contained in these sections is one of the key safeguards included in the *PCMLTFA* to ensure the regime complies with section 8 of the *Canadian Charter of Rights and Freedoms*, which protects against state interference with privacy rights and will be engaged whenever law enforcement conducts a search that interferes with a recognized privacy interest.<sup>37</sup>

At the same time, it has been a source of consternation for many law enforcement officials, who argue they would be able to conduct more efficient and effective money laundering investigations if given direct and real-time access to information in the FINTRAC database (a common occurrence in many other countries, including the US).<sup>38</sup>

I return to the tension between privacy rights and the effective investigation of money laundering offences later in this chapter.

Section 60 contains an alternative mechanism for law enforcement to gain access to tactical information in the possession of FINTRAC. Under that provision, the Attorney

<sup>34</sup> Section 55(3) includes a long list of law enforcement agencies that can receive FINTRAC disclosures, including police forces, the Canada Revenue Agency, the Canada Border Services Agency, the Communications Security Establishment, the Competition Bureau, and provincial securities commissions.

<sup>35</sup> Section 55.1(1) contains a similar provision for the disclosure of information relevant to threats to the security of Canada.

<sup>36</sup> *PCMLTFA*, s 56.1(1).

<sup>37</sup> *Canadian Charter of Rights and Freedoms [Charter]*, s 8.

<sup>38</sup> Evidence of J. Simser, Transcript, April 9, 2021, pp 102–3. See also Evidence of C. Hamilton, Transcript, May 12, 2021, pp 71–72. Other witnesses also testified that it would be of great use to law enforcement to have real-time access to financial data: see, for example, Evidence of M. Heard, Transcript, March 30, 2021, pp 79–80.

General of a province or his deputy may, for the purposes of an investigation in respect of a money laundering or terrorist financing offence, bring an application for the disclosure of information relevant to the offence being investigated. The application must be in writing and be accompanied by an affidavit that includes, among other things, facts that justify (a) a belief, on reasonable grounds, that a money laundering or terrorist financing offence has been committed; and (b) that the information requested is “likely to be of substantial value” to an investigation.<sup>39</sup>

Law enforcement agencies can also prompt FINTRAC to disclose relevant information by voluntarily submitting information relating to an ongoing investigation (such as the name of a target) through something known as a voluntary information record. FINTRAC will review that information and determine whether it is in possession of any additional information that could assist with the investigation. If so, it will disclose that information to investigators *provided the statutory conditions for disclosure are satisfied*.<sup>40</sup>

In addition to the disclosure of tactical information to law enforcement, FINTRAC is empowered to use the information collected under section 54 to generate *strategic* intelligence concerning “trends and developments ... and improved ways of detecting, preventing and deterring money laundering.”<sup>41</sup>

FINTRAC’s 2019–20 annual report describes its strategic intelligence functions in the following terms:

With the information that FINTRAC receives from its regime partners and businesses across the country, the Centre [FINTRAC] is able to produce valuable strategic intelligence in the fight against money laundering and terrorist activity financing. Through the use of analytical techniques, FINTRAC is able to identify emerging characteristics, trends and tactics used by criminals to launder money or fund terrorist activities. The goal of the Centre’s strategic intelligence is to inform the security and intelligence community, regime partners and policy decision-makers, Canadians and international counterparts about the nature and extent of money laundering and terrorist activity financing in Canada and throughout the world.<sup>42</sup>

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39 Ibid, s 60(3).

40 See, for example, Evidence of P. Payne, Transcript, April 16, 2021, p 149; Evidence of M. Heard, Transcript, March 30, 2021, p 78; Evidence of B. Baxter, Transcript, April 8, 2021, pp 12–13; Exhibit 828, Christian Leuprecht, Jeff Simser, Arthur Cockfield, and Garry Clement, *Detect, Disrupt and Deter: Domestic and Global Financial Crime – A Roadmap for British Columbia* (March 2021) [Leuprecht Report], p 22. While the statute refers to the voluntary disclosure of information by law enforcement, in reality, voluntary information requests are used to trigger the disclosure of information about specific targets by FINTRAC to law enforcement. I return to the use of voluntary information records later in this chapter.

41 PCMLTFA, s 58(1)(b).

42 Exhibit 733, *FINTRAC Annual Report 2019–20*, pp 13–14.

## Compliance

As part of its core mandate, FINTRAC administers what it describes as a comprehensive, risk-based compliance program to ensure that reporting entities fulfill their obligations under Part 1 of the *PCMLTFA* and that FINTRAC receives the information it needs to generate tactical and strategic intelligence with respect to money laundering. There are three pillars of that compliance program: assistance, assessment, and enforcement.

### Assistance

Section 58(1)(c) of the *PCMLTFA* expressly authorizes FINTRAC to take measures to inform the public, reporting entities and law enforcement bodies. This includes informing them about their obligations under the regime; the nature and extent of money laundering activities inside and outside Canada; and measures taken to detect, prevent, and deter money laundering activities.<sup>43</sup>

In accordance with this provision, FINTRAC has undertaken various outreach activities to assist reporting entities in understanding and complying with their reporting obligations under the *PCMLTFA*. These activities include:

- online publications;
- conferences and teleconferences;
- working groups;
- presentations to businesses and other stakeholders;
- training sessions and meetings;
- policy interpretations; and
- responses to enquiries.<sup>44</sup>

In British Columbia, many of these outreach activities have been focused on the real estate sector.<sup>45</sup> In 2019–20, for example, FINTRAC was able to negotiate a new memorandum of understanding with the Real Estate Council of British Columbia (now part of the BC Financial Services Authority), which establishes a framework for these agencies to share compliance-related information, enhance the knowledge and expertise of each agency regarding new and evolving trends in the real estate sector, and develop anti-money laundering training modules for real estate professionals.<sup>46</sup> However, there remain significant concerns about the low number of suspicious

43 *PCMLTFA*, s 58(1)(c).

44 Exhibit 733, *FINTRAC Annual Report 2019–20*, pp 17–21. See also evidence of D. Achimov, Transcript, March 12, 2021, p 34.

45 Exhibit 733, *FINTRAC Annual Report 2019–20*, p 19.

46 *Ibid.*

transaction reports submitted by reporting entities in that sector. In 2019–20, for example, reporting entities in the British Columbia real estate sector submitted a *total* of 37 suspicious transaction reports to FINTRAC, which gives rise to serious concerns about the quality and comprehensiveness of the information in the FINTRAC database.<sup>47</sup>

### **Assessment**

FINTRAC also has a number of assessment tools in place to ensure that reporting entities are complying with their obligations under the *PCMLTFA*.

Section 62 allows an authorized representative of FINTRAC to “examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1 or 1.1.”<sup>48</sup>

FINTRAC can also serve notice requiring a reporting entity to provide “any document or other information relevant to the administration of Part 1 or 1.1 in the form of electronic data, a printout or other intelligible output.”<sup>49</sup>

Section 63 allows a justice of the peace to issue a warrant authorizing an authorized representative of FINTRAC to enter a home (whether a house or an apartment), if the justice is satisfied that:

- there are reasonable grounds to believe that there are records in the premises that are relevant to ensuring compliance with Part 1 or Part 1.1;
- entry to the home is necessary for any purpose that relates to ensuring compliance with Part 1 or Part 1.1; and
- entry to the home has been refused or there are reasonable grounds for believing that entry will be refused.<sup>50</sup>

FINTRAC’s 2019–20 annual report indicates that the compliance examinations conducted in accordance with these provisions are the “primary instrument” used to assess the compliance of reporting entities.<sup>51</sup> It also indicates that FINTRAC uses a risk-based approach to select the businesses that will be examined each year. The current focus is on businesses that “report large numbers of transactions or that are at a higher risk of being deficient or exploited by money launderers or terrorist financiers.”<sup>52</sup>

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47 Evidence of D. Achimov, Transcript, March 12, 2021, p. 94. Indeed, it appears that 90 percent of reports filed with FINTRAC come from major financial institutions: Evidence of B. MacKillop, Transcript, March 12, 2021, p. 96. A full discussion of the low level of reporting among realtors can be found in Chapter 16.

48 *PCMLTFA*, ss 62(1) and (2).

49 *Ibid*, s 63.1(1).

50 *Ibid*, s 63(2).

51 Exhibit 733, *FINTRAC Annual Report 2019–20*, p 22.

52 *Ibid*.

In 2019–20, FINTRAC conducted 399 compliance examinations across Canada. The real estate sector was the focus of the largest number of examinations (146), followed by money services businesses (114), and securities dealers (58).<sup>53</sup>

FINTRAC has also assumed primary responsibility for assessing the compliance of federally regulated financial institutions such as chartered banks.<sup>54</sup>

### **Enforcement**

Where FINTRAC uncovers evidence of non-compliance by a reporting entity, it has a number of tools at its disposal to change the non-compliant behaviour. One such tool is follow-up examinations, which are used to determine if a business has addressed previous instances of non-compliance.<sup>55</sup> In 2019–20, FINTRAC conducted 44 follow-up examinations and identified improvement in compliance behaviour in more than 88 percent of cases.<sup>56</sup>

FINTRAC can also impose administrative monetary penalties on reporting entities that have failed to comply with their obligations under the *PCMLTFA*. Such penalties are intended to encourage compliance with the *PCMLTFA* rather than punish the harm done by the violation.<sup>57</sup> The maximum penalty for a violation is \$100,000 if committed by an individual and \$500,000 if committed by a business.<sup>58</sup>

Where an individual or entity receives a Notice of Violation, the person is entitled to make representations to the Director, who must decide, on a balance of probabilities, whether the person or entity committed the violation.

Subject to any regulations made under section 73.1(1), the Director can also impose the penalty imposed, a lesser penalty, or no penalty.

Section 73.16 also allows an individual or entity to enter into a compliance agreement with FINTRAC whereby it agrees to comply with the provision to which the violation relates and pays a reduced penalty for the violation.

In 2019–20, FINTRAC issued two administrative monetary penalties (one in the real estate sector and the other in the money services business sector).<sup>59</sup>

Finally, the *PCMLTFA* creates a number of criminal penalties for the violation of certain provisions of that statute. For example, section 74(1) makes it a criminal offence to knowingly contravene a long list of statutory provisions including sections 6 and 6.1 (which impose record-keeping and client identification requirements on

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid, p 23.

<sup>56</sup> Ibid.

<sup>57</sup> *PCMLTFA*, s 73.11. See also Exhibit 733, *FINTRAC Annual Report 2019–20*, p 23.

<sup>58</sup> *PCMLTFA*, s 73.1(2).

<sup>59</sup> Exhibit 733, *FINTRAC Annual Report 2019–20*, p 24.

reporting entities). Where the matter is prosecuted by way of summary conviction, the person is liable to a fine of not more than \$250,000 or to imprisonment to a term of not more than two years less a day. Where the matter is prosecuted by indictment, the person is liable to a fine of not more than \$500,000 or to imprisonment to a term of not more than five years.<sup>60</sup>

## Effectiveness of the Federal Regime

While the enactment of the *PCMLTFA* and the obligations it imposes on reporting entities may have a significant deterrent effect on those seeking to launder illicit funds, a number of legitimate concerns have been raised about the effectiveness of the federal regime in responding to the money laundering threats facing the Province of British Columbia. These concerns include a lack of strategic vision, the inability of FINTRAC to get actionable intelligence into the hands of law enforcement, the absence of a legislative framework for the exchange of tactical information concerning money laundering activity, and a lack of law enforcement resources to investigate and prosecute money laundering offences. Given the importance of an effective federal regime to address money laundering activity in the province, I will address each of these in turn.

### Limited Strategic Vision

One of the key criticisms of the federal anti-money laundering regime is the lack of strategic vision at the federal level. The United Kingdom, the United States and the Netherlands have each developed a comprehensive and cross-governmental economic crime strategy to guide the development of anti-money laundering policy and evaluate the effectiveness of the anti-money laundering measures that have been put in place.

The UK's *Economic Crime Plan* is a particularly good example of the strategic vision required to make a meaningful difference in the fight against money laundering. While recognizing the significant progress the UK has made in recognizing and prioritizing the threat posed by economic crime, the report acknowledges that the threat “remains high and is constantly evolving.”<sup>61</sup> Accordingly, it identifies seven key objectives (or “strategic priorities”) aimed at improving and strengthening the UK's response to economic crime. These objectives include:

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60 *PCMLTFA*, s 74(1). Other such provisions include s 75, which makes it a criminal offence to knowingly contravene sections 7, 7.1 and 11.49(1), s 76, which makes it a criminal offence to knowingly contravene s 8, s 77(1) which makes it a criminal offence to contravene subsections 9(1) or (3), and s 77(2), which makes it a criminal offence to contravene s 11.43 insofar as it relates to any required reporting measure contemplated by paragraph 11.42(2)(e) and specified in a directive issued under subsection 11.42(1).

61 UK Finance, *Economic Crime Plan 2019–22* (July 2019), p 8. A copy of the *Economic Crime Plan* can be found online: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/816215/2019–22\\_Economic\\_Crime\\_Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816215/2019–22_Economic_Crime_Plan.pdf).

- developing a better understanding of the threat posed by economic crime and the UK's performance in combatting economic crime;
- pursuing better sharing and usage of information to combat economic crime within and between the public and private sectors;
- ensuring that the powers, procedures, and tools of law enforcement, the justice system, and the private sector are as effective as possible;
- strengthening the capabilities of law enforcement, the justice system, and the private sector to detect, deter, and disrupt economic crime;
- building greater resilience to economic crime by enhancing the management of economic crime risk in the private sector and the risk-based approach to supervision;
- improving systems for transparency of ownership of legal entities and legal arrangements; and
- delivering an ambitious international strategy to enhance security, prosperity and the UK's global influence.<sup>62</sup>

The UK plan goes on to identify a number of action items within each priority area. For example, the action items within the first priority area include:

- expanding public-private threat assessments to improve the evidence base upon which national risk assessments are conducted, and to inform the government's policy response to money laundering and financial crime;
- developing a fully operational performance system to measure what works in combatting financial crime;
- conducting new national risk assessments on money laundering using the public-private threat assessments noted above;
- better understanding the threat and performance in combatting public-sector fraud; and
- resolving evidence gaps through a long-term research strategy.<sup>63</sup>

With respect to the last action item the UK's *Economic Crime Plan* states that “[a]n important part of building our capacity to respond is improving our evidence base. Good quality and robust research is fundamental to ensuring a comprehensive understanding of the threat and the most effective and efficient targeting of resources.”<sup>64</sup> It goes on to state

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<sup>62</sup> Ibid, p 9.

<sup>63</sup> Ibid, pp 23–25.

<sup>64</sup> Ibid, p 25.

that the long-term research strategy will seek to map existing work, prioritize evidence gaps that will deliver the greatest “value-add” in understanding the threat, and improve awareness of the nature, extent and threat posed by economic crime.<sup>65</sup>

When strategic priorities and action items are identified in this manner, government agencies are able to take coordinated action in response to economic crime and money laundering threats. For example, the UK Home Office and National Crime Agency have developed a National Serious and Organized Crime Performance Framework that is informed by the strategic priorities identified in the UK’s *Economic Crime Plan* and assesses the UK’s response to economic crime against the following criteria:

- How comprehensive is our understanding of economic crime threats and vulnerabilities?
- How effectively are we pursuing serious and organized economic criminals in the UK, online, and overseas?
- How effectively are we building resilience in the public and private sectors against economic crime?
- How effectively are we supporting those impacted by economic crime?
- How effectively are we deterring people from involvement in economic crime?
- How effectively are we developing core capabilities to address emerging economic crime threats?
- How effectively and efficiently are we managing our resources in countering economic crime?<sup>66</sup>

Regulators, reporting entities, and other public- and private-sector stakeholders can also tailor their anti-money laundering efforts to the threats and vulnerabilities identified in the UK’s *Economic Crime Plan* in order to focus on measures that will have the greatest impact on money laundering activity.

The US *National Strategy for Combating Terrorist and Other Illicit Financing* and the Dutch “Joint Action Plan” also contain a number of useful lessons for Canada, particularly insofar as they make a greater effort to set priorities for financial institutions and other reporting entities (as opposed to following the historic international practice of “outsourcing” that work to individual reporting entities). Nicholas Maxwell, founding director of NJM Advisory, a boutique research consultancy firm focused on anti-money laundering issues and one of the world’s leading experts on public-private information sharing partnerships, testified that:

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65 Ibid.

66 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 80–81; Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 5, 2021, updated December 11, 2021), p 13.

[I]t does tend to be the US, the Netherlands and the UK who are at the forefront of having a cross-government strategy with a performance management framework and, in particular, setting priorities, which is a relatively new idea. Canada ... will be in a reasonable position to say that [it is] following the historic international practice, which is to just outsource the understanding of priorities to each individual regulated entity through what is known as the “risk-based approach,” and the risk-based approach obviously does provide a lot of flexibility when a government doesn’t understand what threats perhaps are out there and what interest they have. Then they just want the regulated sector to discover the unknown unknowns. But when you have known unknowns, so known threats but an unknown ... reports of the actual incidents of the threats, then there is a place for priorities. And the US has been particularly prominent in establishing that type of framework or proposing that type of framework, as has the UK through its National Economic Crime Centre and the Dutch action plan, and then the cross-government coordination has been evident in those three jurisdictions.<sup>67</sup>

In Canada, there is no comprehensive economic crime strategy, no real understanding of the money laundering threats facing the country, and no meaningful evaluation of the effectiveness of the anti-money laundering measures put in place by the federal government. Mr. Maxwell remarked that Canada does well at supporting cross-government dialogue and bringing together different parts of government but none of those efforts are tied to a clear economic crime strategy in which targets are set and performance is measured. He states:

Canada does well at supporting cross-government dialogue, various operational committees, often co-chaired by public safety and Department of Finance. There is a lot of activity which is aimed at bringing different parts of government together, and there’s new activity announced 2019, 2020. There’s almost a proliferation of initiatives which try and bring stakeholders together. But the problem is this doesn’t exist within a clear cross-government economic crime strategy which is directing all of that activity set within a framework at which targets are set and performance is measured. There have been some great points that we should recognize, including ... in 2019 the joint special meeting of federal, provincial, territorial finance ministers and ministers responsible for AML [anti-money laundering] to agree to joint priorities. That’s good. But those joint priorities [are] ... vague, you could say. So there is a real need for clarity on an economic crime strategy that can inform this direction of this huge amount of resources being spent in the private sector to achieve something which the Canadian

<sup>67</sup> Evidence of N. Maxwell, Transcript, January 14, 2021, pp 83–84. A copy of the US *National Strategy for Combating Terrorist and Other Illicit Financing* (2020) can be found online: <https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf>.

government wants it to achieve and then measure if it's being achieved. And that's missing.<sup>68</sup>

While the federal government periodically conducts a national risk assessment, the current risk assessment is more than five years out of date, and concerns have been raised that it “is only produced for [the Financial Action Task Force's] benefit and doesn't have a regular role in Canadian society and policy making.”<sup>69</sup> Moreover, the absence of a national economic crime strategy means that reporting entities are required to report “everything under the sun” without being aware of the priorities that really make a difference. Mr. Maxwell described the impact on reporting entities as follows:

So individual regulated entities, reporting entities are required to identify risk by themselves and to report everything from a \$20 million suspicious transaction and in effect put the same resources into a \$20 suspicious transaction, and they must report those \$20 transactions and that does take time, resources and people. So there's no effort to prioritize the capabilities and the resources in reporting entities from the perspective of government. So one, there's no identification of national economic crime threats as there is, for example, in the UK or in the new US proposed rule [which] makes it very clear that FinCEN [the Financial Crimes Enforcement Network]<sup>70</sup> wants reported entities to prioritize based on national economic crime threats because they want to see expertise, processes developed in response to those threats and they want to see action on those threats.

That doesn't happen in Canada. Reporting entities are adrift to report everything under the sun and to not be aware of the priorities that really make a difference to Canada. Obviously that can be achieved through the existing public / private partnership project initiatives, and to a certain extent that's helped. But from a broader perspective, there are no national economic crime threat priorities in Canada, and there is no consistent way in which priorities are meant to steer the resources in reporting entities.<sup>71</sup>

While the absence of a national economic crime / money laundering strategy is a significant shortcoming in the federal regime, I was encouraged to hear that the Province has started developing a provincial anti-money laundering strategy, and I urge it to continue developing and refining that strategy.

I note, however, that the provincial anti-money laundering strategy will be considerably more effective if it is developed alongside a national economic crime strategy and strongly encourage the Province to explore ways of engaging the federal government on this important issue.

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68 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 62–63.

69 Ibid, p 49.

70 The Financial Crimes Enforcement Network (FinCEN) is the US equivalent of FINTRAC.

71 Ibid, pp 65–67.

The AML Commissioner recommended in Chapter 8 may be in a position to monitor efforts to develop a national economic crime strategy and provide information, support, and assistance in the creation of a national strategy.

## FINTRAC

A second criticism of the federal regime relates to the high volume of information collected by FINTRAC as compared with the low number of disclosures made to law enforcement. In 2019–20, reporting entities in Canada submitted a total of 31,417,429 individual reports to FINTRAC.<sup>72</sup> In comparison, reporting entities in the United States submitted a total of 21,683,802 reports, and reporting entities in the United Kingdom submitted a total of 573,085 reports.<sup>73</sup> Per head of population, that corresponds to 12.5 times more reports in Canada as compared with the US and 96 times more reports as compared with the UK.<sup>74</sup> Mr. Maxwell testified that the large number of reports submitted to FINTRAC is the product of a “defensive” reporting regime.<sup>75</sup> He also emphasized the huge financial burden that places on private-sector reporting entities (which is estimated to be in the range of \$6.8 billion per year).<sup>76</sup>

Despite the huge volume of information collected under the federal regime, FINTRAC made only 2,057 “unique” disclosures to law enforcement bodies in 2019–20<sup>77</sup> and only 1,582 of these disclosures were directly related to money laundering (with 296 related to “terrorism financing and threats to the security of Canada” and 179 related to “money laundering, terrorism financing and threats to the security of Canada”).<sup>78</sup>

Law enforcement agencies in British Columbia *received* only 335 disclosures that year (though a large number of disclosures were provided to national headquarters, which may have been used to support investigations in this province).<sup>79</sup>

Even more concerning is the fact that FINTRAC received 2,519 voluntary information records from law enforcement agencies across the country in the 2019–20

72 Exhibit 828, Leuprecht Report, Appendix 3, p 2 (Table 5).

73 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 71–72. See also <https://www.fincen.gov/reports/sar-stats> and <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/480-sars-annual-report-2020/file>.

74 Evidence of N. Maxwell, Transcript, January 14, 2021, p 73.

75 Ibid, pp 65–66, 72–73.

76 Ibid, pp 53–54, 59. Note that these numbers are an estimate of the total amount spent by reporting entities in complying with their obligations under the *PCMLTFA*. FINTRAC’s annual expenditures are in the range of \$55 million: Exhibit 733, *FINTRAC Annual Report 2019–20*, p 35.

77 Exhibit 828, Leuprecht Report, Appendix 3, pp 2–3 (Table 6). It is my understanding that “unique” disclosures represent the number of distinct reports disclosed, as opposed to the total number, as in some cases the same report is sent to multiple law enforcement agencies: *ibid*, p 2 (Table 6), footnote 4. See also Evidence of C. Leuprecht, Transcript, April 9, 2021, pp 138–39.

78 Exhibit 733, *FINTRAC Annual Report 2019–20*, p 8.

79 Ibid, p 9.

fiscal year.<sup>80</sup> While there is limited evidence before me concerning the number of FINTRAC disclosures made in response to voluntary information records, it seems likely that most of the 2,057 “unique” disclosures made to law enforcement in 2019–20 were made in response to these requests. If so, the number of *proactive* disclosures (i.e., disclosures that were not prompted by voluntary information requests) would be smaller than the 2,057 unique disclosures referenced in FINTRAC’s 2019–20 annual report. The issue is important because proactive disclosures may prompt the commencement of a new investigation (or assist in identifying a new target), whereas voluntary information records are typically made to support an investigation already underway. If the number of proactive disclosures is small, it suggests that FINTRAC is not able to effectively identify and report money laundering activity in the absence of such prompting.

While I appreciate there are a number of legal and constitutional issues that limit the circumstances in which FINTRAC can disclose information to law enforcement bodies, I have concluded that law enforcement bodies in this province cannot count on FINTRAC to produce timely, actionable intelligence with respect to money laundering threats, and that the Province must take steps to develop its own intelligence capacity in order to better identify and respond to money laundering activity in British Columbia. A full discussion of these issues, as well as my recommendations for the creation of a new money laundering intelligence and investigation unit, can be found in Chapters 39 to 41.

## Information-Sharing

While the federal anti-money laundering regime has achieved notable success in the development of strategic information-sharing partnerships (i.e., the exchange of knowledge and insight with respect to money laundering typologies and indicators of money laundering activity), the absence of a legal gateway for the exchange of *tactical* information has been a source of significant criticism. Mr. Maxwell testified that Canada is the only common law country that does not allow for tactical information-sharing between public- and private-sector entities, and that the absence of a legal gateway for the exchange of such information creates a “hard limit” on the effectiveness of the federal regime.<sup>81</sup> One aspect of the problem is that reporting entities – which are primarily responsible for the collection of intelligence concerning

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<sup>80</sup> Ibid, p 10. As set out above, voluntary information records are used by law enforcement to prompt FINTRAC to provide information relevant to ongoing investigations. Investigators provide FINTRAC with information relating to an ongoing investigation, such as the name of a target. FINTRAC will review that information and determine whether it is in possession of any information that could assist with the investigation. If the statutory preconditions are met (i.e., if FINTRAC has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering or terrorist financing offence), it will disclose that information to the relevant law enforcement agency. Although initiated by a voluntary disclosure by investigators, it is really a request for records and information from FINTRAC: see, for example, Evidence of P. Payne, Transcript, April 16, 2021, p 149; Evidence of M. Heard, Transcript, March 30, 2021, p 78; Evidence of B. Baxter, Transcript, April 8, 2021, pp 12–13; Exhibit 828, Leuprecht Report, p 22.

<sup>81</sup> Evidence of N. Maxwell, Transcript, January 14, 2021, pp 85–88.

money laundering threats – do not receive any guidance from law enforcement officials that inform the collection process. Mr. Maxwell explained:

[F]undamentally ... reporting entities are part of the AML/ATF [anti-money laundering / anti-terrorist financing] system, they are required to identify crime, so if you don't assist them in that process then they are going to be less effective. And when crimes are priorities and you have particular crimes of concern, money laundering issues of concern in British Columbia, ... there isn't a process for those priorities to inform the collection process. At the strategic level we talked about prioritization, but at a tactical level, your law enforcement officers who are working on serious organized crime in British Columbia should be able to understand for intelligence purposes what the financial intelligence AML/ATF system has in terms of relevant information to their investigation. That's the whole point of the AML/ATF regime, that it provides useful information to law enforcement. *But your law enforcement officers are not able to request any specific information. They are not able to — outside of a production order for evidence where they must already know that the financial institution holds the account. They are not able to share tactical information with specific financial institutions or other reporting entities to allow those reporting entities to be responsive to the law enforcement collection requirements, so that is why the flow of information is so disjointed, and ultimately the effectiveness and challenges that we see in terms of the lack of ability for the Canadian regime to demonstrate effective results in a large part are due to this lack of information sharing and lack of a cycle that really is fit for purpose.* [Emphasis added.]<sup>82</sup>

Another aspect of the problem is that FINTRAC is unable to follow up with reporting entities to collect additional information concerning money laundering activity. For example, it cannot seek additional information from a financial institution concerning accounts that are linked to suspicious activity (or accounts opened in other financial institutions by the same person). Mr. Maxwell described these limitations as follows:

I think ... the enforcement and FINTRAC staff work hard every day to make the most out of the legal environment that they have to disrupt crimes which they are pursuing, but you know, a “low ceiling” would be a polite way of framing it because the Canadian regime is incapable of supporting a real-time understanding of financial crime as it's occurring to enforcement agencies. There's significant time lag in disclosures eventually getting through to enforcement agencies ... and FINTRAC's limitations on being able to go back to the regulated entity to ask for more information. “We were interested in what you said here, but we're also interested in these accounts that are linked.”

<sup>82</sup> Ibid, pp 92–93.

*So the reporting is happening in the blind, without guidance from public agencies outside of their strategic project initiatives. And therefore Canada cannot achieve a real-time and responsive use of the regulated community, and those 30,000-plus reporting entities and that \$5.1 billion US of [spending] is not being responsive to tactical level interests from public agencies. [Emphasis added.]*<sup>83</sup>

While I have little doubt that the creation of a legal gateway for tactical information sharing would have immense benefits for the investigation of money laundering offences, it is important to understand that there are a number of legal impediments to the exchange of tactical information within the Canadian constitutional framework.

The BC Civil Liberties Association made a submission that tactical information sharing is contrary to established constitutional principles insofar as it allows law enforcement to access private information without authorization or oversight. It submits that the *PCMLTFA* is already controversial insofar as it allows law enforcement bodies to access private financial information without obtaining prior judicial authorization.<sup>84</sup> While FINTRAC's role as an intermediary that can disclose financial information to law enforcement only where there are reasonable grounds to suspect that the information would be of assistance in investigating or prosecuting an offence somewhat reduces the constitutional vulnerability of the scheme, any proposal that would allow two-way information sharing would undermine these safeguards and allow law enforcement to engage in suspicion-less searches without prior authorization.<sup>85</sup>

The BC Civil Liberties Association also submits that public-private information sharing partnerships such as Project Athena have the effect of undermining constitutionally protected rights, insofar as they invite financial institutions to act as an extension of the state in the collection of private financial information for use in criminal proceedings.<sup>86</sup> Project Athena was a public-private information sharing partnership spearheaded by RCMP Sergeant Ben Robinson in response to the increased use of anonymous bank drafts at Lower Mainland casinos following the implementation of measures designed to curtail the use of unsourced cash. The concern was that anonymous bank drafts could be purchased by an account holder at a major financial institution and then passed to a casino patron, thus circumventing the requirement that casino patrons complete a source-of-funds declaration whenever they make large cash buy-ins in excess of \$10,000. Because most bank drafts did not include any identifying information on their bank drafts, it was difficult, if not impossible, for the casino to tell whether the patron purchased the bank draft himself or received it from an underground service provider.

One of the primary goals of Project Athena was to increase awareness of the issue among financial institutions (an excellent example of strategic information sharing). However, there was also a tactical component: financial institutions were provided with

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83 Ibid, pp 85–86. See also *ibid*, pp 90–91.

84 Closing submissions, BC Civil Liberties Association, para 53.

85 *Ibid*, para 54.

86 *Ibid*, paras 56–59.

a list of gamblers who had used anonymous bank drafts issued by that institution and asked to confirm whether the gambler had a bank account at that institution. If not, it could be a sign that the gambler had received the bank draft in furtherance of a money laundering scheme perpetuated by a professional money laundering operation.<sup>87</sup>

While it is unclear if law enforcement ever used that information to commence an investigation, there is evidence that many financial institutions conducted their own investigations with a view to filing suspicious transaction reports with FINTRAC (see Chapter 20).

The BC Civil Liberties Association submits that requiring financial institutions to confirm whether a particular gambler holds an account with the institution violates established privacy rights, and that financial institutions may have been acting as agents of the state by investigating clients brought to their attention by law enforcement.<sup>88</sup>

While it is not my role, as Commissioner, to decide these issues, I share the BC Civil Liberties Association's concern about the potential for tactical information-sharing partnerships – such as Project Athena – to circumvent the requirements of section 8 of the *Charter* and undermine established constitutional rights. At the same time, it strikes me that the constitutional issues that arise in this context are highly context specific, and that there may be ways for law enforcement to guide the collection of tactical intelligence without infringing on constitutional rights. For example, the constitutional concerns that arise in this context may be attenuated where law enforcement provides tactical information about particular typologies and targets to reporting entities and those entities respond by filing reports with FINTRAC (rather than communicating directly with the police). In those circumstances, the relevant privacy concerns are mediated by the requirements of the *PCMLTFA*, which allows FINTRAC to disclose information to law enforcement only where it has reasonable grounds to suspect that the designated information would be relevant to the investigation or prosecution of a money laundering or terrorist financing offence.

In subsequent chapters of this Report, I recommend that the designated provincial money laundering intelligence and investigation unit recommended in Chapter 41 take an incremental and sector-specific approach to the development of tactical information-sharing partnerships, which takes into account the immense value of these partnerships in the fight against money laundering as well as the important constitutional concerns that arise in this context. As much as possible, the provincial money laundering intelligence and investigation unit should ensure that the exchange of tactical information (if any) in each sector of the economy is governed by written policies and procedures that clearly set out the permissible flow of information and the process by which that occurs. Moreover, it should ensure that it seeks and obtains legal advice with respect to the specific constitutional issues that arise in each sector.

87 For an example see Exhibit 460, Email from Melanie Paddon, re Project Athena June 2018, (August 14, 2018) (redacted). A full discussion of Project Athena can be found in Chapter 39.

88 Closing submissions, BC Civil Liberties Association, para 59.

The AML Commissioner (discussed in Chapter 8) may also be able to assist in the development of strategic and tactical information-sharing initiatives by conducting research on the constitutional issues that arise in this context and assisting with the development of information-sharing agreements in various sector of the economy.

## **Law Enforcement Resources**

While the primary focus of this chapter is the legal and regulatory framework enacted by the federal government to address money laundering and terrorist financing activity, it is important to note that even the most comprehensive anti-money laundering regime will be ineffective if there are no law enforcement officials available to use the intelligence generated by the financial intelligence unit to conduct money laundering investigations.

I review the resources dedicated to money laundering investigations at the federal, provincial, and municipal level in Chapter 39. My conclusion is that the federal government has not dedicated sufficient resources to the investigation of money laundering offences and that the creation of a designated provincial intelligence and investigation unit is the best way to ensure the province is able to mount an efficient and effective law enforcement response.

## **Conclusion**

In this chapter, I have reviewed the federal anti-money laundering regime and some of the critiques that have been levelled at that regime. While constitutional constraints prevent me from making recommendations concerning federal institutions and legislation, it is vital to understand the gaps and weaknesses in the federal regime in order to understand and address money laundering risks arising in this province.

## Chapter 8

# The Provincial Framework and the Need for an AML Commissioner

Over the past five years, the Government of British Columbia has made laudable efforts to understand and respond to the money laundering threats facing this province. It has commissioned expert reports on money laundering activity in various sectors of the economy.<sup>1</sup> It has also implemented a number of new anti-money laundering measures, including the introduction of source-of-funds verification in the gaming industry; the enactment of the *Land Owner Transparency Act*, SBC 2019, c 23; and an amendment to the *Business Corporations Act*, SBC 2002, c 57, to require private companies to maintain records of beneficial owners.

I am encouraged by these developments. However, given the historic lack of attention money laundering has received in this jurisdiction, the complexity and ever-evolving nature of money laundering, and the challenges in combatting it, more is required. I believe that provincial anti-money laundering efforts would benefit from the creation of an independent office of the Legislature to provide strategic oversight of the provincial response to money laundering and report to the Legislature regularly. In what follows, I outline what I consider to be the essential functions of that office, which I refer to throughout this Report as the Anti-Money Laundering Commissioner (AML Commissioner). Although I refer to the AML Commissioner as a single person throughout this Report, it will quickly become apparent that the nature and quantity

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<sup>1</sup> Terms of Reference, s 4(2)(b); Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, “Combatting Money Laundering in BC Real Estate,” Expert Panel, March 31, 2019 [Maloney Report]; Exhibit 832, Peter German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia* [Dirty Money 1]; Exhibit 833, Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [Dirty Money 2]; Exhibit 607, Dan Perrin, *Real Estate Regulatory Structure Review* (2018).

of work I am envisioning for this commissioner are such that he or she will require assistance from teams focused on different aspects of the commissioner’s mandate, as well as sufficient resourcing from the Province.

I also recommend that the Anti–Money Laundering Deputy Ministers’ Committee and the Anti–Money Laundering Secretariat be continued. The Province should also implement a requirement that all government agencies, law enforcement bodies, and regulators with a money laundering mandate designate an anti–money laundering liaison officer, who would be the primary point of contact for improved inter-agency collaboration and information sharing.

## The Provincial Anti–Money Laundering Regime

In Chapters 6 and 7, I describe the international anti–money laundering framework set out by the Financial Action Task Force<sup>2</sup> and the federal regime – the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) – administered by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). The international and federal regimes are important pieces of the puzzle when considering how the Government of British Columbia should tackle money laundering. Indeed, money laundering has inherent international and federal dimensions, and the federal government has a crucial role to play given its jurisdiction over criminal law, banking, taxation, international trade, and other key areas touching on financial crime.

At present there is no centralized or coordinated provincial anti–money laundering “regime” in British Columbia in the same way as there is at the federal level with the Financial Action Task Force–based and *PCMLTFA* frameworks. The provincial regime is spread out among various economic sectors. Indeed, the bulk of this Report centers on key economic sectors under provincial jurisdiction, including casinos, real estate, professional services, corporations, and provincial financial institutions.

As I elaborate in subsequent chapters of this Report, anti–money laundering regulation in these sectors varies dramatically. Some regulators have been proactive, engaged, and eager to implement anti–money laundering measures. Others have taken the view that FINTRAC is responsible for all anti–money laundering regulation. Still other sectors do not have regulators at all.<sup>3</sup> History teaches us that criminals will target the “weakest link” – the sector where there is less regulation or awareness of money laundering risks, or where gaps have not been identified or closed. Further, there is a great deal we do not know about money laundering: subsequent parts of this Report highlight significant gaps in our understanding of how often money laundering occurs in certain sectors or how. There is a pressing need for continuing research and study in these areas.

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2 Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019).

3 For example, many luxury goods sectors are not regulated: see Chapter 34.

In order to build a strong, coordinated, and effective anti-money laundering regime in British Columbia, it is essential that there be a clear allocation of responsibility for both the identification of money laundering risks and the implementation of measures designed to address those risks.<sup>4</sup> For this reason, I am recommending that the Province establish the office of the AML Commissioner.

**Recommendation 1:** I recommend that the Province establish an independent office of the Legislature focused on anti-money laundering, referred to throughout this Report as the Anti-Money Laundering (AML) Commissioner. The AML Commissioner should be responsible for:

- producing a publicly available annual report on money laundering risks, activity, and responses, as well as special reports on specific issues;
- undertaking, directing, and supporting research on money laundering issues in order to develop expertise on money laundering issues, including emerging trends and responses, informed by an understanding of the measures taken internationally;
- issuing policy advice and recommendations to government, law enforcement, and regulatory bodies concerning money laundering issues;
- monitoring, reviewing, auditing, and reporting on the performance of provincial agencies with an anti-money laundering mandate; and
- leading working groups and co-operative efforts to address money laundering issues.

## The Need for an AML Commissioner

An overarching theme that emerged through the course of this Inquiry is that money laundering is rarely afforded the priority it requires. Because it operates in the shadows, it often goes unnoticed. Because the damage it causes is not as visible or as immediately apparent as that caused by some other crimes (such as violent crime), it is often afforded less priority and attention.

For many organizations and government agencies, if anti-money laundering is identified as a priority at all, it is as one in a long list of priorities. It is in the middle (or at the bottom) of the list. It is easy to see how anti-money laundering can be neglected. The topic area is complex and often not intuitive. The methods used to launder funds are varied and constantly changing. Expertise in the field is hard to come by. For many regulators and

<sup>4</sup> Indeed, British Columbia's current anti-money laundering strategy notes the need to identify "a governing body with overarching responsibility for [anti-money laundering]" and raises the prospect of creating an "independent body of government to oversee and coordinate [anti-money laundering] activities": Exhibit 46, Provincial Anti-Money Laundering Strategy (January 30, 2020), Strategy 1.1.1, p 6.

agencies, there may be no meaningful expertise within that organization. Furthermore, the consequences of anti-money laundering efforts may be opaque or unknown – they are likely to be hard to see and quantify (see Chapter 4). Consequently, those working to combat money laundering do not get the sort of feedback they get in other domains, where the results of their efforts are obvious and rewarding. Given these considerations, when anti-money laundering is one of many competing priorities, it is easy for it to get lost in the mix. As busy regulators and public agencies carry on their duties in an increasingly complex time, it is simply too easy for anti-money laundering to fall by the wayside.

Unlike many government priorities, anti-money laundering does not fit nicely into one sector or ministry. For this reason, among others, anti-money laundering historically has not been the dedicated responsibility of any one minister and has not received sufficient attention or priority by government. It has similarly been largely neglected in this province by law enforcement, which has, when faced with competing priorities, paid little attention and dedicated few resources to the fight against money laundering (see Chapters 39–41).

A large part of the rationale for an AML Commissioner is to change this trend – and change it permanently. The creation of a new office of the Legislature with an *exclusive* focus on anti-money laundering will counteract and overcome the neglect that this topic has faced for too long. Such a commissioner can give anti-money laundering pre-eminent attention, in a public and accountable way, so that the people of British Columbia and the government have accurate, current, and reliable information about how public agencies, law enforcement, and government are doing in coming to grips with and responding to money laundering in British Columbia. Having a commissioner focused solely on anti-money laundering will ensure that attention is given to this area on an ongoing basis.

An additional rationale for the creation of such a commissioner is to create a centre of expertise in British Columbia, as well as a resource that is available to consult and advise. Given the complexity of money laundering and the realistic challenges for most regulatory agencies dealing with it in-house, the AML Commissioner will, I expect, be a welcome partner (and leader) in the fight against money laundering. This commissioner will also be available to educate and advise government in order to assist the Province in responding to this constantly evolving threat. Finally, the AML Commissioner will, as and when appropriate, monitor law enforcement efforts in the province in order to track and report to government on whether law enforcement is affording the priority and resources required to address money laundering.

Put simply, despite a relatively long history of mounting evidence regarding the evolution and extent of this problem – and despite a public discourse revealing that money laundering is an issue of concern for British Columbians – government, law enforcement, and regulatory agencies have, for many years, failed to grasp the nature and extent of this growing problem. They have failed to afford it the priority and resources that are required.

I am satisfied that the only way to reverse this unsatisfactory state of affairs is to vest one office with the responsibility to support, oversee, and monitor the provincial response to money laundering.

## **Role and Responsibilities of the AML Commissioner**

Having explained the need for an AML Commissioner, I now turn to key components of the commissioner's office – its independence, mandate, functions, powers, staffing, and budget.

### **Independence**

The AML Commissioner should be an independent office of the Legislature rather than an executive agency. The creation of an independent office will provide stability (given that executive agencies can be created and dismantled fairly easily) as well as necessary independence from the executive, whose anti-money laundering policies and efforts will be reported on by the commissioner.

Independent offices of the Legislature are typically created where the executive branch needs an independent body to monitor and advise on issues that impact numerous ministries or where there is a need to impartially administer public services, or to review the manner in which public services are delivered. At present, there are 10 such offices in British Columbia:

- the Office of the Auditor General;
- the Office of the Conflict of Interest Commissioner;
- Elections BC;
- the Office of the Human Rights Commissioner;
- the Office of the Information and Privacy Commissioner;
- the Office of the Registrar of Lobbyists;
- the Office of the Merit Commissioner;
- the Office of the Ombudsperson;
- the Office of the Police Complaint Commissioner; and
- the Office of the Representative for Children and Youth.

Each of these offices has its own legislative framework tailored to the specific role being carried out by the commissioner or lead officer, and his or her team. While a detailed review of the various offices is beyond the scope of this chapter, I highlight a few aspects that are relevant to the role of the proposed AML Commissioner.

The AML Commissioner’s role is perhaps most analogous to that of the BC Human Rights Commissioner, albeit with a very different subject matter. The BC Human Rights Commissioner is a relatively new office, established in 2019, whose broad mandate is to “promote and protect human rights” by doing any or all of the following:

- identifying and promoting the elimination of discriminatory practices, policies, and programs;
- developing resources, policies, and guidelines to prevent and eliminate discriminatory practices, policies, and programs;
- publishing reports, making recommendations, or using other means to prevent or eliminate discriminatory practices, policies, and programs;
- developing and delivering public information and education about human rights;
- undertaking, directing, and supporting research respecting human rights;
- examining the human rights implications of any policy, program, or legislation, and making recommendations where there may be inconsistencies with the *Human Rights Code*, RSBC 1996, c 210;
- consulting and co-operating with individuals and organizations in order to promote and protect human rights;
- establishing working groups for special assignments respecting human rights;
- promoting compliance with international human rights obligations;
- intervening in human rights complaints under the *Human Rights Code*;
- approving an employment equity program under the *Human Rights Code*; and
- initiating inquiries into matters referred by the Legislative Assembly or matters that, in her opinion, would promote or protect human rights.<sup>5</sup>

The BC Human Rights Commissioner must submit an annual report to the Legislative Assembly and is empowered to submit special reports to the Legislature on particular human rights issues.<sup>6</sup> When conducting inquiries into matters referred by the Legislative Assembly or on his or her own initiative, the commissioner has a number of powers to compel information.<sup>7</sup>

In many ways, the functions of the Human Rights Commissioner are analogous to those I have in mind for the AML Commissioner. Like human rights issues, money laundering is an issue that impacts numerous ministries, and there is a strong interest in having an individual with specialized knowledge and expertise to work proactively

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5 *Human Rights Code*, RSBC 1996, c 210, s 47.12.

6 *Ibid*, ss 47.23, 47.24.

7 *Ibid*, ss 47.13, 47.16, 47.19.

to prevent money laundering activity. There is also a strong interest in having a commissioner conduct research on emerging trends,<sup>8</sup> promote compliance with international standards, and establish working groups with respect to specific issues (such as information sharing).

The AML Commissioner's role also has strong parallels to aspects of the Auditor General's mandate. As the title suggests, the Auditor General is responsible for auditing over 150 government departments and ministries.<sup>9</sup> The office conducts **financial audits**, which ensure that financial statements are presented fairly, accurately, and free of material misstatements, as well as **performance audits**, which consider whether an entity is achieving its objectives effectively, economically, and efficiently.<sup>10</sup> The Auditor General has a number of powers to compel the information and records necessary to complete his or her duties.<sup>11</sup>

As I elaborate below, one of the key functions I have in mind for the AML Commissioner is conducting audits of provincial agencies and regulators that have anti-money laundering mandates. While I appreciate that the Auditor General already conducts performance audits of provincial agencies, I believe it is important that the anti-money laundering audits be done by the AML Commissioner for two reasons. First, the Auditor General's office (properly) has discretion as to which offices or departments it audits. I consider it necessary that there be regular audits focused on *anti-money laundering* specifically, and it would be problematic to interfere with the Auditor General's independence by requiring that office to focus on a particular topic or sector on a regular basis. Second, I expect that the AML Commissioner's office will develop particular expertise in anti-money laundering, rendering it well suited to conduct the audits.

The anti-money laundering audits I am envisioning have some parallels to the work done by the BC Representative for Children and Youth. The Representative has a four-part mandate:

- supporting, assisting, informing, and advising children and their families about government-funded services and programs;

8 The BC Human Rights Commissioner has conducted research in a number of areas, including determining whether “social condition” and “Indigeneity” should be included as prohibited grounds of discrimination in the *Human Rights Code*: British Columbia's Office of the Human Rights Commissioner, “Key Issues: Discrimination,” online: <https://bchumanrights.ca/key-issues/discrimination/>. Research of this kind can clearly be of great benefit to government when it is deliberating whether to amend legislation or introduce new policies.

9 Office of the Auditor General of British Columbia, “About Us – What We Do,” online: <https://www.bcauditor.com/about-us/what-we-do>.

10 Office of the Auditor General of British Columbia, “About Us – Financial Audits,” online: <https://www.bcauditor.com/about-us/what-we-do/financial-audits>; Office of the Auditor General of British Columbia, “About Us – Performance Audits,” online: <https://www.bcauditor.com/about-us/what-we-do/performance-audits>.

11 *Auditor General Act*, SBC 2003, c 2, ss 16–17.

- supporting, assisting, informing, and advising “included adults”<sup>12</sup> and their families about government-funded services and programs;
- monitoring, reviewing, auditing, and conducting research on these services and programs for the purpose of making recommendations to improve their effectiveness and responsiveness; and
- conducting independent reviews and investigations into critical injuries or deaths of children receiving government services.<sup>13</sup>

The Representative’s function of monitoring, reviewing, auditing, and conducting research on government-funded services and programs, and making recommendations about their effectiveness, parallels in a number of respects what I have in mind for the AML Commissioner’s audits. These audits will, I expect, ensure that the anti-money laundering efforts of government institutions remain current, effective, and responsive to emerging trends.

While I appreciate that the creation of another statutory office could be seen as an additional layer of bureaucracy, I believe that the AML Commissioner will play an important role in ensuring that the anti-money laundering regime in this province remains current, responsive, and effective. Further, I expect that the presence of the AML Commissioner will assist in ensuring the provincial and federal governments follow through on commitments they have made during the present Commission’s process.

## **Mandate and Functions**

Broadly speaking, the AML Commissioner’s mandate would be to oversee and monitor the provincial response to money laundering by carrying out the following functions:

- producing a publicly available annual report on money laundering risks, activity, and responses, as well as special reports on specific issues;
- undertaking, directing, and supporting research on money laundering issues in order to develop expertise on money laundering issues, including emerging trends and responses, informed by an understanding of the measures taken internationally;
- issuing policy advice and recommendations to government, law enforcement, and regulatory bodies concerning money laundering issues;
- monitoring, reviewing, auditing, and reporting on the performance of provincial agencies with an anti-money laundering mandate; and
- leading working groups and co-operative efforts to address money laundering issues.

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12 “Included adult” is defined as an adult under 27 years of age who (a) is receiving or is eligible to receive community living support under the *Community Living Authority Act*, or (b) received, as a child, a reviewable service: *Representative for Children and Youth Act*, SBC 2006, c 29, s 1.

13 *Representative for Children and Youth Act*, s 6.

In what follows, I expand on each of these proposed functions and comment on some of the statutory powers that will be needed to carry them out.

### ***Producing Annual and Special Reports on the State of Money Laundering in BC***

A key function of the AML Commissioner would be producing an annual report on the state of money laundering risks and anti-money laundering efforts in the province. The report would be tabled in the Legislature and made publicly available,<sup>14</sup> such that British Columbians can be aware of the money laundering risks in this province, the steps being taken to combat them, and any shortfalls that need to be addressed.

The content of the report would stem from the other functions of the AML Commissioner's office, which I elaborate on below. The report would discuss key risks and vulnerabilities that the AML Commissioner has identified through his or her research function. It would also discuss the results of anti-money laundering audits the commissioner had undertaken in the previous year. If applicable, it would contain recommendations or policy advice, in order to address gaps in the Province's anti-money laundering response.

While the AML Commissioner would not be in a position to audit or recommend improvements to federal agencies, he or she should not be reticent to identify gaps and weaknesses in the federal regime to the extent they affect anti-money laundering efforts within the province. For example, the federal government has recently made a commitment to increase the number of RCMP officers assigned to money laundering and has given assurances that it will continue to prioritize money laundering investigations (see Chapter 39). The AML Commissioner should take all reasonable steps to monitor these efforts. If it appears that the federal government has not followed through on those commitments, the AML Commissioner should advise the provincial government and, if appropriate, the public, and recommend measures that the provincial government can take to address any gaps. While the Province cannot compel the federal government to invest in the fight against money laundering, it is essential that the citizens of British Columbia understand the efforts being made by the federal government to address the issue and that the provincial government be in a position to respond to gaps and weaknesses in the federal regime.

The AML Commissioner should also be given a mandate to file special reports with the Legislature on specific issues (for example, new areas of vulnerability or new money laundering typologies). The publication of these reports will increase awareness of the issue within government and allow regulators and private-sector entities to respond by updating their anti-money laundering protections (or where appropriate, filing reports with FINTRAC). I expect these reports will be public, unless there is sound reason to depart from that practice.

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<sup>14</sup> There may be sound reasons for aspects of the report to not be publicly available. In general, it is my view that issuing public reports should be a priority, as it ensures accountability and visibility into the progress made (or not made) in combatting money laundering in the province.

## ***Undertaking, Directing, and Supporting Research***

In various chapters of this Report, I point to areas where money laundering risks are not well understood. For example, in Chapter 22, I note that there is a live debate as to whether or not white-label ATMs pose a money laundering risk. Similarly, in Chapter 34, I discuss significant gaps in our understanding of money laundering through luxury goods markets and the need for the Province to promptly implement a reporting regime for all transactions of over \$10,000 in cash, with the goal of understanding what is occurring in that sector.

I also discuss in Chapters 2 and 3 some gaps in Canada’s national identification of money laundering risks. In particular, the federal government’s 2015 national risk assessment<sup>15</sup> has been criticized for being outdated (now over seven years old) and is considered by some to be “only produced for [the Financial Action Task Force’s] benefit and [lacking] a regular role in Canadian society and policy making.”<sup>16</sup> Similarly, as I elaborate in Chapter 3, a 2019 report produced by Criminal Intelligence Service Canada on the activity of organized crime groups in Canada has a number of shortcomings, including that over a thousand organized crime groups operating in Canada were not assessed, that the numbers and techniques discussed therein are not specific to British Columbia, that much money laundering activity is not reported and thus not captured by the data used, and that the data does not discuss the *volume* of illicit funds being laundered through each sector of the economy.

One of the rationales for an AML Commissioner is to create a centre of expertise on money laundering issues. As such, the AML Commissioner will be well placed to lead efforts to better understand money laundering vulnerabilities in this province. While it would be unrealistic to expect the AML Commissioner (or a single province) to conduct the same kind of comprehensive risk assessment that the national risk assessment is meant to provide, the AML Commissioner’s office could help fill the gaps left by federal inaction by focusing on key money laundering risks and vulnerabilities in this province.

I am therefore recommending that the AML Commissioner be empowered to undertake, direct, and support research on money laundering issues of concern to British Columbia. The money laundering risks and vulnerabilities identified by the commissioner would inform his or her annual and special reports on the state of money laundering in this province, as well as advice to government.

In carrying out these research functions, the AML Commissioner should make efforts to identify current knowledge gaps and develop a research strategy to fill those gaps. While traditional tools such as Financial Action Task Force publications will undoubtedly provide a good starting point for that work, it is important to recognize that money laundering threats and activity vary regionally. As such, I would encourage the AML Commissioner to go beyond those sources and consider other ways of assessing money laundering risks, especially insofar as they are specific to British Columbia.

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15 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015).

16 Evidence of N. Maxwell, Transcript, January 14, 2021, p 49.

The AML Commissioner should work with the Province to develop and gain access to information and data that will assist him or her in conducting research and gaining insight into local trends and advising government.

### ***Issuing Policy Advice and Recommendations to Government***

While I believe that government (rather than the AML Commissioner) should have primary responsibility for the study and implementation of specific measures designed to identify, deter, and prevent money laundering activity, I believe there is a role for the AML Commissioner – whose office will be charged with developing and maintaining an understanding of the money laundering risks facing the Province and developments with respect to those risks – to issue policy advice and recommendations to government concerning specific issues. For example, the AML Commissioner may be able to provide policy advice to government on the success (or lack thereof) of specific measures in other countries, or on the creation of new information-sharing pathways between the private sector, regulators, and law enforcement. Such policy advice could be given directly to government, be included in the commissioner’s annual report, or form the basis of special reports filed with the Legislature.

### ***Monitoring, Auditing, and Reporting on AML Activity of Provincial Bodies***

The AML Commissioner should be given a mandate to monitor, review, audit, and report on the performance of provincial bodies with an anti–money laundering mandate to ensure that they properly understand the money laundering risks arising in their sectors and take appropriate steps to respond to those risks.

The UK’s Office for Professional Body Anti–Money Laundering Supervision (OPBAS) has developed a sound model for the evaluation of anti–money laundering efforts of government bodies.<sup>17</sup> OPBAS is essentially a “regulator of regulators” that oversees and evaluates the anti–money laundering efforts of 25 accounting and legal supervisors<sup>18</sup> (referred to as “professional body supervisors”). It was created following the UK’s 2017 national risk assessment and comments in the Financial Action Task Force’s 2018 mutual evaluation of the UK to provide better oversight of the legal and accountancy sectors.<sup>19</sup> It has two key objectives:

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- 17 OPBAS, *Sourcebook for Professional Body Anti–Money Laundering Supervisors* (January 2018, addendum added February 2021) [OPBAS Sourcebook], online: <https://www.fca.org.uk/publication/opbas/opbas-sourcebook.pdf>.
- 18 As I understand it, the supervisors are analogous to regulators or professional associations in this country. The professional body supervisors include the Association of Accounting Technicians; the Association of Chartered Certified Accountants; the Institute of Certified Bookkeepers; the law societies of England, Northern Ireland, and Scotland; and several others: OPBAS Sourcebook, para 2.1.
- 19 OPBAS, *Anti–Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Themes from the 2018 OPBAS Anti–Money Laundering Supervisory Assessments* (March 2019), online: <https://www.fca.org.uk/publication/opbas/themes-2018-opbas-anti-money-laundering-supervisory-assessments.pdf> [OPBAS 2019 Report], paras 1.2, 1.4. The mutual evaluation identified significant inconsistencies in the way that legal and accountancy professional body supervisors conducted their anti–money laundering supervision and noted that understanding of money laundering risks was uneven among them: *ibid*, para 1.4.

1. ensuring a robust and consistently high standard of supervision by the professional body supervisors overseeing the legal and accountancy sectors; and
2. facilitating collaboration and information and intelligence sharing between professional body supervisors, statutory supervisors, and law enforcement agencies.<sup>20</sup>

OPBAS evaluates professional body supervisors in eight key areas set out in its sourcebook:

- **governance:** whether the professional body supervisor:
  - clearly allocates responsibility for managing its anti-money laundering supervisory activity;
  - demonstrates that senior management is actively engaged with their approach to anti-money laundering supervision;
  - has appropriate reporting and escalation arrangements promoting effective decision-making; and
  - keeps its advocacy and regulatory functions separate.<sup>21</sup>
- **risk-based approach:** whether the professional body supervisor:
  - adopts a risk-based approach, focusing efforts and resources on the highest risks;
  - ensures that measures to reduce money laundering are proportionate to the risks;
  - regularly reviews the risks relating to their sector; and
  - supports its members' adoption of a risk-based approach.<sup>22</sup>
- **supervision:** whether the professional body supervisor:
  - effectively monitors its members;
  - uses the risk profiles it prepares to decide the frequency and intensity of on-site and off-site supervision; and
  - prepares guidance and communications for its members.<sup>23</sup>

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20 Financial Conduct Authority, "Office for Professional Body Anti-Money Laundering Supervision" (modified September 20, 2021), online: <https://www.fca.org.uk/opbas>.

21 OPBAS Sourcebook, paras 3.1–3.4.

22 Ibid, paras 4.2–4.14.

23 Ibid, paras 5.1–5.4.

- **information sharing between supervisors and public authorities:** whether the professional body supervisor:
  - co-operates and co-ordinates activities with other supervisors and law enforcement entities to counter money laundering and terrorist financing threats;
  - has a single point of contact responsible for liaison with other supervisory, law enforcement, and overseas authorities; and
  - has mechanisms in place, such as a whistle-blowing regime, to encourage members of its sector to report breaches of the anti-money laundering regulations.<sup>24</sup>
  
- **information and guidance for members:** whether the professional body supervisor:
  - makes up-to-date information on money laundering and terrorist financing available to its members, including through typologies and guidance materials; and
  - communicates its expectations to its membership effectively.<sup>25</sup>
  
- **staff competence and training:** whether the professional body supervisor:
  - employs people with appropriate qualifications, integrity, and professional skills to carry out its anti-money laundering functions; and
  - considers whether to require formal anti-money laundering qualifications.<sup>26</sup>
  
- **enforcement:** whether the professional body supervisor:
  - makes arrangements to ensure that members are liable to effective, proportionate, and dissuasive disciplinary action;
  - has sufficient information-gathering and investigative powers to effectively monitor and assess compliance;
  - seeks to remove the benefits of non-compliance and deter future non-compliance; and
  - makes enforcement action related to non-compliance with the anti-money laundering regime public.<sup>27</sup>

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<sup>24</sup> Ibid, paras 6.1–6.8.

<sup>25</sup> Ibid, paras 7.1–7.8.

<sup>26</sup> Ibid, paras 8.1–8.4.

<sup>27</sup> Ibid, paras 9.1–9.5.

- **record-keeping and quality assurance:** whether the professional body supervisor:
  - keeps written records of the actions it has taken, including instances where it has not acted;
  - subjects its supervisory work and decision-making to quality assurance testing; and
  - submits an annual questionnaire to OPBAS.<sup>28</sup>

At the time of writing, OPBAS has produced three annual reports.<sup>29</sup> It is useful to consider how its approach and findings have shifted from the first to third annual report. The first report found “a variable quality” of anti-money laundering and counterterrorist financing among the professional body supervisors, with 80 percent of them lacking appropriate governance arrangements, 91 percent not fully applying a risk-based approach to supervision, and 23 percent undertaking no anti-money laundering supervision.<sup>30</sup> The 2020 report found “strong improvement across both the legal and accountancy sectors” in their anti-money laundering supervision, while noting that some supervisors continued to lag behind their peers.<sup>31</sup> The 2021 report moved from a focus on the more *technical* aspects of supervisors’ anti-money laundering measures towards a focus on the *effectiveness* of anti-money laundering supervision and controls, “highlighting examples of good practice as well as areas of concern, instead of only seeking to evaluate technical compliance.”<sup>32</sup> It found that although there had been considerable progress by supervisors in terms of *technical* compliance with the UK’s money laundering regulations, there were “differing levels of achievement and some significant weaknesses” in terms of *effectiveness*.<sup>33</sup>

The foregoing demonstrates that OPBAS has been successful in moving professional body supervisors toward a more consistent approach to money laundering supervision. It appears that significant progress occurred in technical compliance between the 2019 and 2021 reports, and it seems likely that OPBAS will similarly be able to help supervisors improve the effectiveness of their anti-money laundering measures.

In my view, a variation on the OPBAS model should be adopted in British Columbia. As I elaborate throughout this Report, the level of anti-money laundering regulation and supervision in this province varies dramatically, and it would be useful to have

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28 Ibid, paras 10.1–10.5.

29 OPBAS 2019 Report; OPBAS, *Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Progress and Themes from 2019* (March 2020) [OPBAS 2020 Report], online: <https://www.fca.org.uk/publication/opbas/supervisory-report-progress-themes-2019.pdf>; OPBAS, *Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Progress and Themes from our 2020/21 Supervisory Assessments* (September 2021) [OPBAS 2021 Report], online: <https://www.fca.org.uk/publication/opbas/supervisory-assessments-progress-themes-2020-21.pdf>.

30 OPBAS 2019 Report, paras 2.1, 2.3–2.5.

31 OPBAS 2020 Report, para 2.1.

32 OPBAS 2021 Report, para 2.4.

33 Ibid, para 2.6.

oversight of various regulators and government agencies to ensure that those who lag behind are identified and changes are implemented. That said, I do not propose that the AML Commissioner be tasked with auditing *all* government agencies and regulators annually (as OPBAS does for legal and accountant regulators) – this would be an enormous task that would be impractical on a yearly basis. Instead, the AML Commissioner should focus on high-risk sectors, regulators that have not been sufficiently engaged with anti-money laundering regulation, or regulators identified by the AML Commissioner as requiring scrutiny. For example, the AML Commissioner may choose in his or her first year to focus on a particular regulator that has not been active in its anti-money laundering regulation and assess whether improvements have been made. In subsequent years, the AML Commissioner could shift focus to other regulators, but he or she could equally choose to return to the same regulator if of the view that insufficient progress has been made or the sector remains high risk.

While I appreciate that the OPBAS model was created to evaluate the anti-money laundering efforts of professional governing bodies, it strikes me that the model could apply more broadly to most government bodies and regulators that have an anti-money laundering mandate in this province. This would include (but not be limited to) the Gaming Policy and Enforcement Branch, the BC Lottery Corporation, the BC Financial Services Authority, the Society of Notaries Public of British Columbia, and the Chartered Professional Accountants of British Columbia.

The Law Society of British Columbia stands in a slightly different position, given the complications that may arise in relation to solicitor-client privilege. However, I see no reason in principle why it should not be subject to this type of evaluation, so long as it does not undermine privilege. Indeed, given the exclusion of lawyers from the *PCMLTFA* regime and the difficulties that would be involved in designing a reporting regime for lawyers (see Chapter 27), the AML Commissioner's engagement with and review of the Law Society's anti-money laundering policies would help offset the gap created by FINTRAC's lack of visibility into the activity of lawyers.

While adjustments would be necessary to avoid interfering with active investigations and files, I see no reason why the AML Commissioner could not review activity by the Civil Forfeiture Office and the designated provincial money laundering intelligence and investigation unit (recommended in Chapter 41). The commissioner could consider, for example, how many cases are initiated by the Civil Forfeiture Office or referred to it by law enforcement, the value of assets seized or restrained, the value of assets forfeited, and the distribution of funds received by the office as a result of sale of those assets. Similarly, the commissioner could consider the number of sworn members assigned to the designated provincial money laundering intelligence and investigation unit; the number of arrests made by it; and the number of investigations that have resulted in charges being recommended, approved, and successfully prosecuted.

### **Working Groups, Special Assignments, and Co-operative Efforts**

I envision a role for the AML Commissioner in the organization of strategic partnerships or working groups to address specific money laundering issues as they arise. Examples include the negotiation of information-sharing agreements among government agencies, regulators, and the private sector; the collection and analysis of data across federal and provincial agencies to allow for a better understanding of money laundering threats in specific sectors of the economy; and the development of approaches to quantification. The AML Commissioner may be particularly well suited to organize and coordinate working groups in areas of shared federal-provincial jurisdiction.

As I noted above, one of the objectives of OPBAS is to facilitate “collaboration and information and intelligence sharing between [professional body supervisors], statutory supervisors and law enforcement agencies.”<sup>34</sup> OPBAS and the UK’s National Economic Crime Centre have established Intelligence Sharing Expert Working Groups for the legal and accountancy sectors, whose terms of reference speak to both strategic and tactical information sharing between supervisors and law enforcement agencies.<sup>35</sup> (As I explain in Chapter 7, *strategic* information sharing refers to broader information such as typologies and general indicators of suspicion, whereas *tactical* information relates to specific individuals and entities.) As of March 2020, OPBAS had held and chaired five accountancy and two legal working group meetings.<sup>36</sup> Its 2020 report notes that despite observing improvements among professional body supervisors between June 2019 and its March 2020 report, there continued to be “stark differences” in how supervisors engaged with OPBAS and the working groups.<sup>37</sup> The 2021 report found some improvements in the supervisors’ engagement with the working group, while still noting some “persistent differences” in engagement.<sup>38</sup>

In my view, the work that OPBAS is doing to bring together stakeholders and encourage better use of information-sharing pathways is important and should be emulated in British Columbia. Although it appears that professional body supervisors in the UK continue to take varying approaches to information sharing, there is, in my view, value in having a body like OPBAS that reports on these approaches and draws attention to those supervisors who are not progressing in the same way as their peers. As I have noted throughout this Report, information sharing is a key component of any anti-money laundering strategy, and there have been varying approaches to it in this province. Although, as I expand in Chapter 7, there are important constitutional considerations relating to the sharing of *tactical* information, these difficulties do not arise when sharing *strategic* information. The

34 Financial Conduct Authority, “Office for Professional Body Anti-Money Laundering Supervision,” online: <https://www.fca.org.uk/opbas>.

35 Accountancy Sector Intelligence Sharing Expert Working Group, “Terms of Reference” (last updated August 2020), online: <https://www.fca.org.uk/publication/opbas/accountancy-sector-isewg-terms-of-reference.pdf>; Legal Sector Intelligence Sharing Expert Working Group, “Terms of Reference” (last updated August 2020), online: <https://www.fca.org.uk/publication/opbas/legal-sector-intelligence-sharing-expert-working-group-terms-of-reference.pdf>.

36 OPBAS 2020 Report, para 4.7.

37 Ibid, paras 4.9–4.12.

38 OPBAS 2021 Report, paras 4.9–4.14.

AML Commissioner would be well placed to create working groups, facilitate the sharing of strategic (and where appropriate, tactical) information, and report on the progress of information-sharing initiatives.

### **Role in Relation to Luxury Goods Sector**

In Chapter 34, I set out a proposed role for the AML Commissioner in the luxury goods sector (as I define that sector in that chapter). I recommend there that the Province implement a reporting regime for all cash transactions of over \$10,000, with the goal of better understanding the use of cash in the British Columbia economy and the associated money laundering risks. This recommendation aims to address a significant gap in our understanding of money laundering through luxury goods, a sector where there are few regulators, markets that do not collect records at all, little information gathered about suspicious activity, and often no one with anti-money laundering responsibilities to speak to. As I expand in Chapter 34, it is essential that the AML Commissioner have access to the reports generated by this reporting regime, such that he or she can develop an understanding of the money laundering risks in the luxury goods sector and recommend measures to address them. The commissioner will also need to engage in other efforts to collect information about luxury goods and markets, such as by consulting with industry and regulators, studying activity in specific markets or regions, and monitoring international money laundering trends.

I also describe in Chapter 34 a role for the AML Commissioner in advising the Province when he or she becomes aware of new and evolving money laundering threats in the luxury goods sector that require timely action. I recommend there that a particular minister be given the ability to implement timely measures to address such new and evolving risks, which may take the form of binding directives or regulations. It will be important for this minister to consult with and take advice from the AML Commissioner and be responsive to his or her suggestions.

### **Powers**

In order to carry out the functions I have just laid out, the AML Commissioner must be given powers of examination and compulsion similar to those afforded to the Auditor General of British Columbia and other commissioners.<sup>39</sup> In certain cases, it may be necessary to carve out exceptions to these powers. For example, it may be inappropriate for the AML Commissioner to receive information concerning specific investigations undertaken by the designated provincial money laundering intelligence

<sup>39</sup> See, e.g., *Auditor General Act*, SBC 2003, c 2, ss 16–17; *Human Rights Code*, RSBC 1996, c 210, ss 47.13, 47.16; *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s 44; *Representative for Children and Youth Act*, SBC 2006, c 29, ss 10, 14, 14.1. OPBAS also has similar powers: *The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017* (UK Statutory Instrument 2017/1301), s 7. Interestingly, OPBAS can also commission a “skilled person” report in which it can require a self-regulatory organization to appoint someone to provide a report on a matter relating to the exercise of OPBAS’s functions under the regulations: *ibid*, s 13.

and investigation unit (though it could be provided information with respect to the number of sworn members assigned to that unit, the number of arrests made by the new unit, the number of money laundering and proceeds of crime investigations that resulted in charges being recommended and approved, etc.). Likewise, it would not be appropriate for the AML Commissioner to receive privileged information from the Law Society, though it could receive information concerning the anti-money laundering program implemented by that organization.

To fulfill the study function, it will be important for the AML Commissioner to be able to compel information from government, government agencies, and regulators. The Province may also wish to consider whether the commissioner should be given the power to compel information from private entities and individuals for the purpose of studying money laundering risks, vulnerabilities, and trends. The exercise of such a power could provide the commissioner with important and timely real-world insights. If the Province decides to provide the AML Commissioner with the ability to compel information from private entities and/or individuals, it would have to give careful consideration to the manner in which this power should be limited.

## **Staffing and Budget**

While I am not inclined to make any specific recommendations concerning the staffing or budget of the AML Commissioner's office, it is essential that the Province appoint a commissioner with a high level of knowledge and expertise in money laundering issues and that he or she be given the resources to hire staff capable of performing the research, data analysis, policy support, evaluation, coordination, and reporting functions outlined above. It is also important that the AML Commissioner be in a position (legally and financially) to seek the assistance of outside professionals, including lawyers, accountants, law enforcement officials, and academics in carrying out his or her functions.<sup>40</sup>

## **The Anti-Money Laundering Deputy Ministers' Committee**

While an independent office of the Legislature is well-placed to provide strategic oversight of the provincial anti-money laundering regime, it is equally important that there be a coordinating body *within* government to respond to advice from the AML Commissioner and to study and implement measures designed to respond to the money laundering threats facing this province.

In September 2018, the Province created the Anti-Money Laundering Deputy Ministers' Committee and Anti-Money Laundering Secretariat, initially, to implement the recommendations made by Peter German in *Dirty Money 1*. The

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<sup>40</sup> I note, in particular, that many of the recommendations contained in this Report involve the creation of constitutionally permissible information-sharing partnerships. My hope is that the AML Commissioner will be in a position to assist with these efforts. However, that task that will almost certainly require the involvement of lawyers.

Anti-Money Laundering Deputy Ministers' Committee is composed of deputy representatives of the Ministry of Finance, the Ministry of Public Safety and Solicitor General, and the Ministry of the Attorney General.<sup>41</sup> It reports to the attorney general, minister of finance, and solicitor general as the lead ministers.<sup>42</sup> When it was created in September 2008, it was responsible for implementing the recommendations in *Dirty Money 1*.<sup>43</sup> Meanwhile, the Anti-Money Laundering Secretariat was responsible for day-to-day actions such as providing information to ministers and developing the legal and regulatory structures that might be utilized in order to address money laundering.<sup>44</sup>

Mark Sieben, deputy solicitor general, explained that upon the release of the expert reports referred to above, the Deputy Ministers' Committee and the Anti-Money Laundering Secretariat were given an expanded mandate to develop a coordinated, multi-sectoral response to money laundering:

It became apparent during the initial year of the committee's existence that discussion and examination of money laundering, while it was premised on the original German report, couldn't be confined simply to looking at what was happening in gaming and casinos ... Consequently, additional external work was done both by Dr. German as well as a panel led by Maureen Maloney. And those reports in due course informed the broader scope of the committee as well as the activity that the committee asked of the secretariat.<sup>45</sup>

While the Deputy Ministers' Committee and Anti-Money Laundering Secretariat have primarily been responsible for the implementation of the recommendations contained in the expert reports, they have also been involved in the development and implementation of a provincial anti-money laundering strategy with the ultimate goal of building a "strong and sustainable anti-money laundering (AML) regime by effectively using targeted actions and tools to identify, prevent, and disrupt illegal activity."<sup>46</sup>

I consider the development and implementation of that strategy to be a critical step in the fight against money laundering. It is only through a coordinated research, compliance, and enforcement regime, in which there is a clear understanding of money laundering threats, that the Province will achieve any sustained success in combatting

41 Evidence of M. Harris, Transcript, June 11, 2020, p 7.

42 Exhibit 42, Government of BC, Anti-Money Laundering Deputy Ministers' Committee Terms of Reference (June 2019), p 1.

43 Evidence of M. Harris, Transcript, June 11, 2020, pp 8–9.

44 See Exhibit 41, Draft – Ministry of Attorney General, Anti-Money Laundering Deputy Ministers Terms of Reference, p 4; Evidence of M. Sieben, Transcript, June 11, 2020, p 12. Megan Harris, the former lead to the Anti-Money Laundering Secretariat, described the responsibilities of the secretariat as partly advisory and partly project management: Transcript, June 11, 2020, p 13.

45 Evidence of M. Sieben, Transcript, June 11, 2020, p 11; Exhibit 42, Government of BC, Anti-Money Laundering Deputy Ministers' Committee Terms of Reference, p 1.

46 Exhibit 46, Provincial Anti-Money Laundering Strategy (January 30, 2020) [AML Strategy], p 3.

those threats.<sup>47</sup> It is important that there be a body within government that is tasked with maintaining a focus on, and guiding the Province's response to, money laundering. I understand that the Deputy Ministers' Committee and Anti-Money Laundering Secretariat have developed some expertise in money laundering issues through the study and implementation of the recommendations contained in the expert reports (as well as other anti-money laundering measures).

I therefore recommend that the Deputy Ministers' Committee and Anti-Money Laundering Secretariat be continued and that these bodies be given responsibility for the continued development and implementation of the provincial anti-money laundering strategy. This strategy should include the introduction of specific measures aimed at identifying, preventing, and deterring money laundering activity in the province's economy. I also recommend that the Deputy Ministers' Committee and Anti-Money Laundering Secretariat be given responsibility for implementing the recommendations contained in this Report.

**Recommendation 2:** I recommend that the Province maintain the Deputy Ministers' Committee and Anti-Money Laundering Secretariat and that they be given responsibility for the continued development and implementation of the provincial anti-money laundering strategy, including the implementation of measures identified in this Report.

It will be important for the AML Commissioner to have ready access to the Deputy Ministers' Committee and the Anti-Money Laundering Secretariat, such that he or she can make recommendations and provide policy advice to them as necessary.

## Anti-Money Laundering Liaison Officer

Another measure that would assist in identifying, preventing, and investigating money laundering activity is the designation of an anti-money laundering liaison officer from each government agency, regulator, and law enforcement body that has an anti-money laundering mandate. The Law Society describes the benefits of this model as follows:

AML-related relationship building and collaboration among different agencies are most effective when (a) each agency has clearly designated an individual staff member as the agency's primary representative on AML measures; (b) other agencies can be assured that the designated representative has the authority and experience to speak on behalf of their organization, and can escalate an issue as appropriate; and (c) the same representative consistently attends AML collaboration or information-

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47 On this point see Evidence of N. Maxwell, Transcript, January 14, 2021, pp 62–63, 120–22.

sharing activities. Conversely, relationship building and collaboration are less successful if agencies have not clearly assigned an AML representative, send different representatives to each meeting, or send staff who are not authorized to act on, or escalate consideration of, an issue in a timely way.<sup>48</sup>

I believe that the appointment of such dedicated anti–money laundering liaison officers has considerable promise for the creation of effective information-sharing pathways among provincial law enforcement and regulatory bodies. While the exchange of tactical information would have to be governed by specific and constitutionally permissible information-sharing agreements, the implementation of this proposal would undoubtedly facilitate the exchange of strategic information and allow for the implementation of measures designed to prevent money laundering activity. I therefore recommend that the Province introduce a statutory requirement that all government agencies, regulators, and law enforcement bodies with an anti–money laundering mandate designate an anti–money laundering liaison officer to be the primary point of contact for improved inter-agency collaboration and information sharing.

**Recommendation 3:** I recommend that the Province introduce a statutory requirement that all government agencies, regulators, and law enforcement bodies with an anti–money laundering mandate designate an anti–money laundering liaison officer to be the primary point of contact for improved inter-agency collaboration and information sharing.

## Conclusion

In this chapter, I have explained the need for a dedicated AML Commissioner in British Columbia and set out the role I envision for that office. Although the primary role and responsibilities of this office are set out here, I have indicated at various points in this Report areas where the AML Commissioner would be well suited to research or study a particular issue and facilitate collaboration between different actors with anti–money laundering mandates.

I expect that the AML Commissioner will ensure, once this Report has been released, that there is continued focus on anti–money laundering in British Columbia. Money laundering is a continually evolving phenomenon, and criminals will constantly seek to exploit new areas of vulnerability. It is crucial that there be a team, following the conclusion of this Commission of Inquiry, whose focus is on money laundering. This will ensure that the Province’s approach to anti–money laundering becomes current and remains effective.

I have also recommended that the Deputy Ministers’ Committee and the Anti–Money Laundering Secretariat be continued. These bodies will serve

<sup>48</sup> Closing submissions, Law Society of British Columbia, para 75.

important coordination roles within government as the Province implements the recommendations in this Report and receives further information and advice from the AML Commissioner in the future. Finally, I have recommended that all government agencies, regulators, and law enforcement bodies designate an anti-money laundering liaison officer to serve as the primary point of contact for improved inter-agency collaboration and information sharing.

## Part III

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# The Gaming Sector

Section 4 of the Commission’s Terms of Reference directs me to make findings and recommendations with respect to the extent, growth, evolution, and methods of money laundering in the “gaming and horse racing” sector. The issue of money laundering in the gaming industry has featured prominently in public discourse in this province for many years and has been the subject of past study and review, including in Dr. Peter German’s 2018 *Dirty Money* report, which the Commission’s Terms of Reference direct me to “review and take into consideration.”

Despite Dr. German’s recent efforts, the Commission elected to focus significant attention on money laundering in the gaming sector. I felt that the focus on this sector was justified for several reasons. First, as will be discussed throughout this part of my Report, the evidence before me establishes that money laundering *did* occur within this sector at significant levels over the course of at least a decade. Accordingly, in a province where money laundering has historically received little attention, British Columbia’s gaming sector presents a rare opportunity to study confirmed money laundering in action, on a large scale, over an extended period of time, in the context of a public enterprise with law enforcement and regulatory oversight. In addition to the significance of this activity itself, the money laundering that I have found took place in the gaming sector presents an opportunity to examine how money laundering infiltrates economic systems and the conditions and failures that allowed it to do so.

Second, the gaming sector offers empirical evidence that assists in demonstrating the scale of money laundering activity, even in a jurisdiction like British Columbia that prides itself on its commitment to the rule of law. As I will explain in Chapter 13, the

evidence before me establishes that the laundering of hundreds of millions of dollars in proceeds of crime was enabled by this province's casinos. That the scale of money laundering in a heavily regulated, security-conscious industry could reach such heights reveals the extent to which money laundering is an opportunistic crime and the need for constant vigilance on the part of industry, government, and law enforcement in guarding against its infiltration in all sectors of the economy.

Third, the example of the gaming sector highlights the global reach of money laundering in the modern world. In Part I, I described how money laundering has become the domain of dedicated, criminal service providers connected to global networks capable of quickly moving illicit funds around the world. The dominant money laundering typology observed in British Columbia's gaming industry is illustrative of this modern money laundering landscape. As I explain in detail in Part III, by the early 2010s, VIP gamblers in this province were serviced by a sophisticated network of "cash facilitators" capable of delivering hundreds of thousands of dollars in illicit cash on short notice at any hour of the day or night. While these gamblers received, gambled, and typically lost these funds in British Columbia, they would often repay them half a world away in China, typically through electronic methods. That those providing this cash were content to be repaid on a different continent, in a country known to restrict the removal of money from its territory, is a telling indicator of the global reach and sophistication of the criminal networks associated with this activity and the scale of the illicit funds to which they had access. It is also indicative of the challenges associated with stifling or isolating this crime.

Fourth, the example of this province's gaming sector underscores the importance of strong political will in responding to money laundering. The gaming industry in this province is subject to heavy regulation and direct government oversight. While these features of the industry were not sufficient to prevent the development of a money laundering crisis in the province's casinos, they did ensure that this activity did not go unnoticed. Concerns about suspicious transactions were brought to the attention of a succession of senior government officials early in the evolution of this crisis. While each took some action in response, the problem nevertheless persisted for at least a decade before decisive action sufficient to bring it to an end was taken. That money laundering proved so intractable even in an industry in which it was quickly recognized and over which government maintained a high degree of control is a telling indicator of the level of engagement and dedication on the part of government required to effectively address this form of criminality, particularly in less visible areas of the province's economy that are not subject to the same level of government control.

Finally, my Terms of Reference direct me to make findings regarding whether the acts or omissions of regulatory authorities or individuals with powers, duties, or functions (in the gaming sector) contributed to money laundering in British Columbia and whether those acts or omissions have amounted to corruption. In order to address this aspect of my Terms of Reference thoroughly and fairly, it was necessary, as will become apparent from a review of the chapters in this Part, for the Commission to canvass a significant body of evidence.

In the past, the gaming industry was afflicted by dysfunctional relationships, an unacceptable level of risk tolerance, and insufficient anti-money laundering safeguards. As I discuss in the chapters that follow, however, the evidence before me demonstrates that the money laundering crisis that afflicted this province's casinos for at least a decade has now been largely addressed by long overdue, decisive action. The industry's anti-money laundering efforts are vastly improved from what they were only a few years ago, and I am encouraged by their trajectory.

This does not mean that there is no need for ongoing vigilance or that there is not room for further improvement, and the chapters that follow include recommendations for further enhancing existing anti-money laundering safeguards.

The experience of the province's gaming industry serves as both a cautionary tale and a model for government and industry seeking to address money laundering in other sectors of the economy. Through a decade of inaction and half-measures, government, law enforcement, and industry allowed a sector of the economy conducted, managed, and regulated by the Province to be used to launder vast amounts of criminal proceeds, which ultimately contributed to the Province's revenues. By facilitating money laundering, British Columbia's gaming sector incentivized and enabled the significant criminal activity that generated these proceeds and the human suffering this activity must have caused. This state of affairs was unacceptable and cannot be repeated, whether in the gaming industry or any other sector of the economy. It is my hope that through lessons learned from years of failure as well as the eventual success in combatting money laundering in the gaming industry, the Province has a better understanding of the type of intelligence, investigation, and decisive action that is required to identify and respond to money laundering activity and that those lessons will be applied to combat money laundering throughout the province and its economy.

## **Outline of Part III**

The origins, rise, and eventual resolution of money laundering in British Columbia's gaming sector are addressed over the course of the following six chapters. The first four chapters set out a detailed narrative spanning several decades based on the evidence I heard during the Commission's hearings. The final two chapters contain an analysis of the facts set out in this narrative, identifying the nature and extent of money laundering that took place in British Columbia's gaming sector and the factors that contributed to its growth and persistence, including the actions and omissions of individuals and organizations connected to the industry.

The narrative that comprises the first four chapters describes the origins and evolution of casino gaming in British Columbia. It explains how casinos in this province have evolved from temporary operations established to raise money for charities and allowing maximum bets of only \$2 into large, permanent establishments

permitting wagers of up to \$100,000 on a single hand of baccarat. This section of the Report identifies a rapid acceleration in large and suspicious cash transactions that accompanied the evolution of casino gaming and increases in betting limits, peaking in or around 2014, a year in which the province’s gaming industry accepted more than \$1 billion in cash transactions of \$10,000 or more and nearly \$200 million in transactions identified by the British Columbia Lottery Corporation as “suspicious.”<sup>1</sup> The rapid rise of these large and suspicious transactions inspired vastly different responses among the individuals and organizations engaged in the gaming sector, prompting many years of debate and disagreement as to their significance and what, if anything should be done in response. While the size and frequency of these transactions began to decline in 2015, they remained at elevated levels until 2018, when decisive action was finally taken to reduce them to a fraction of 2014 levels.

In Chapter 13, I conclude that these transactions were integrally connected to significant money laundering activity and that, over the course of a decade between 2008 and 2018, hundreds of millions of dollars in illicit funds were laundered through casinos in British Columbia’s Lower Mainland. The laundering of these funds was accomplished through a money laundering typology known as the “Vancouver model,” in which cash representing the proceeds of crime was provided to casino patrons, many of whom held significant wealth outside of Canada but were unable to access that wealth in British Columbia. While these patrons genuinely gambled this money, and often lost it, the provision of these funds facilitated money laundering as, win or lose, patrons were required to repay these funds and typically did so in a different medium of exchange in another jurisdiction. Through these exchanges, the illicit cash provided to casino patrons was converted into a different form and transferred to another location, obscuring its origins and advancing the objectives of those intent on laundering it.

In Chapter 14, I identify the factors that contributed to the development and perpetuation of money laundering in Lower Mainland casinos, including the acts and omissions of individuals and organizations connected to the industry. As described in detail in that chapter, this analysis reveals a systemic failure on the part of the gaming industry, law enforcement, and government to respond to obvious criminal activity that grew to become commonplace in several Lower Mainland casinos. While the role played by actors including the BC Lottery Corporation, the Gaming Policy and Enforcement Branch, law enforcement, gaming service providers, and elected officials with responsibility for the industry were not equal, each failed to take steps that could have significantly reduced – if not eliminated – money laundering in the industry. As such, all must share in the responsibility for the rise and perpetuation of this serious problem over so many years.

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1 Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2021, exhibit A; Exhibit 784, Affidavit #2 of Caterina Cuglietta, sworn on March 8, 2021, exhibit A.

## Horse Racing

I note that my Terms of Reference identify the sector discussed in this Part of my Report as “gaming *and horse racing*” [emphasis added]. While the Commission devoted significant hearing time to casino gaming, very little was focused on money laundering in the horse-racing industry. The subject of horse racing was addressed in Dr. German’s *Dirty Money 2* report. Dr. German concluded that the horse-racing industry in British Columbia was in financial decline and that it was not a “high money laundering risk at present.”<sup>2</sup> The information obtained in the course of the investigations undertaken by the Commission outside of the hearing process was consistent with Dr. German’s conclusion that there is not, at present, a significant money laundering risk in the horse-racing industry in British Columbia. For this reason, the Commission elected not to devote significant hearing time to horse racing. To the extent that this sector was addressed in the Commission’s hearings, I find that the evidence supports that money laundering is not a significant issue in horse racing in this province.<sup>3</sup>

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2 Exhibit 833, Peter German QC, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicles Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*], pp 211–52.

3 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 58–59; Evidence of D. LePard, Transcript, April 7, 2021, pp 57–59.

## Chapter 9

# Gaming Narrative: Pre-2004 and Integrated Illegal Gaming Enforcement Team

### **Limited Decriminalization of Gaming and Assumption of Provincial Responsibility**

In order to understand the evolution of British Columbia's gaming industry and the eventual rise of money laundering therein, it is necessary to begin with a discussion of legal and regulatory changes made at the federal and provincial levels between the 1960s and 1990s. During this era, federal legislative changes removed near-absolute criminal prohibitions on gambling, enabling the eventual creation of a legal, commercial gaming industry in Canada. In doing so, however, these legislative changes established requirements that necessitated a central role for the provincial government in this industry in British Columbia. The bureaucratic and regulatory apparatus established by the Province in response provides important context for understanding the evolution of the industry and the growth of large and suspicious cash transactions in the decades that followed.

### **Federal Decriminalization of Gambling**

Prior to 1969, gambling in British Columbia – and throughout Canada – was regulated primarily through the federal government's jurisdiction over criminal law.<sup>1</sup> A series of statutes passed by Parliament in the late 19<sup>th</sup> century, alongside offences established by colonial legislatures prior to Confederation or received from English law, resulted in the criminalization of most forms of gambling in Canada.<sup>2</sup>

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1 Exhibit 67, Overview Report: Regulation of Gaming in British Columbia [OR: BC Gaming Regulations], para 2.

2 Ibid, paras 4–14.

The wisdom of this widespread, criminal prohibition against gambling was questioned in a 1956 report of the federal Joint Committee of the Senate and House of Commons on Capital Punishment, Corporal Punishment and Lotteries.<sup>3</sup> The report concluded that violations of the gambling provisions of the *Criminal Code* were widespread, that enforcement of these laws had become impractical, and that there existed broad public support for lotteries organized for “charitable and benevolent purposes.”<sup>4</sup> The Joint Committee recommended that Parliament expand legal gambling by allowing provinces and municipalities to establish licensing systems permitting charitable and religious organizations to conduct lotteries.<sup>5</sup>

Thirteen years later, in 1969, amendments to the *Criminal Code* significantly broadened the scope for legal gambling in Canada, while also assigning substantial responsibility for the regulation of gaming to provincial governments.<sup>6</sup> Existing criminal prohibitions on gambling remained in place, but exceptions to those prohibitions were added to the *Criminal Code* to permit:<sup>7</sup>

- a. The Government of Canada to conduct and manage lottery schemes;
- b. The government of a province, alone or in conjunction with another province, to conduct and manage lottery schemes in accordance with any law enacted by the legislature of that province;
- c. A charitable organization to conduct and manage a lottery scheme under the authority of a license issued by a province if the proceeds of the lottery scheme were used for a charitable or religious object or purpose, with some limits on the nature of the scheme and the amounts that could be wagered and won;
- d. An agricultural fair or exhibition or an operator of a concession leased by an agricultural fair or exhibition or board to conduct a lottery scheme under the authority of a license issued by a province; and
- e. Any person under the authority of a license issued by a province to conduct and manage a lottery scheme at a public place of amusement, with some limits on the nature of the scheme and the amounts that could be wagered and won.<sup>8</sup>

In 1985, further amendments to the *Criminal Code* eliminated the federal government’s authority to conduct and managing gaming, leaving responsibility for legal gaming in the hands of the provinces.<sup>9</sup> At the same time, additional amendments expanded the forms

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3 Ibid, para 15.

4 Ibid.

5 Ibid.

6 Ibid, paras 3, 16.

7 Ibid, para 16.

8 Ibid, para 16.

9 Ibid, para 21.

of permissible gaming to include slot machines and electronic gambling, but only if conducted and managed by a province (rather than by a licensee).<sup>10</sup>

## **Development of Provincial Legal and Administrative Regime**

In the years that followed the federal government’s limited decriminalization of gambling, British Columbia began to develop a legal and administrative apparatus to regulate gaming in the province.<sup>11</sup> In 1970, the Government of British Columbia promulgated an Order-in-Council permitting the Province to conduct public gaming in accordance with the recent amendments to the *Criminal Code* and establishing a Licensing Branch within the Ministry of the Attorney General to issue licenses to conduct lotteries to charitable and religious organizations.<sup>12</sup> The Licensing Branch was also tasked with developing regulations regarding eligibility for licences, applicable fees, financial accountability, and minimum percentages of lottery proceeds required to be paid towards a charitable or religious object.<sup>13</sup>

Four years later, the Government of British Columbia passed the *Lotteries Act*, SBC 1974, c 51, establishing the BC Lottery Branch.<sup>14</sup> The existing Licensing Branch, established in 1970, became part of the new Lottery Branch.<sup>15</sup>

Section 5 of the new *Lotteries Act* authorized the responsible minister to both:<sup>16</sup>

- a. Conduct and manage lottery schemes in the Province; and
- b. Regulate and licence certain persons to conduct and manage such other lotteries in the province as are permitted under the *Criminal Code* (Canada), pursuant to the authority conferred by the *Criminal Code* (Canada) and this Act and the regulations.

The *Lotteries Act* also established a Lottery Fund “into which shall be paid all proceeds from the conduct and operation of lotteries by the province.” The fund was to be used first to pay the costs of administering the Act, with any remaining funds to be used for “cultural or recreational purposes or for preserving the cultural heritage of the province.” In 1976, the permissible uses of the Lottery Fund were expanded to allow lottery revenue to also be used for “other purposes.” In 1979, the Province established the Lottery Grants Branch to administer the Lottery Fund, which had grown as a result of increased lottery revenues.<sup>17</sup>

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<sup>10</sup> Ibid, para 25.

<sup>11</sup> Ibid, paras 59–77.

<sup>12</sup> Ibid, para 60.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid, para 61.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid, para 62.

<sup>17</sup> Ibid, para 64.

The types of gaming permitted in the province were expanded in 1978, when casino-style games such as blackjack were allowed at events conducted by charitable organizations.<sup>18</sup> Bets were limited to two dollars and a maximum of six gaming tables were permitted at such events.<sup>19</sup>

In the years that followed, the Province's administrative apparatus for conducting and managing, licensing, and regulating gaming continued to evolve.<sup>20</sup> The British Columbia Lottery Corporation (BCLC) was incorporated in 1984 and continued under the *Lottery Corporation Act*, SBC 1985, c 50, the following year.<sup>21</sup> The *Lottery Corporation Act*, which remained in force until 2002, identified the BCLC's objects as:

- a. to develop, undertake, organize, conduct and manage lottery schemes on behalf of the government;
- b. if authorized by the Minister, to enter into agreements to develop, undertake, organize, conduct and manage lottery schemes on behalf of or in conjunction with the government of Canada or the government of another province, or an agent of either of them;
- c. if authorized by the Minister, to enter into the business of supplying any person with computer software, tickets or any other technology, equipment or supplies related to the conduct of lotteries in or out of the province, or any other business related to the conduct of lotteries;
- d. (beginning in 1993) if authorized by the Minister, to enter into agreements with a person regarding any lottery conducted on behalf of the government; and
- e. to do such other things as the Minister may require from time to time.

As initially enacted in 1985, the *Lottery Corporation Act* also required BCLC to pay its net profits into the Lottery Fund.<sup>22</sup> Since the abolition of the Lottery Fund in 1992, BCLC's profits have been paid into the Province's consolidated revenue fund.<sup>23</sup>

In 1985, the Lottery Branch was renamed the Public Gaming Control Branch. In 1986, it was renamed again, this time becoming the Public Gaming Branch.<sup>24</sup> In 1987, the provincial government established the British Columbia Gaming Commission to

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18 Ibid, para 66.

19 Ibid, para 66.

20 Ibid, paras 67–77.

21 Ibid, para 68.

22 Ibid, para 69.

23 Ibid.

24 Ibid, para 67.

develop gaming policy and set terms and conditions for charity gaming licenses.<sup>25</sup> The Public Gaming Branch was absorbed into the BC Gaming Commission in 1995.<sup>26</sup>

Also in 1995, the provincial government established the Gaming Audit and Investigation Office (GAIO) as a monitoring and enforcement agency for the gaming GAIO's mandate was to:<sup>27</sup>

- a. Register individuals and companies involved in the activity of lawful gaming in British Columbia;
- b. Investigate any occurrence which may be of a criminal nature or bring into disrepute lawful gaming under either s. 207 of the [*Criminal*] Code or provincial enactments; and
- c. Audit and review gaming operations and organizations against standards established by provincial legislation and policy.

BCLC's mandate expanded in 1997 to include conduct and management of slot machines in British Columbia, and the following year it assumed responsibility for casino table games, bringing all casino gaming in the province under BCLC's authority.<sup>28</sup>

In 1998, an investigation division was formed within GAIO and the provincial government established the Gaming Policy Secretariat. The role of the Gaming Policy Secretariat was to provide policy advice to the minister responsible for gaming and to coordinate the implementation of government policy related to gaming.<sup>29</sup>

British Columbia's regulatory regime was reorganized again in 2002 through the enactment of the new *Gaming Control Act*, SBC 2002, c 14, and the creation of another new regulatory body – the Gaming Policy and Enforcement Branch (GPEB). This new Act established a model for the conduct, management, and regulation of gaming in the province that, in large part, continues to this day. The model established in 2002 and its implications will be discussed in detail later in this chapter, following further discussion of the development of the gaming industry prior to 2002.

## **BC's Gaming Industry Prior to 2002**

Throughout the portion of the Commission's hearings devoted to the gaming sector, I heard from several witnesses with extensive experience working in the gaming industry in this province and who observed first-hand the evolution of that industry over several decades. These witnesses offered valuable insight into the conditions in casinos in the early days of the industry's development and provide useful context for understanding how the industry evolved.

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25 Ibid, para 71.

26 Ibid, para 74.

27 Ibid, para 75.

28 Ibid, para 70.

29 Ibid, para 77.

## The Charitable Gaming Model

Of these witnesses, the individual whose tenure began earliest in the development of British Columbia's gaming industry was Walter Soo, who spent 36 years with the Great Canadian Gaming Corporation (Great Canadian).<sup>30</sup> While Mr. Soo eventually rose through the ranks of Great Canadian to become executive vice-president, player and gaming development, he began his career in the industry as a part-time roulette dealer, working at the Pacific National Exhibition (PNE) and charity casinos.<sup>31</sup> Mr. Soo gave evidence before the Commission by way of an affidavit and through oral testimony.<sup>32</sup>

The gaming industry that Mr. Soo entered in 1983 differed significantly from what exists in British Columbia today. In 1983, gaming in this province was limited to fairs and exhibitions (like the PNE) as well as “charity casinos.” Bets were limited to \$5 and could only be made using cash. Charity casinos were casinos operated by charities for the purpose of fundraising. At that time, a charitable organization could apply for a license to operate a casino for up to three days. If granted a license, the charities would typically contract with a gaming supply company, which were private sector businesses like Great Canadian that would provide a venue, gaming equipment, and staff who would operate the casino alongside volunteers supplied by the charity licensee.<sup>33</sup>

The charitable organizations licensed to operate the casino received 50 percent of the gross revenue generated by the casino, the gaming supply company received 40 percent, and the provincial government received 10 percent.<sup>34</sup> The charity was insulated from financial loss in the event the casino lost money.<sup>35</sup>

Initially, there were no permanent casino venues in British Columbia. The venues provided by the gaming supply companies were temporary, rented spaces – often hotel ballrooms. By the late 1980s, permanent casino venues had begun to open, including the Richmond Casino in 1987. While the charity casino model remained in place for another decade, these new venues allowed gaming supply companies to offer a permanent base from which they could assist charities in holding licensed casino events.<sup>36</sup>

30 Exhibit 559, Affidavit #1 of Walter Soo, made on February 1, 2021 [Soo #1], para 4.

31 Ibid, paras 5–15.

32 In addition to oral testimony received during the Commission's hearings, the Commission also received evidence by way of affidavit, either in place of oral testimony or, as in Mr. Soo's case, alongside it. Affidavits were prepared by witnesses with the assistance of their own counsel (or in some cases, counsel for their current or former employer). The use of affidavits enabled the entry of evidence without the use of significant hearing time, ensuring the efficient use of the hearing time available to the Commission. In all instances where a witness gave evidence by affidavit, participants were provided the witness's affidavit in advance and given an opportunity to request that the witness attend to give oral testimony. Where witnesses did not attend to give oral evidence, it is because no participant requested their attendance.

33 Exhibit 559, Soo #1, paras 16–21; Evidence of W. Soo, Transcript, February 9, 2021, p 5; Exhibit 147, Affidavit #1 of Muriel Labine, affirmed on October 23, 2020 [Labine #1], para 4; Evidence of M. Labine, Transcript, November 3, 2020, pp 167–68; Evidence of R. Coleman, Transcript, April 28, 2021, pp 21–23.

34 Exhibit 559, Soo #1, para 21; Exhibit 147, Labine #1, para 4; Evidence of M. Labine, Transcript, November 3, 2020, pp 167–68.

35 Exhibit 559, Soo #1, para 21; Evidence of R. Coleman, Transcript, April 28, 2021, pp 21–23.

36 Exhibit 559, Soo #1, paras 19, 22.

## End of Charitable Model and Engagement of BCLC

Multiple witnesses identified the late 1990s as an important turning point for the industry. By 1998, as indicated above, BCLC had taken on responsibility for all casino gaming in British Columbia. As BCLC assumed responsibility for the conduct and management of casino gaming, the Province moved away from the charitable gaming model. Under the new model, the gaming supply companies that had previously contracted with charities now entered into operating services agreements with BCLC, and would come to be commonly referred to as “gaming service providers.” With the elimination of their involvement in the conduct and management of casinos, charities also lost the direct financial support they had received from gaming, as gaming revenue was now split between BCLC and service providers in accordance with the terms of operating services agreements. Profits generated by BCLC were paid into the provincial government’s consolidated revenue fund.<sup>37</sup>

As the industry shifted away from the charitable model, it also began to expand. Several Lower Mainland municipalities, incentivized by the promise of 10 percent of net revenue generated by casinos within their jurisdictions, approved casino expansion and the introduction of slot machines. The development of “destination casinos” elsewhere in the province commenced at the same time.<sup>38</sup>

As the industry expanded, the environment within gaming facilities changed as well. When the role of charities in the operation of casinos was eliminated, so too was the requirement that volunteers from those charities be involved in running casinos. This left professional staff members employed by gaming service providers to operate casinos without the involvement of charity volunteers. Casino hours were extended, new games, including baccarat and slot machines, were introduced, and maximum betting limits, which by that time had grown to \$25, were increased significantly to \$500.<sup>39</sup>

As these changes came into effect, business increased and new players began to frequent Lower Mainland casinos to play at the higher levels permitted by new betting limits.<sup>40</sup> At least two witnesses noted that these changes to British Columbia casinos occurred at the same time as an influx of immigration from Asia, associated with the 1997 handover of Hong Kong to the People’s Republic of China. These witnesses suggested that resulting demographic changes may have also driven increased

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37 Exhibit 559, Soo #1, paras 23–24; Evidence of R. Duff, Transcript, January 25, 2021, p 6; Evidence of M. Labine, Transcript, November 3, 2020, pp 168–69; Evidence of T. Towns, Transcript, January 29, 2021, p 137; Exhibit 517, Affidavit of Terry Towns, made January 22, 2021 [Towns Affidavit], paras 18–19; Exhibit 147, Labine #1, para 5; Evidence of W. Soo, Transcript, February 9, 2021, pp 4, 6; Exhibit 67, OR: BC Gaming Regulations, para 70.

38 Exhibit 559, Soo #1, paras 25–26; Evidence of W. Soo, Transcript, February 9, 2021, p 4.

39 Evidence of W. Soo, Transcript, February 9, 2021, pp 5–6; Evidence of R. Duff, Transcript, January 25, 2021, pp 6–9; Evidence of M. Labine, Transcript, November 3, 2020, p 169; Exhibit 147, Labine #1, para 5; Exhibit 87, Affidavit #1 of Stone Lee, sworn October 23, 2020 [S. Lee #1], para 6; Evidence of S. Lee, Transcript, October 27, 2020, pp 9–10.

40 Evidence of W. Soo, Transcript, February 9, 2021, pp 6–8; Evidence of R. Duff, Transcript, January 25, 2021, pp 6–9; Evidence of M. Labine, Transcript, November 3, 2020, p 169.

demand for gaming.<sup>41</sup> Mr. Soo described the significance of these demographic changes as follows:<sup>42</sup>

Certainly I spent time in the casinos whenever I could. And certainly the level of cash had risen in all of our properties but in particular it was very noticeable in Richmond, and Richmond casino particularly because everyone can see from the late '80s where I opened that casino from '87, left a half year later and came back in 1990, the whole city had transformed due to the arrival of the very wealthy Chinese. So I saw a lot of activity that way. I had heard the stories from management people and staff who had complained to management people about it, but I was not the person that dealt with it when it came up.

As casinos continued to accept only cash, the growth in business and elevated betting limits led to an increase in the volume of cash entering casinos.<sup>43</sup> Stone Lee, a former dealer for Great Canadian who went on to become a BCLC investigator, recalled that patrons playing at the level of the new \$500 bet limit would typically buy-in for \$5000 and that it was common for buy-ins to be made using \$20 bills during this era. Mr. Lee recalled that between 1997 and 1999, buy-ins of \$10,000 or more were uncommon.<sup>44</sup>

## Cash Facilitation in BC Casinos

Along with the new players referred to above, another group of individuals began to appear more frequently in casinos in the Lower Mainland at the time of these changes to the gaming industry in the late 1990s. These individuals, whom I will refer to as “cash facilitators,”<sup>45</sup> consisted of predominantly young Asian men.<sup>46</sup> They gambled occasionally, but their primary activity in the casinos was to supply cash and/or casino chips to patrons who had exhausted their funds and required additional cash or chips in order to continue to gamble.<sup>47</sup> During this time period, among Great Canadian-operated casinos, cash facilitators were concentrated at the Richmond Casino and the Holiday Inn Casino in Vancouver, but were also present at other Lower Mainland

41 Evidence of W. Soo, Transcript, February 9, 2021, pp 8–10; Evidence of R. Duff, Transcript, January 25, 2021, p 8.

42 Evidence of W. Soo, Transcript, February 9, 2021, pp 9–10.

43 Evidence of R. Duff, Transcript, January 25, 2021, pp 8–9; Evidence of W. Soo, Transcript, February 9, 2021, pp 6–8; Evidence of S. Beeksma, Transcript, October 26, 2020, p 28; Evidence of S. Lee, Transcript, October 27, 2020, pp 11–12.

44 Exhibit 87, S. Lee #1, paras 6–7; Evidence of S. Lee, Transcript, October 27, 2020, pp 10–11.

45 In the course of the Commission’s hearings, witnesses frequently referred to these individuals as “loan sharks.” As that term is often understood to refer to individuals lending money at very high interest rates, and as there is no evidence of interest rates of that sort being charged to casino patrons as part of these loans, I will generally use the term “cash facilitator” throughout this Report, except where quoting directly from the evidence or where it is required by the context.

46 Evidence of M. Labine, Transcript, November 3, 2020, pp 169–70; Exhibit 147, Labine #1, para 8.

47 Exhibit 87, S. Lee #1, paras 9–10; Evidence of S. Lee, Transcript, October 27, 2020, p 12; Evidence of S. Beeksma, Transcript, October 26, 2020, p 28; Evidence of P. Ennis, Transcript, February 3, 2021, pp 68–69; Exhibit 147, Labine #1, paras 6–11; Evidence of M. Labine, Transcript, November 3, 2020, pp 169–70.

casinos, including the Royal Diamond and Grand Casinos in Vancouver and the Burnaby Casino.<sup>48</sup>

Muriel Labine, a former dealer and dealer supervisor at the Richmond Casino, testified that cash facilitation on the floor of the Richmond Casino during this period was open and nearly constant and that cash facilitators were present at the casino every day. Ms. Labine’s evidence was that it would not be uncommon to see multiple cash facilitators in the casino at once.<sup>49</sup>

Steven Beeksma, a former Great Canadian security and surveillance staff member who went on to become a BCLC investigator, gave evidence that suspected cash facilitators were easy to identify at the Richmond Casino and that he would typically observe one or two suspected cash facilitators each day during the period he worked at the Richmond Casino in the early 2000s. Mr. Beeksma testified that the cash provided by cash facilitators during this time period typically ranged in amount from \$500 to \$20,000.<sup>50</sup>

## **Activity Identified as Suspected Cash Facilitation**

The nature of cash facilitation occurring in the province’s casinos at this time was sometimes captured in reports prepared by BCLC. The following excerpts from contemporaneous BCLC Security Incident reports from this period offer some insight into the type of activity observed in Lower Mainland casinos that was identified as cash facilitation (or, as referenced in these excerpts, “loan sharking”) and the response from service providers and BCLC:

- May 2000: Burnaby Villa Gateway Casino<sup>51</sup>

This date a male was observed at [gaming table] MB3 passing stacks of \$100 bills across the table to another player. The casino security staff attempted to identify this customer. He refused to produce identification and was asked to leave. He is a suspected loan shark. When asked to leave he said “these people need my money.”

Subject was barred from casino until he produces identification. Photo was obtained. Efforts will be made to identify who this subject is.

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48 Evidence of P. Ennis, Transcript, February 3, 2021, p 69; Exhibit 503, Overview Report: 1998–2001 BCLC Security Incident Reports Related to Loan Sharking, Money Laundering and Suspicious Transactions in British Columbia Casinos [OR: 1998-2001 BCLC Security Reports].

49 Evidence of M. Labine, Transcript, November 3, 2020, p 170–71; Exhibit 147, Labine #1, para 10.

50 Exhibit 78, Affidavit #1 of Steve Beeksma, affirmed on October 22, 2020 [Beeksma #1], paras 16, 19; Evidence of S. Beeksma, Transcript, October 26, 2020, p 28.

51 Exhibit 503, OR: 1998-2001 BCLC Security Reports, Appendix E, BCLC Security Incident Report bearing file number 00 1059 dated May 31, 2000.

- August 2000: Burnaby Villa Gateway Casino<sup>52</sup>

He was observed passing a stack of \$100 bills to another player and was subsequently asked to leave the casino for loansharking activities. He refused to identify himself on that occasion.

- February 2001: Great Canadian Casino – Richmond<sup>53</sup>

I was standing behind MB1 observing player LCT #14 (big player) playing on a reserved table. He was sitting at the table with [cash facilitator]. After player #14 lost all his chips, [cash facilitator] got up from the table and went over to another customer ... and received a [handful] of \$500 chips from her. He then went back to the table (MB1) and handed the chips to player #14. This transaction was done under the table, out of camera coverage but right in front of me.

[Cash facilitator] is a regular here at the casino but very rarely does he play. He sits at a table next to a high [roller's] side and helps the player by keeping track of the outcome [of] each hand and helps the player pay and collect his or her chips. This kind of stuff happens here on a daily basis (not only by [cash facilitator]).

- March 2001: Burnaby Villa Gateway Casino<sup>54</sup>

This date, a customer identified as [cash facilitator] was observed in the Burnaby Casino, passing large amounts of cash to other players. He is [a] suspected loan shark. He was spoken [to] about his actions by casino staff and informed that he was being barred from [the] casino for one year.

- June & July 2001: Great Canadian Casino – Holiday Inn<sup>55</sup>

These subjects do not play, they move about the site on and off of the gaming floor. The male appears to be directing the female. The noted activity of the female; 1) openly passed an envelope containing wads of cash (\$100 bills) to a patron, 2) taken chips from a female patron, 3) handed cash to a male patron, 4) received cash from a male patron, 5) engaged in a private conversation while handing out money – making notes, 6) female accessed the ATM at the site.

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52 Ibid, Appendix I, BCLC Security Incident Report bearing file number 00 1587 dated August 16, 2000.

53 Ibid, Appendix L, BCLC Security Incident Report bearing file number 01 0628 dated March 2, 2001.

54 Ibid, Appendix M, BCLC Security Incident Report bearing file number 01 0795 dated March 20, 2001.

55 Ibid, Appendix Q, BCLC Security Incident Report bearing file number 01 1705 dated July 12, 2001.

- July 2001: Great Canadian Casino – Holiday Inn<sup>56</sup>

[T]here were (2) subjects a male and a female identity not known observed by surveillance on the gaming floor of the Holiday Inn.

[S]urveillance monitored the 2 subjects moving on the floor, not playing. Of note the female subject was observed meeting with a regular “registered large cash transaction patron” LCT #201.

The female handed a paper envelope (package) which when opened contained a large wad of \$100 bills.

- July 2001: Great Canadian Casino – Richmond<sup>57</sup>

BCLC Casino Security and Surveillance Investigator, Gordon Board, walked onto the Richmond Casino gaming floor and noted [cash facilitator #1] buying-in on MB table #2, later determined it was for \$5,000.00. As [cash facilitator #1] was making the buy-in [cash facilitator #2] was standing close by and [a] Chinese male with glasses was walking near [the] table. As soon as the buy-in was completed and [cash facilitator #1] received his chips he took approximately 5 chips and handed them off to the Chinese male with glasses in a motion to avoid detection. The Chinese male took the chips to MB #3 and commenced betting.

- August 2001: Great Canadian Casino – Holiday Inn<sup>58</sup>

Holiday Inn Casino reported that surveillance observed [a patron] receiving a large amount of cash from two people (one woman – Asian, approx. 50 years old; and one man – Asian, approx. 45 years old).

Over the past three days, [the patron] has bought in with over \$200,000.00 in cash.

... After [the patron] lost about \$60 000 on MB 11, he was observed waiting in the concession area when the [unknown] Asian Female passed an envelope to the [unknown] Asian Male, who then passed the envelope to [the patron].

Shortly after receiving the envelope, [the patron] returned to MB 11 and bought in for \$30,000.00.

- September 2001: Great Canadian Casino – Holiday Inn<sup>59</sup>

[S]urveillance observed a female patron ... enter the casino. [The female patron] had been known to pass and receive large amounts of

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56 Ibid.

57 Ibid, Appendix R, BCLC Security Incident Report bearing file number 01 1759 dated July 20, 2001.

58 Ibid, p 292.

59 Ibid, Appendix Q, BCLC Security Incident Report bearing file number 01 1705 dated July 12, 2001.

money on the gaming floor and has been the subject of two Occurrence reports from this location... This evening... surveillance observed [the female patron] approach FPG 14 and talk to an older lady. The older lady pointed out a male player on MB 18. This male player was approached by [the female patron] and the two proceeded outside of the casino from the Broadway entrance. Outside of the casino, the male player proceeded to give [the female patron] a large amount of money. The exchange completed, [the female patron] returned inside of the casino, met up with another male and left immediately in a black Lexus.

## **Service Provider Response to Cash Facilitation**

The evidence I heard regarding the response of service providers to cash facilitation during this time period was focused on casinos operated by Great Canadian, including the Richmond and Holiday Inn Casinos. It is not necessarily reflective of responses at facilities operated by other service providers.

It appears that Great Canadian did not have a written policy regarding cash facilitators during this time. Some witnesses – who at the time or later filled senior roles within Great Canadian – acknowledged the existence of cash facilitators, but advised me that Great Canadian did not tolerate them. One manager recounted to me his recollection that cash or chip passing was not prohibited in that period. The evidence of gaming workers whose jobs placed them on the casino floor in this period satisfies me that, while Great Canadian may have, in principle, not tolerated cash facilitators, the practice on the casino floor was not uniformly consistent with that position. I am satisfied that, regardless of the position of management, cash facilitation was common at Great Canadian facilities during this time period, at times occurring in the open and largely unchecked, though during the latter part of this period it does appear that Great Canadian more consistently worked to remove cash facilitators when detected.

Patrick Ennis, who was employed in Great Canadian's surveillance and security departments for 29 years, eventually rising to the position of vice-president, corporate security and compliance, worked as security manager at multiple Great Canadian locations between 1994 and 2001.<sup>60</sup> Mr. Ennis gave evidence that cash facilitation was a constant source of concern for Great Canadian early in his career and that Great Canadian never tolerated cash facilitation and worked to remove cash facilitators from Great Canadian-operated casinos.<sup>61</sup>

Mr. Soo, who served as Great Canadian's director of operations from 1992 to 2001, was aware of concerns about cash facilitation raised by Great Canadian staff, but did

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60 Exhibit 530, Affidavit #1 of Patrick Ennis, made on January 22, 2021 [Ennis #1], paras 2–10.

61 Exhibit 530, Ennis #1, paras 11–14; Evidence of P. Ennis, Transcript, February 3, 2021, pp 68–70.

not observe the activity first-hand.<sup>62</sup> Mr. Soo gave evidence that while the company did not have a policy regarding cash facilitation at the time, Great Canadian did not tolerate illicit activity at casinos and that cash facilitation that was observed by staff should have been reported to the surveillance department.<sup>63</sup>

Rick Duff, who held management positions at various Great Canadian-operated facilities in the late 1990s and into the 2010s similarly recalled there being no written policy regarding cash facilitation in the late 1990s.<sup>64</sup> He testified that illegal activity was to be reported but that passing cash and chips was not prohibited at the time.<sup>65</sup> Like Mr. Soo, Mr. Duff recalled being aware of reports of such activity, but not having observed it first-hand.<sup>66</sup>

I also heard evidence regarding Great Canadian's response to cash facilitation following the Province's move away from the charitable gaming model from individuals who held lower-level positions within the organization at that time. These witnesses added additional detail and nuance.

Ms. Labine, who worked at the Richmond Casino between 1992 and 2000, gave evidence that Great Canadian floor staff had significant concerns about cash facilitators at the Richmond Casino and regularly raised those concerns to management.<sup>67</sup> According to Ms. Labine, management was not receptive to these concerns, denying that there was a problem with cash facilitation at the casino and, in some instances, seeming to accommodate cash facilitators.<sup>68</sup> Ms. Labine recalled one incident where she believed Mr. Duff spoke with two cash facilitators on the casino floor who subsequently spoke with others, after which all of the cash facilitators left the facility. Shortly after the departure of the cash facilitators, senior BCLC personnel arrived in the casino. When the BCLC representatives left approximately 30 minutes later, the cash facilitators returned.<sup>69</sup> Mr. Duff did not recall the incident described by Ms. Labine but testified that it would be normal to "clean up" the casino prior to the arrival of senior BCLC personnel. He denied the existence of a policy or practice of asking cash facilitators to leave the casino in advance of such visits.<sup>70</sup>

Mr. Lee, who transferred to Great Canadian's security and surveillance department after approximately two years as a dealer,<sup>71</sup> recalled resistance from management when he reported cash facilitators.<sup>72</sup> Mr. Lee acknowledged that he was never directed

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62 Evidence of W. Soo, Transcript, February 9, 2021, pp 8-11; Exhibit 559, Soo #1, paras 11-12.

63 Evidence of W. Soo, Transcript, February 9, 2021, pp 10-11.

64 Evidence of R. Duff, Transcript, January 25, 2021, pp 2-4, 12-14.

65 Ibid, pp 12-14.

66 Ibid, pp 12-14.

67 Exhibit 147, Labine #1, paras 2, 13-14, 17; Evidence of M Labine, Transcript, November 3, 2020, pp 173-74.

68 Exhibit 147, Labine #1, paras 13-17; Evidence of M. Labine, Transcript, November 3, 2020, pp 173-76.

69 Exhibit 147, Labine #1, para 15; Evidence of M. Labine, Transcript, November 3, 2020, pp 175-76.

70 Evidence of R. Duff, Transcript, January 25, 2021, pp 17-19.

71 Exhibit 87, S. Lee #1, para 4.

72 Ibid, para 20.

to ignore cash facilitators, but testified that, in response to his reports, management would suggest that the individuals in question could not be proven to be cash facilitators.<sup>73</sup> Mr. Lee also recalled, however, that in or around 1999, Great Canadian sought to prevent cash facilitation by implementing a policy prohibiting individuals who were not playing from loitering near gaming tables.<sup>74</sup>

Mr. Beeksma, who began his career in the gaming industry in 2000 as a security officer at the Richmond Casino, also testified to an evolving approach to cash facilitation in Great Canadian-operated facilities.<sup>75</sup> Mr. Beeksma recalled that, at the beginning of his career, Great Canadian's approach to cash facilitation changed frequently. While security and surveillance personnel were sometimes directed to remove cash facilitators, they were often tolerated, not, he understood, because they were thought to be good for business, but because they were replaced so quickly when removed that his supervisors thought it better to leave those with whom the casinos were familiar in place than to be constantly working to identify new cash facilitators.<sup>76</sup> Within his first two years with the company, however, Mr. Beeksma testified that Great Canadian directed that any cash facilitators should be removed and banned from the facility for a period of one year.<sup>77</sup>

Larry Vander Graaf, who joined the Gaming Audit and Investigation Office as an investigator in 1998 and was promoted to manager three years later, gave evidence that he was aware of cash facilitation in British Columbia casinos during his tenure with GAIO.<sup>78</sup> In his view, service providers were more permissive towards cash facilitation during this time than they would become in later years.<sup>79</sup>

## **BCLC Response to Cash Facilitation**

As BCLC took on responsibility for casino gaming in 1998, it also began to engage with the issue of cash facilitation in casinos. Mr. Ennis recalled that BCLC was supportive of Great Canadian's efforts to remove cash facilitators and barred identified cash facilitators from casinos across the province.<sup>80</sup> Mr. Ennis's recollection is consistent with the evidence of Terry Towns, who joined BCLC as its director of security in 2000, later becoming vice-president of corporate security and compliance.<sup>81</sup> Mr. Towns recalled that, at the beginning of his tenure, BCLC investigators spent a significant proportion of their time addressing cash facilitation.<sup>82</sup> At the time, BCLC's response to cash facilitators varied

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73 Ibid.

74 Ibid, para 19.

75 Exhibit 78, Beeksma #1, paras 20; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 28–30.

76 Exhibit 78, Beeksma #1, paras 20, 23, 25; Evidence of S. Beeksma, Transcript, October 26, pp 28–30.

77 Exhibit 78, Beeksma #1, paras 22–23.

78 Exhibit 181, Affidavit #1 of Larry Vander Graaf, made on November 8, 2020 [Vander Graaf #1], para 11.

79 Ibid, para 12.

80 Evidence of P. Ennis, Transcript, February 3, 2021, p 70.

81 Exhibit 517, Towns Affidavit, paras 13, 63.

82 Ibid, para 43.

depending on the circumstances.<sup>83</sup> Investigators would warn or bar individuals that were observed providing cash to others, depending on factors including the nature of the activity observed, whether the individual had received previous warnings or whether they were suspected to be affiliated with organized crime.<sup>84</sup> Mr. Towns testified that these efforts were successful and that cash facilitation within casinos became less obvious over time, but that BCLC's ability to address the problem was ultimately limited, as it had no authority to address ongoing cash facilitation if it was moved off casino property.<sup>85</sup>

## **Regulatory Response to Cash Facilitation**

As indicated above, there were multiple regulatory bodies with responsibility for the gaming industry prior to 2002. Based on the evidence before me, it does not appear that these regulatory bodies had any significant engagement with the issue of cash facilitation at this time. Derek Sturko, former executive director of the Gaming Policy Secretariat, who went on to become the first general manager of the Gaming Policy and Enforcement Branch, gave evidence that neither cash facilitation nor money laundering were “on the radar” of the Gaming Policy Secretariat in 1999.<sup>86</sup> Mr. Vander Graaf gave evidence that GAIO was aware of the presence of cash facilitators, but because of relatively low betting limits, cash facilitation was not an issue that required “extensive interceding.”<sup>87</sup> Mr. Vander Graaf's evidence was that GAIO did not have the authority to ban cash facilitators from casinos and, as such, its involvement was limited to reporting illegal activity to police and assisting them, when appropriate, in their investigations.<sup>88</sup> This is consistent with the evidence of Mr. Ennis, who did not observe any significant engagement on cash facilitation from GAIO.<sup>89</sup>

## **Cash Facilitation, Money Laundering, and Criminality in Casinos**

While there is ample evidence that cash facilitation was a concern in British Columbia casinos during this time period, there is scant information available about the identities or affiliations of cash facilitators or the sources of the funds provided to players by these individuals. Accordingly, it is not possible to reliably determine the extent to which funds provided by cash facilitators during this time was the proceeds of crime or whether these activities were connected to money laundering.

Throughout the evidence before me, however, there are indications that there was a criminal element present in British Columbia's casinos during this time and that there

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83 Ibid, para 46.

84 Ibid.

85 Ibid, para 54; Evidence of T. Towns, Transcript, January 29, 2021, pp 142–43.

86 Evidence of D. Sturko, Transcript, January 28, 2021, p 101.

87 Evidence of L. Vander Graaf, Transcript, November 12, pp 8–9; Exhibit 181, Vander Graaf #1, paras 11–15.

88 Exhibit 181, Vander Graaf #1, para 13.

89 Evidence of P. Ennis, Transcript, February 3, 2021, pp 70–71.

was some level of connection between cash facilitation and criminality. Two witnesses gave evidence, for example, that an individual identified in media reporting as “China’s Most Wanted” person was known to frequent the Holiday Inn Casino circa 1999, playing at high levels and associating with cash facilitators.<sup>90</sup> Mr. Towns said that, while organized crime was not a significant concern at the beginning of his tenure with BCLC, members of criminal organizations were occasionally identified in BC casinos.<sup>91</sup>

There is also evidence connecting cash facilitation to violence. Ms. Labine gave evidence that cash facilitators engaged in intimidation against players who were in their debt.<sup>92</sup> Mr. Duff, who worked in the Richmond Casino at the same time as Ms. Labine, spoke of one cash facilitator’s reputation for being dangerous and “hanging around with dangerous people.”<sup>93</sup> Mr. Beeksma, who worked in security and surveillance at the Richmond Casino recalled a fight between suspected cash facilitators believed to be connected to a “turf war.”<sup>94</sup>

While much of the information connecting cash facilitation during this era to violence and criminality is anecdotal and/or second-hand, it is corroborated to a degree by contemporaneous documentation that underscores the human cost associated with cash facilitation during this period. One 1998 BCLC report, for example, indicates that the Vancouver Police Department laid charges against four individuals following a “loan sharking and extortion investigation” that concluded that victims unable to repay loans were threatened with violence and forced “to transfer vehicles, household belongings and even take out mortgages to pay the loan sharks.”<sup>95</sup> One of the victims attempted suicide.<sup>96</sup> A second report from the following year documented an attempted assault at the Royal Diamond Casino against a known cash facilitator, in which the alleged perpetrator attempted to strike the cash facilitator with a brick and then attempted to hit both the cash facilitator and casino security staff with his vehicle.<sup>97</sup>

## **The Impact of Cash Facilitation on Casino Workers**

In addition to descriptions of cash facilitation activity at the Richmond Casino, the evidence of Ms. Labine offers insight into the impact of this activity on casino employees confronted with it in their workplace. In the following paragraph drawn from Ms. Labine’s evidence, she describes the fear she felt in response to these events:<sup>98</sup>

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90 Exhibit 87, S. Lee #1, para 14; Evidence of P. Ennis, Transcript, February 3, 2021, pp 131–32.

91 Exhibit 517, Towns Affidavit, para 37.

92 Exhibit 147, Labine #1, para 12–13.

93 Evidence of R. Duff, Transcript, January 25, 2021, pp 16–17.

94 Exhibit 78, Beeksma #1, para 24.

95 Exhibit 503, OR: 1998-2001 BCLC Security Reports, Appendix A, BCLC Security Incident Report bearing file number 98 1157 dated November 27, 1998.

96 Ibid.

97 Ibid, Appendix B, BCLC Security Incident Report bearing file number 99 801 dated June 29, 1999.

98 Exhibit 147, Labine #1, para 13.

By 1998, I was increasingly scared and disturbed by this apparent organized crime activity at our worksite. I was experiencing and observing harassment and intimidation from loan sharks and their associates. In one incident, a senior loan shark called Scarface was deliberately blowing smoke into the face of a casino dealer at a non-smoking table after losing a hand in cards. When I stepped in as a supervisor and asked him to stop, he swore at me and flicked ashes on the carpet. When I called Rick Duff, the floor manager, to deal with the situation, he said, “leave him alone”, “he’s dangerous”, “you don’t want to deal with him.” Rather than asking Scarface to leave, the floor manager removed the non-smoking sign from the table he was sitting at and provided Scarface an ashtray so he could continue gambling.

In his evidence, Mr. Duff indicated that he did not recall the events described by Ms. Labine, though he acknowledged that he was aware of the individual, understood that he was associated with dangerous people, and that he might have changed a non-smoking table to a smoking table to accommodate a patron.<sup>99</sup>

In her evidence, Ms. Labine described her ultimately unsuccessful efforts to convince Great Canadian management to take action to address what she perceived to be a threat to her safety and well-being in her workplace.<sup>100</sup>

Ms. Labine’s discussion of the events that occurred during her tenure at the Richmond Casino is only one of several perspectives on the environment within British Columbia casinos at that time and the response of service providers, BCLC and law enforcement. However, her description of how her work environment and her perception of the response of her employer made her feel is a useful reminder of the impact of living and working in proximity to perceived criminal activity.

## **Other Forms of Suspected Money Laundering Identified in Casinos**

Much of the evidence related to suspicious activity in casinos during this time focused on cash facilitation. There is also evidence, however, of other activity in casinos during this period which appears to be connected to money laundering (albeit at a much smaller scale than seen later). The evidence is not sufficient to allow me to conclude that money laundering had infiltrated British Columbia casinos in any sort of coordinated or systematic manner during this period. It does appear that, in at least some instances, such suspicious activity was documented, and some suspicious transactions were refused.

Some of this activity was described by Ms. Labine in her affidavit. In addition to cash facilitation, Ms. Labine recalled observing the following activities, which she identified as “suspected money laundering activities”:<sup>101</sup>

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<sup>99</sup> Evidence of R. Duff, Transcript, January 25, 2021, pp 14–16.

<sup>100</sup> Exhibit 147, Labine #1, paras 13–19.

<sup>101</sup> Ibid, para 9.

- patrons buying casino chips but not playing or playing minimally;
- patrons arriving at the casino with large amounts of \$20 bills bundled in elastic bands, converting the cash into \$500 and \$1,000 casino chips, but betting only small amounts;
- patrons betting equal amounts on both a player and the banker, ensuring minimal losses but allowing money to be represented as gambling winnings when paid out to the patron; and
- patrons converting small denominations of currency into larger denominations.

The following excerpts from contemporaneous BCLC Security Incident reports also identify suspected money laundering activity not directly connected to cash facilitation.

- March 2000: Royal Diamond Casino<sup>102</sup>

This date, female ... attended at the Royal Diamond Casino and attempted to exchange \$11,600.00 US dollars into Canadian currency. The casino staff were certainly suspicious. She was able to convince the casino manager that she did intend to gamble with the money if exchanged, so they allowed her to exchange \$3,000 US dollars. She then went to the concession area of the casino, had something to eat, and then said she was going to meet a friend at another casino. She left without gambling any of the exchanged money. The \$11,600 US dollars that she produced was comprised of a mixture of large and small bills. Of course she asked to exchange the smaller bills first which they did for her.

There were two unidentified males with her. They tried to look like they were not together but it was obvious that they were. They were not involved in the money exchange and therefore were not identified. Security staff obtained [photos] of all three subjects. When they left security followed them to a vehicle outside and obtained particulars ...

When these subjects left the Royal Diamond, the security staff contacted other [casinos] in this area to alert them. They were informed that the males had been into the Grand Casino, earlier in the day (1300 hrs) to exchange US dollars. They were successful in exchanging a total of \$700.00 US dollars, into Canadian funds. One male got \$300 and the other guy got \$400.

From conversations with Casino staff at the Royal Diamond, it was clear that they were aware that they got “scammed” big time.

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102 Exhibit 503, OR: 1998-2001 BCLC Security Reports, Appendix D, BCLC Security Incident Report bearing file number 00 0563 dated March 22, 2000.

- August 2000: Burnaby Villa Gateway Casino<sup>103</sup>

[I]nformation was received from Security staff at Burnaby Villa Casino. They have identified a group of nine (9) Vietnamese males that have been seen in the Burnaby Casino over the past week or so. They have been playing together as a group and moving about the casino as a group. They have exchanged large amounts of cash, mainly in \$20 bills, at the gaming tables. They gamble a bit but mostly appear to be laundering this money. They are also suspected in some money lending, loan sharking.

- April 2001: Great Canadian Casino – Newton<sup>104</sup>

[A patron] attended Surrey [Great Canadian] and requested to exchange \$5000 US currency, denominations 50 x \$100.

Patron provided proper ID and an LCT was completed. [The patron] advised the cashier ... that he was playing at a table.

The \$5000 US was exchanged for \$7300 Cdn. [The patron] left the cashier, didn't go to a table and left the site.

[The patron] walked and [got] into a silver Honda or Nissan sedan ... There was an Asian female observed possibly associated to [the patron].

After a few minutes, the Asian female attended the [Great Canadian] cashier, seeking to exchange \$5000 US funds. [The cashier] asked the female if she was associated to the male who had just exchanged some US currency – she denied knowing the male.

[The cashier] declined to conduct the exchange and the female departed the casino.

## Law Enforcement Engagement

These examples of suspicious activity and the connections between violence and cash facilitation at British Columbia casinos raise the question of law enforcement's engagement with the gaming industry during this period, which seemed to vary somewhat by jurisdiction. As mentioned in the discussion of an investigation into "loan sharking and extortion" above, the Vancouver Police Department had some level of engagement with issues in Vancouver gaming facilities. Mr. Vander Graaf attributed this, in part, to the existence of a "small but knowledgeable [two]-officer police unit" focused on gaming that worked closely with GAIO.<sup>105</sup> Mr. Vander Graaf believed that

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103 Ibid, Appendix I, BCLC Security Incident Report bearing file number 00 1587 dated August 16, 2000.

104 Ibid, p 193.

105 Exhibit 181, Vander Graaf #1, para 15.

these officers were well aware of cash facilitation issues at Vancouver casinos, but that law enforcement was unlikely to resolve the issue because cash facilitation “was a minor offence with minimal penalties requiring significant investigative resources and because witnesses were typically very reluctant to cooperate in those investigations for fear of reprisals against themselves and/or their families.”<sup>106</sup>

Witnesses who worked in the gaming industry in other municipalities described a different level of engagement by law enforcement. Mr. Beeksma, who worked in security and surveillance in the Richmond Casino, described a very limited law enforcement presence at that facility, consisting of responses to calls for service and occasional walkthroughs.<sup>107</sup> Ms. Labine gave evidence that she observed no overt law enforcement response to cash facilitation during her tenure at the Richmond Casino.<sup>108</sup> Ward Clapham, who served as officer-in-charge of the Richmond RCMP detachment between 2001 and 2008, gave evidence that, while the Richmond RCMP was aware of cash facilitation and minor criminal activity around the Richmond Casino prior to the opening of the River Rock Casino in 2004, the Richmond detachment had not identified significant criminality associated with the casino.<sup>109</sup>

In the late 1990s, it appears that the provincial government identified a need for greater law enforcement engagement in the gaming industry. The Province proposed the creation of a “multi-agency, multi-disciplinary illegal gambling enforcement unit comprised of seconded police and provincial government support personnel” along with a dedicated Crown counsel for gambling enforcement.<sup>110</sup> The mandate of the proposed unit would have been “the enforcement, detection and prevention of illegal gambling and criminal offenses directly relating to destination casino and other legal gaming venues in the Province of British Columbia.”<sup>111</sup> While the proposal for this unit was submitted to Treasury Board, a memorandum dated January 22, 1998, indicates that it was withdrawn due to a “recent Supreme Court ruling,” which is not identified.<sup>112</sup> As I discuss in the chapters that follow, proposals for similarly focused law enforcement units were made repeatedly in the subsequent two decades, but no such unit was established until 2016, nearly 20 years later.

## Enactment of the *Gaming Control Act*

The legal landscape for the gaming industry in British Columbia changed substantially in 2002 with the enactment of the *Gaming Control Act*. Among other changes, the *Gaming Control Act* eliminated a previous patchwork of legislation and proliferation

<sup>106</sup> Exhibit 181, Vander Graaf #1, para 14–15; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 8–9.

<sup>107</sup> Evidence of S. Beeksma, Transcript, October 26, pp 32–33.

<sup>108</sup> Exhibit 147, Labine #1, paras 14, 19; Evidence of M. Labine, Transcript, November 3, 2020, pp 176–77.

<sup>109</sup> Evidence of W. Clapham, Transcript, October 27, 2020, p 130.

<sup>110</sup> Exhibit 77, Overview Report: Integrated Illegal Gaming Enforcement Team [OR: IIGET], Appendix D, October 1997 Treasury Board Submission: Illegal Gambling Enforcement Unit.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

of regulatory authorities, establishing GPEB as a single regulator for the industry. Despite occasional amendments to the *Gaming Control Act* since 2002,<sup>113</sup> the legal, regulatory, and administrative regime established by the Act has largely remained in place in the two decades that have followed its enactment.

## **Rationale for the Enactment of the *Gaming Control Act***

The *Gaming Control Act* was introduced and ultimately enacted in the wake of the 2001 provincial election, which brought a new government to power. According to former Minister Rich Coleman, who was appointed solicitor general and minister responsible for gaming following that election, the *Gaming Control Act* represented the new government's attempt to modernize the gaming industry while honouring a campaign commitment not to further expand gaming in British Columbia.<sup>114</sup>

In introducing the bill on second reading in the Legislature, Mr. Coleman described the rationale for the proposed legislation as follows:<sup>115</sup>

The introduction of the Gaming Control Act is another step in reorganizing gaming in British Columbia to replace what was a dysfunctional operation with a seamless operation without influence by members of this House on licensing and issues to do with gaming so that it's kept at arm's length from government.

Gaming in this province, Mr. Speaker, is conducted under the authority of the Criminal Code of Canada. The Criminal Code allows each province to conduct and manage gaming or to license charitable and religious organizations to conduct and manage some forms of gaming. Until recently gaming in British Columbia has been managed through a number of agencies, commissions, several laws and numerous regulations. Five different agencies had a role in regulating, licensing, inspecting, managing, auditing and operating gaming in this province. They were the gaming policy secretariat, the B.C. Gaming Commission, the gaming audit and investigation office, the B.C. Racing Commission and the B.C. Lottery Corporation.

At present there are four statutes dealing with gaming. They are the Lottery Act, the Lottery Corporation Act, the Horse Racing Act and the Horse Racing Tax Act. In addition, there are numerous policies and directives relative to gaming. One of the things I found out as I moved into the gaming sector as a minister and looked at it was that we had not given the legislative authority for a lot of the work we asked our staff to conduct themselves, particularly in audit and investigation. This act fixes that.

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113 Exhibit 70, Overview Report: *Gaming Control Act* Hansard.

114 Evidence of R. Coleman, Transcript, April 28, 2021, pp 21–27.

115 Exhibit 70, Overview Report: *Gaming Control Act* Hansard, pp 3–6.

In addition to the numerous policies and directives related to gaming, despite all this, several aspects of the gaming industry are not covered by legislation. For example, as I said earlier, the registration, audit and investigatory functions of gaming have been occurring but haven't had the legislative authority to do so. It's very important that we fix that, Mr. Speaker, so that we can move on in a professional manner.

When we took office, we reviewed gaming management structure, and our review identified a great deal of duplication. It identified inefficiencies. It highlighted the need for restructuring, and it highlighted the need for a comprehensive legislative framework. As a result, we announced a new management model for gaming in September of 2001. The five agencies that previously were responsible for gaming were consolidated into two: the gaming policy and enforcement branch and the B.C. Lottery Corporation.

The B.C. Lottery Corporation is responsible for the day-to-day operations of gaming, including commercial bingo halls, a change which I've moved over from the Gaming Commission. The gaming policy and enforcement branch is responsible for enforcement functions and, for now, charitable gaming such as 50-50 draws and meat raffles. The government sets a broad policy within which both of these agencies operate. These changes were made to improve the efficiency of the gaming sector and to reduce the overlap and duplication.

...

Bill 6 provides a comprehensive legislative framework. The bill formalizes the mandate and financial administration considerations of the B.C. Lottery Corporation. The bill confirms the authority of the corporation to conduct and manage lotteries, casinos and commercial bingo halls in B.C.

It establishes a role for the corporation in regard to the future of the horse-racing industry. The bill establishes the framework for the location or relocation of gaming facilities and ensures that those decisions will be made by the B.C. Lottery Corporation, a very key point, because in the past many decisions relative to the relocation or assignments of casinos or bingos and their locations were influenced by members of government, members of executive council or Members of the Legislative Assembly by lobbying.

That is now arm's length from government. That is in the hands of the Lottery Corporation, who have a mandate to manage this sector. It will never again happen after the passage of Bill 6 that the influence of a minister should ever have any influence whatsoever relative to a gaming facility in British Columbia relative to its relocation, its operation or its management.

Bill 6 formalizes the mandate and responsibility of the gaming policy and enforcement branch. The bill supports the branch's responsibility for policy and legislation, standards, regulation, licensing, registration, distribution of gaming proceeds and enforcement of all sectors of gaming.

It provides all the necessary authority for licensing of charitable gaming events and horse racing. It provides the statutory authority for the registration of gaming service providers and gaming workers and those organizations and individuals involved in the industry. It also provides the statutory authority for audits and investigations in response to allegations of wrongdoing and our ability to manage the sector of gaming that we want to go after, after we settle this one down, and that is the illegal gaming in British Columbia.

Bill 6 also provides authorization to provide gaming funds to eligible community organizations. It eliminates duplication and improves accountability. It provides for the fair and transparent administration of gaming.

In his evidence before the Commission, Mr. Coleman described the rationale for the enactment of the *Gaming Control Act* in similar terms. He testified that the legal structure that governed the gaming industry prior to the new legislation was not “totally weak, but it wasn't remarkably strong either.”<sup>116</sup> He said that there was a need for “clear statutory decision-making powers” in the industry and emphasized the importance of ensuring that the management and regulation of the industry was arm's length from political influence:<sup>117</sup>

In gaming control and licensing, it's a statutory authority. So the minister can't tell them what rules to put in place or what they can do. They can work on policy and then bring the legislative changes or regulatory changes to a body like cabinet, but they cannot direct.

It wasn't strong enough, in my opinion, at that time for BC, so we brought a new *Gaming Control Act*. And the *Gaming Control Act* was written on the basis that at no time anywhere at any time would a person in elected office or a staff member of any minister or anybody other than the statutory authority be able to make the decisions on how to proceed in an investigation, a policy going forward or whatever.

Mr. Coleman denied that the new legislation was intended to increase revenue for the provincial government.<sup>118</sup> Similarly, Mr. Sturko, who was involved in developing the new model for regulating gaming, gave evidence that revenue was not a factor in its

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116 Evidence of R. Coleman, Transcript, April 28, 2021, p 23.

117 Ibid, pp 25–26.

118 Ibid, pp 30–31.

development.<sup>119</sup> While revenue-generation may not have motivated the new legislation, Mr. Coleman acknowledged that, following the enactment of the *Gaming Control Act*, the Province began to see increased gaming revenue alongside the redevelopment of gaming facilities, beginning with the River Rock Casino, which opened in 2004.<sup>120</sup>

## Legal and Regulatory Structure of BC's Gaming Industry

The enactment of the *Gaming Control Act* in 2002 was the final piece of the legal, regulatory and administrative structure that would govern the gaming industry for the next two decades, as many of the events of interest to this Commission unfolded. Accordingly, this is an opportune point to describe how gaming in this province has been conducted, managed, and regulated since the *Gaming Control Act* came into force under both federal and provincial legislation.

### ***Criminal Code of Canada***

As described previously, prior to 1969, most forms of gambling were subject to criminal law prohibitions established by the federal government or, prior to Confederation, by the British Parliament or colonial legislatures.<sup>121</sup> While the limited decriminalization of gambling in that year (and further amendments in 1985)<sup>122</sup> enabled the development of a commercial gaming industry in British Columbia and other provinces, federal criminal law has continued to shape the legal and regulatory structure of the gaming industry in this province.

The 1969 and 1985 amendments to the *Criminal Code*, discussed earlier, created exceptions to the prohibitions on gambling but did not repeal those prohibitions entirely.<sup>123</sup> The *Criminal Code's* current gambling provisions are found in Part VII of the *Code*, titled “Disorderly Houses, Gaming and Betting”, and consisting of sections 197–212 of the *Code*. Sections 201–203, 206, and 209 create a series of offences related to gambling, which continue to prohibit activities including, for example, “[k]eeping a gaming or betting house” (s 201) and “[b]etting, pool-selling and bookmaking” (s 202).<sup>124</sup>

While these prohibitions remain in place, section 207 of the *Criminal Code* creates exemptions from these offences, including for lottery schemes conducted and managed or licensed by the government of a province.<sup>125</sup> Section 207(1) permits the conduct and

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119 Exhibit 507, Affidavit #1 Derek Sturko, made on January 18, 2021 [Sturko #1], paras 5, 20, 21.

120 Evidence of R. Coleman, Transcript, April 28, 2021, pp 29–30.

121 Exhibit 67, OR: BC Gaming Regulations, paras 2–14.

122 Ibid, paras 15–25.

123 Ibid, paras 16–19.

124 Ibid, para 27.

125 Ibid, para 29.

management of lottery schemes<sup>126</sup> by a provincial government, providing that, the other provisions of Part VII of the *Criminal Code* notwithstanding, it is lawful:<sup>127</sup>

for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province.

Section 207(1) also permits provincial governments to license others to conduct and manage lottery schemes but sets limits on the types of organizations and entities who may be granted such licences.<sup>128</sup> They include, for example, charitable and religious organizations and the boards of fairs and exhibitions but do not include for-profit businesses such as the gaming service providers that now operate British Columbia casinos under contract with BCLC.<sup>129</sup>

Accordingly, while the 1969 and 1985 *Criminal Code* amendments enabled the development of a legal gaming industry in British Columbia, the nature of those amendments also imposed constraints that have shaped how the industry developed. It was not open to the Province, for example, to adopt a privatized model of gaming with casinos owned and operated by private operators and regulated by government. Unless the Province was prepared to entrust the operation of gaming to charities, fairs, and exhibitions – as it did prior to the reforms of the late 1990s – its only option<sup>130</sup> was to become directly involved in the conduct and management of gaming, including the land-based casinos that were the focus of much of the Commission’s gaming-sector hearings. As one endeavours to understand why British Columbia’s gaming industry evolved as it has, it is important to recognize that the legal, regulatory, and administrative models open to the Province were – and remain – constrained by federal legislation.

## ***Gaming Control Act***

The enactment of the *Gaming Control Act* reorganized British Columbia’s gaming industry and its governing legislation. The Act was intended to replace four pre-existing enactments: the *Horse Racing Act*, RSBC 1996, c 198; the *Horse Racing Tax Act*, RSBC 1996, c 199; the *Lottery Act*, RSBC 1996, c 278; and the *Lottery Corporation Act*, RSBC 1996, c 279.

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126 “Lottery scheme” is defined broadly in s 207(4) of the *Criminal Code* to encompass a wide array of gaming activity going well beyond what might commonly be thought of as a “lottery” and including both land-based casino and online gaming, among other forms: Exhibit 67, OR: BC Gaming Regulations, paras 32–34.

127 Exhibit 67, OR: BC Gaming Regulations, para 29.

128 Ibid, para 30.

129 Ibid.

130 In *Great Canadian Casino C Ltd. v Surrey (City of)* (1999), 53 BCLR (3d) 379, 1998 CanLII 2894 aff’d 1999 BCCA 619, the Supreme Court of British Columbia considered the meaning of “conduct and manage.” The Court’s decision indicates the requirement that provincial governments (or licensees) impose real limits on how gaming may be offered within a province. In particular, the Court held that “[a] key indication of management and control is the fact of which party ... is the ‘operating mind’ of the lottery scheme,” confirming that a province that is not the “operating mind” of a lottery scheme cannot be said to have conduct and management of that lottery scheme: Exhibit 67, OR: BC Gaming Regulations, paras 35–38.

The *Gaming Control Act* also reallocated the responsibilities of five distinct organizations – the Gaming Policy Secretariat, Gaming Audit and Investigation Office, BC Gaming Commission, BC Racing Commission, and BC Lottery Corporation – among two, the Gaming Policy and Enforcement Branch and the BC Lottery Corporation.<sup>131</sup>

The *Gaming Control Act* establishes British Columbia’s model for the conduct, management, and regulation of land-based casino gaming in part by continuing and assigning roles and responsibilities to GPEB and BCLC. These two agencies, along with registered gaming service providers, play central roles in the province’s gaming industry.

## Gaming Policy and Enforcement Branch

Established in 2002, GPEB is continued under section 22 of the *Gaming Control Act*.<sup>132</sup> Section 23 of the Act provides that the Branch is “responsible for the overall integrity of gaming and horse racing.”

### General Manager Role and Responsibilities

GPEB is directed by a general manager, who typically also holds the rank of assistant deputy minister within the British Columbia public service.<sup>133</sup> The powers, duties, and responsibilities of the general manager are governed by the *Gaming Control Act*.<sup>134</sup> Section 27 of the Act identifies some of the responsibilities of the general manager, including but not limited to:<sup>135</sup>

- The general manager is the head of the branch and is responsible, under the direction of the minister and with reference to the responsibility of the branch under section 23, for the enforcement of the *Gaming Control Act* (s 27(1)).
- The general manager must advise the minister on broad policy, standards, and regulatory issues (s 27(2)(a)).
- Under the minister’s direction, the general manager must develop, manage, and maintain the government’s gaming policy (s 27(2)(b)).
- The general manager may establish criteria necessary for considering, reviewing, and evaluating proposals for new or existing gaming facilities (s 27(2)(c)).
- The general manager may establish public interest standards for gaming operations, including but not limited to extension of credit, advertising, types of activities allowed, and policies to address problem gambling at gaming facilities (s 27(2)(d)).

<sup>131</sup> Exhibit 67, OR: BC Gaming Regulations, paras 78–80. These changes did not all happen simultaneously with the enactment of the *Gaming Control Act*. The *Horse Racing Tax Act* was not repealed until 2003, for example.

<sup>132</sup> Exhibit 67, OR: BC Gaming Regulations, paras 80–81.

<sup>133</sup> Ibid, para 84.

<sup>134</sup> Ibid, para 85.

<sup>135</sup> Ibid, paras 85–86.

- The general manager may direct that the branch conduct an investigation respecting the integrity of lottery schemes or horse racing, or the conduct, management, operation, or presentation of lottery schemes or horse racing (s 27(3)(a)).
- The general manager may make inquiries or carry out research into any matter that affects or could reasonably be expected to affect the integrity of gaming or horse racing (s 27(3)(c)).

In addition to these responsibilities, section 28(1) of the *Gaming Control Act* empowers the general manager to issue directives to GPEB and BCLC as to the carrying out of responsibilities under the Act including, but not limited to, directives:

- respecting the extent or type of gaming activities that may be carried on at a gaming facility or in relation to provincial gaming;
- establishing limitations respecting ownership, control, or both, of gaming service providers in general or of classes of gaming service providers;
- respecting types of lottery schemes for which gaming event licences may be issued;
- respecting types of horse racing for which horse racing licences may be issued;
- respecting specified activities in conjunction with lottery schemes or horse racing, in circumstances, or on conditions, that may be set out in the directives;
- respecting standards for security and surveillance
  - at gaming facilities or gaming premises or classes of gaming facilities or gaming premises; or
  - in relation to gaming operations or classes of gaming operations;
- respecting the technical integrity of lottery schemes;
- establishing criteria for the review and evaluation of proposals for new gaming facilities or for the relocation of existing gaming facilities;
- prohibiting or restricting the extension of credit to participants in gaming events and governing the extension of credit;
- approving the formula for determining the amount of gaming revenue that
  - must be returned to charitable, religious, or other organizations in connection with a licensed gaming event; or
  - may be retained by or paid to a gaming service provider in connection with the conduct, management, operation, or presentation of lottery schemes;

- establishing policies to address problem gambling; and
- respecting the method by which the prescribed distance for the purposes of the definition of “potentially affected local government” in section 17.1 must be measured, including rules for determining the terminal points of that distance.

Until 2018, however, the general manager’s authority to direct BCLC was limited. When the *Gaming Control Act* was enacted, section 28(3) of the Act provided that the general manager required the approval of the minister responsible for gaming in order to issue a directive to BCLC.<sup>136</sup> This requirement was repealed in November 2018 and the general manager of GPEB can now issue directives to BCLC without the consent of the responsible minister.<sup>137</sup> This is an important development that I discuss further in Chapter 12 and Chapter 14.

In order to define and differentiate the roles of GPEB and BCLC, the *Gaming Control Act* also prohibits the general manager from taking certain actions. Section 27(4) of the Act provides that the general manager, in carrying out her or his responsibilities under section 27 of the Act, must not:

- conduct, manage, operate, or present gaming or horse races;
- enter into an agreement with Canada or the government of another province with respect to the conduct, management, operation, or presentation of lottery schemes or horse races; or
- enter into an agreement with a gaming service provider.

### **Organization of GPEB**

Mr. Sturko, who was appointed as the first general manager of GPEB in 2002,<sup>138</sup> gave evidence about how the Branch was organized at the time of its inception. Mr. Sturko testified that following its creation, GPEB conducted a functional analysis that involved examination of all of the functions to be conducted or overseen by the Branch.<sup>139</sup> This analysis led to the creation of an organizational structure with the following streams of business:<sup>140</sup>

- policy and legislative work, including responsible gambling and support services;
- licensing and grants;

<sup>136</sup> Ibid, para 87.

<sup>137</sup> Ibid; *Attorney General Statutes Amendment Act, 2018*, SBC 2018, c 49, ss 22–24; Exhibit 541, Affidavit #1 of John Mazure, sworn on February 4, 2021, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

<sup>138</sup> Exhibit 507, Sturko #1, para 21.

<sup>139</sup> Ibid, paras 26–27; Evidence of D. Sturko, Transcript, January 28, 2021, p 102.

<sup>140</sup> Exhibit 507, Sturko #1, para 27; Evidence of D. Sturko, Transcript, January 28, 2021, pp 102–3.

- racing;
- registration and certification;
- audit and compliance; and
- investigations.

The Branch adopted a decentralized decision-making model, particularly for the audit, investigation, and registration divisions, in which the leadership of those divisions were responsible for the actions of the divisions that they led.<sup>141</sup>

Following its creation, GPEB was subject to occasional changes to its organizational structure. In 2008, for example, the Branch undertook a risk-mapping exercise that led to the creation of an internal compliance and risk management division.<sup>142</sup> Other changes to the structure of GPEB, which were made in later years, will be discussed in Chapter 10 and Chapter 12.

### **Registration of Gaming Service Providers and Gaming Workers**

The *Gaming Control Act* also establishes a registration scheme for “gaming services providers”<sup>143</sup> and “gaming workers.”<sup>144</sup> The general manager is required to maintain a register of gaming service providers and workers<sup>145</sup> and the Act prohibits anyone who is not registered from providing “gaming services,”<sup>146</sup> except for BCLC or anyone excluded from the requirement by regulation.<sup>147</sup>

This registration scheme provides GPEB a measure of oversight and control over the companies and individuals who work in the gaming industry in British Columbia.

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141 Ibid, para 28.

142 Exhibit 507, Sturko #1, para 29; Evidence of S. Birge, Transcript, February 3, 2021, pp 4–5.

143 Section 1 of the *Gaming Control Act* defines “gaming services provider” as a person who:

- (a) provides gaming services,
- (b) provides gaming supplies, or services or tests gaming supplies,
- (c) provides or trains gaming workers, or
- (d) provides a facility for gaming,

and includes persons in a class of persons prescribed for the purpose of this definition, but does not include a person in a class of persons excluded from this definition by regulation of the Lieutenant Governor in Council.

144 Section 1 of the *Gaming Control Act* defines “gaming worker” as an individual:

- (a) who is paid to assist in the conduct, management, operation or presentation of a lottery scheme or of horse racing, or
- (b) who is in any class of individuals connected in any capacity with the gaming industry or its regulation and is prescribed for the purpose of this definition,

but does not include an individual in a class of individuals excluded from this definition by regulation.

145 Exhibit 67, OR: BC Gaming Regulations, para 93.

146 The *Gaming Control Act* defines “gaming services” as “services that are required for or comprise any component of the activities of operating or presenting a lottery scheme or horse racing, and includes services in a class of services prescribed for the purpose of this definition, but does not include services in a class of services excluded from this definition by regulation of the Lieutenant Governor in Council.”

147 *Gaming Control Act*, s 94.

Among other requirements, before a gaming service provider or gaming worker can be registered (or before a registration can be renewed), the applicant must submit to a background investigation and the general manager must consider it appropriate to issue or renew the registration, taking into account the information on the application, the report of the background investigation and any other information the general manager considers relevant to the application.<sup>148</sup>

The general manager also has the authority to refuse, suspend, or cancel a registration, and may also issue a warning, impose new conditions or vary conditions on a registration, or impose an administrative fine. The general manager may take any of these actions if an applicant or registrant:<sup>149</sup>

- is considered by the general manager, on reasonable grounds, to be detrimental to the integrity or lawful conduct or management of gaming;
- no longer meets a registration requirement or did not meet a registration requirement at the time of registration;
- has breached or is in breach of
  - a condition of the registration; or
  - a contract with the lottery corporation;
- has made material misrepresentation, omission, or misstatement in the application for the registration or renewal or in reply to an inquiry by a person conducting an audit, inspection, or investigation under the *Gaming Control Act*;
- has been refused a similar registration, licence, or authority in British Columbia or another jurisdiction;
- has held a similar registration, licence, or authority in British Columbia or another jurisdiction and the similar registration, licence, or authority has been suspended or cancelled; or
- has been convicted of an offence, inside or outside British Columbia, that, in the opinion of the general manager, calls into question the honesty or integrity of the applicant.

## **BC Lottery Corporation**

BCLC is a Crown corporation controlled by the Province of British Columbia.<sup>150</sup> The mandate of BCLC is set out in section 7 of the *Gaming Control Act*:

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148 Exhibit 67, OR: BC Gaming Regulations, paras 95, 97.

149 Ibid, paras 99–100.

150 Ibid, para 103.

- (1) The lottery corporation is responsible for the conduct and management of gaming on behalf of the government and, without limiting the generality of the foregoing,
  - (a) may develop, undertake, organize, conduct, manage and operate provincial gaming on behalf of the government, either alone or in conjunction with the government of another province,
  - (b) [Repealed 2010-21-90.]
  - (c) subject to first receiving the written approval of the minister, may enter into agreements, on behalf of the government of British Columbia, with the government of Canada or the governments of other provinces regarding the conduct and management of provincial gaming in British Columbia and in those other provinces,
  - (d) subject to first receiving the written approval of the minister, may enter into the business of supplying any person with operational services, computer software, tickets or any other technology, equipment or supplies related to the conduct of
    - (i) gaming in or out of British Columbia, or
    - (ii) any other business related to gaming,
  - (e) may enter into agreements with persons, other than registered gaming services providers, respecting provincial gaming or any other business related to provincial gaming,
  - (f) subject to subsection (1.1), may enter into agreements with registered gaming services providers for services required in the conduct, management or operation of provincial gaming,
  - (g) may set rules of play for lottery schemes or any class of lottery schemes that the lottery corporation is authorized to conduct, manage or operate,
  - (h) may monitor the operation of provincial gaming and the premises and facilities in which provincial gaming is carried on,
  - (i) must monitor compliance by gaming services providers with this Act, the regulations and the rules of the lottery corporation, and
  - (j) must do other things the minister may require and may do other things the minister may authorize.

Gaming conducted by BCLC includes casino, lottery, bingo, and sports betting through multiple channels of distribution.<sup>151</sup>

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<sup>151</sup> Ibid, para 105.

## Registered Gaming Service Providers

BCLC conducts and manages commercial land-based casino gaming, in part by entering into operational services agreements with private sector gaming service providers. As these gaming service providers must be registered with GPEB in order to provide gaming services, they are accountable to and subject to the oversight of both GPEB, through the conditions of registration, and BCLC, through their obligations under operational services agreements.

The contractual relationship between BCLC and gaming service providers is intended to permit service providers to provide operational services to BCLC, while ensuring that it maintains its mandated role of conducting and managing commercial gaming in the province.<sup>152</sup> The terms of operational services agreements typically include:<sup>153</sup>

- a. Service providers are paid a fee for service under the operational services agreements, equal to certain percentages of the “net win” (as defined in the operational services agreements) from different games. Service providers are also entitled to reimbursement for certain capital investments made to gaming facilities.
- b. Service providers are responsible for the general operation of gaming facilities, including surveillance and security, and are restricted from subcontracting certain activities without the consent of the Lottery Corporation.
- c. Casino employees are employed by the service providers and the real property used for the physical gaming facilities are typically owned or leased by the service providers, however gaming supplies (as defined in the *Gaming Control Act* and including slot machines) are provided and maintained by BCLC.
- d. Service providers are subject to notice and reporting requirements under the operational services agreements and are restricted from completing any significant corporate or partnership changes without BCLC approval. Specifically, shareholder changes for corporate service providers of greater than 5% are restricted and notice is required of any change in directors or officers of a service provider.
- e. Service providers are required to fulfill reporting and data collection functions.
- f. Service providers are restricted from entering into real property leases relating to gaming facilities, financing arrangements, or contracts relating to equipment at gaming facilities without providing notice to BCLC.

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<sup>152</sup> Ibid, para 122.

<sup>153</sup> Ibid.

BCLC issues standards and directions under the *Gaming Control Act* and operational services agreements with which service providers are obligated to comply.<sup>154</sup> BCLC cannot impose penalties on service providers but may seek contractual remedies in the event a service provider fails to satisfy its obligations under an operational services agreement.<sup>155</sup>

There are three gaming service providers that provide operational services at the six largest casinos in British Columbia's Lower Mainland (River Rock Casino Resort, Hard Rock Casino Vancouver, Grand Villa Casino, Starlight Casino, Cascades Casino Langley, and Parq Vancouver).<sup>156</sup> Great Canadian provides operational services at the River Rock Casino Resort and the Hard Rock Casino Vancouver, among other sites. Gateway Casinos and Entertainment Limited provides operational services at the Grand Villa, Starlight, and Cascades Casinos, among other sites. Parq Vancouver ULC, as general partner and on behalf of Parq Vancouver Limited Partnership, provides operational services at the Parq Vancouver casino.<sup>157</sup>

### ***Proceeds of Crime (Money Laundering) and Terrorist Financing Act***

Alongside the *Criminal Code's* function in setting the conditions for legal gaming in the provinces, federal legislation also plays a role in regulating British Columbia's gaming industry through the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*). BCLC, as the entity responsible for the conduct and management of casinos in British Columbia, is responsible for meeting the obligations imposed on casinos by the *PCMLTFA*.<sup>158</sup> These obligations include:<sup>159</sup>

- verifying client identity and conducting ongoing monitoring of business relationships and high-risk clients;
- complying with record-keeping requirements;
- complying with all transaction reporting requirements, including suspicious transaction reports, applicable electronic funds transfers, large cash transaction reports, and casino disbursement reports; and
- maintaining a comprehensive compliance program, which includes the following components:
  - appointment of a person responsible for implementation of the program;

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<sup>154</sup> Ibid, para 124.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid, para 125.

<sup>157</sup> Ibid, paras 126–136.

<sup>158</sup> Ibid, paras 110–111.

<sup>159</sup> Ibid, para 12.

- development and application of written compliance policies and procedures that are kept up to date and approved by a senior officer;
- assessing and documenting the risk of money laundering and terrorist activity financing offences;
- developing and maintaining a written, ongoing compliance training program for employees, agents, and/or mandataries or other persons; and
- instituting and documenting a review of the policies and procedures, the risk assessment, and the training program for the purpose of testing their effectiveness every two years.

While BCLC is ultimately responsible for compliance with reporting requirements for the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), service providers play an important role in identifying reportable transactions and gathering information necessary to complete reports.<sup>160</sup> Because service provider personnel handle transactions with casino patrons and are responsible for monitoring the activities of patrons at gaming facilities, they are responsible for reporting information generated through this monitoring to BCLC or to FINTRAC on behalf of BCLC.<sup>161</sup> The obligations of service providers in this regard include:

- identifying unusual financial transactions through consideration of risk factors and circumstances including the amount of funds involved, patterns of patron play, locations of patron play, time of day of transactions, use of cash, and identity and affiliations of patrons;
- reporting unusual financial transactions to BCLC;
- reporting large cash transaction reports and casino disbursement reports to FINTRAC on behalf of BCLC; and
- collecting patron personal identification information and personal details.

BCLC reviews unusual financial transaction reports submitted by service providers and, upon establishing reasonable grounds to suspect that one or more transactions are related to the commission of a money laundering or terrorist financial offence, prepares and submits suspicious transaction reports to FINTRAC.<sup>162</sup>

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<sup>160</sup> Ibid, para 113.

<sup>161</sup> Ibid, para 113.

<sup>162</sup> Ibid, para 115.

## **Integrated Illegal Gaming Enforcement Team**

In the next chapter, I discuss the continued evolution of British Columbia’s gaming industry following the enactment of the *Gaming Control Act*, including the initial rise of large and suspicious cash transactions beginning in or around 2008. Before doing so, however, I will digress briefly to discuss the formation, operation, and dissolution of a law enforcement unit known as the Integrated Illegal Gaming Enforcement Team (IIGET), which was established in 2003 and disbanded in 2009. This unit is relevant to the Commission’s mandate, but for reasons apparent in the discussion that follows, was largely separated from events occurring in the province’s casinos during its existence. As a result of the connection of this unit to gaming in the province, and its disbandment at a critical juncture, it is necessary to discuss the uncertainty regarding its mandate and the evidence that I heard regarding the unit’s creation, operation, and dissolution.

### **Creation and Structure of IIGET**

#### ***Rationale for Creation of the Unit***

The Commission heard evidence from multiple witnesses involved in the creation of IIGET. While these witnesses held a variety of positions at the time the unit was created and played a range of roles in its inception, those who had an understanding of why the unit was established were unanimous in linking its creation to concerns about illegal gaming outside of the legal gaming industry, particularly those related to the proliferation of illegal video lottery terminals.<sup>163</sup>

Mr. Coleman, who was solicitor general and the minister responsible for gaming at the time that IIGET was established, recalled how he first learned of the idea for the unit and described his understanding of the rationale for its creation:<sup>164</sup>

Well, the IIGET idea came to me through staff within the ministry who had had some success, as I’d said earlier, with the Integrated Homicide Investigation Team. I’m a fan of integration. The idea was as we were doing the casinos and were modernizing and were strengthening over here and we had the statutory authority in another place, there was one piece people were concerned about in and around gaming and that was the illegal activity outside of casinos and outside of the regulated pieces of gaming.

And that really was, for lack of a better description, pointed towards grey machines, which we had around BC in bars and restaurants where we had – we would call them – we called them grey machines but basically

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163 Evidence of R. Coleman, Transcript, April 28, 2021, pp 39–41; Exhibit 507, Sturko #1, para 44; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 24–25; Evidence of T. Robertson, Transcript, November 6, 2020, p 33.

164 Evidence of R. Coleman, Transcript, April 28, 2021, pp 39–40.

slot machines that were illegal. We also had concerns about illegal gaming activity. Illegal gaming activity, things like bookmaking, and also illegal games like poker games and what have you that were being run by – or allegedly run by different gangs in BC.

So the pitch was let's have an Integrated Gaming Enforcement Team, go look at the lower side of the gaming activity that's illegal outside a casino, let's put them in place as a unit and build some expertise there and have them do that job. It was a five-year agreement. Because of the fiscal challenges of government, the Lottery Corporation was asked if they would consider paying for it out of their revenues. It was okay with Treasury Board. That was done.

### ***Memorandum of Understanding***

IIGET was eventually established pursuant to a memorandum of understanding (MOU) entered into by the Ministry of Public Safety and Solicitor General and the RCMP in March 2004.<sup>165</sup> The term of the agreement was five years – from April 1, 2003, to March 31, 2008.<sup>166</sup>

Pursuant to the MOU, the RCMP were to provide a maximum of six RCMP members and one support staff to form the unit, for the fiscal year beginning April 1, 2003.<sup>167</sup> This complement was to increase to 12 members and one support staff in the following fiscal year.<sup>168</sup> The MOU provided that the new unit was to be co-located with the GPEB investigation division and that the Branch would provide office space and “basic administrative support” to the unit at no cost to the RCMP.<sup>169</sup> The financial commitment to the unit made by BCLC was also set out in the MOU, which began with an amount not to exceed \$1.5 million in the first fiscal year, rising to \$1.66 million in the fifth and final year of the agreement.<sup>170</sup> The MOU also set out financial support to be provided by the provincial government's Police Services Division.<sup>171</sup>

### ***Consultative Board***

The MOU provided for the creation of a consultative board with a membership consisting of<sup>172</sup>

- the director of the Police Services Division (chair and full voting member)
- the general manager of GPEB (full voting member)

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<sup>165</sup> Exhibit 77, OR: IIGET, Appendix A, 2003 Integrated Illegal Gaming Enforcement Team Memorandum of Understanding.

<sup>166</sup> Ibid, para 10.1.

<sup>167</sup> Ibid, para 3.2.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid, para 3.3.

<sup>170</sup> Ibid, para 3.6.

<sup>171</sup> Ibid, paras 3.7–3.8.

<sup>172</sup> Ibid, paras 4.1–4.5, Schedule A.

- the commanding officer of “E” Division, RCMP (full-voting member)
- an executive of the British Columbia Association of Chiefs of Police (full voting member)
- the president and CEO of BCLC (limited voting member)<sup>173</sup>

The role of the consultative board was identified in paragraph 4.3 of the MOU:

4.3 The Consultative Board will:

- (a) subject to limitations and caveats as outlined in sections 2.2 and 5.1 of this MOU, determine global objectives, priorities and goals for the IIGET that are not inconsistent with those of the Province or the RCMP;
- (b) determine the form and frequency of reports and reviews concerning the operations of the IIGET;
- (c) after two years of operation arrange an effectiveness review of IIGET;
- (d) determine recommendations to be made to the Solicitor General regarding the continued operation, funding and success of the IIGET; and
- (e) determine such other matters as are for attention of the Consultative Board specified elsewhere in the MOU.

The role of the consultative board, as set out in the MOU, was generally consistent with how the relationship between the consultative board and the unit was described in the evidence before me. Mr. Begg, who, as the Province’s director of police services, served as chair of the consultative board, gave evidence that the board did not manage the unit, but served “as an advisory and to give feedback to IIGET.”<sup>174</sup>

Similarly, Tom Robertson, who served as officer-in-charge of the unit when it first became operational, described reporting to the consultative board quarterly:<sup>175</sup>

[O]n the financial spending of the unit, on the investigations in general of the unit. Not getting into specifics of the active investigations, but giving some details on statistical information on what had occurred on the unit in the past quarter as well as initiatives that we were doing as far as education and that sort of thing.

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173 Ibid, para 4.4: The president and CEO of BCLC was entitled to vote only with respect to “(a) the Consultative Board’s approval of the budgets as contemplated by section 3.9 [of the MOU]; (b) matters relating to the effectiveness review contemplated by section 4.3(c); and (c) the determination of recommendations to be made to the Solicitor General contemplated by section 4.3(d).”

174 Evidence of K. Begg, Transcript, April 21, 2021, p 31.

175 Evidence of T. Robertson, Transcript, November 6, 2020, p 34.

## Mandate of IIGET

The mandate of IIGET is the subject of some conflict in the evidence. While there seems to be a consensus that the rationale for the creation of the unit was to combat illegal gaming outside of legal gaming venues – such as common gaming houses and illegal video lottery terminals – there was contradictory evidence as to whether the unit’s mandate was limited to such activity, or whether it also encompassed illegal activity in legal gaming venues.

Mr. Vander Graaf and Joe Schalk were the executive director and senior director of the GPEB investigation division, respectively, during the period of IIGET’s existence. They, along with Mr. Coleman and Mr. Sturko, gave evidence that illegal activity in legal gaming venues – including money laundering and cash facilitation – was outside of the mandate of IIGET.<sup>176</sup> When asked if matters related to legal casinos fell within the unit’s mandate, Mr. Coleman responded:<sup>177</sup>

It was outside their mandate, but if they came across something that – intelligence ... my hope would be that they would be sharing it with the [Combined Forces Special Enforcement Unit], which was the integrated unit within organized crime, any gang task force we had, any information.

Both Mr. Vander Graaf and Mr. Schalk held firm to the view that illegal activity in legal casinos was outside of IIGET’s mandate.<sup>178</sup> However, both also stressed that, from their perspective as former RCMP officers, there were ultimately no limits on where the members of the unit could focus their investigative efforts.<sup>179</sup> Mr. Vander Graaf offered the following explanation of his understanding of the unit’s mandate:<sup>180</sup>

I can see what the issue would be. Should they – could they go into legal gaming or couldn’t they go into legal gaming, or were they being paid only to stay in illegal gaming by the lottery corporation and not welcome in legalized gaming.

My interpretation of that was – and I was there from the beginning – that they were to address illegal gaming enforcement. That was their mandate. Could they do unlawful activity in legal gaming? Absolutely. If there was roles – there was roles and responsibilities outlined on some document that I’ve seen as to whether BCLC’s role and responsibility and the RCMP’s responsibility. Really you didn’t have to put the RCMP’s

176 Evidence of R. Coleman, Transcript, April 28, 2021, pp 40–41; Exhibit 507, Sturko #1, para 47; Evidence of D. Sturko, Transcript, January 28, 2021, pp 112–13; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 28, 37–39 and Transcript, November 13, pp 36–37; Evidence of J. Schalk, January 22, 2021, pp 124–26.

177 Evidence of R. Coleman, Transcript, April 28, 2021, p 41.

178 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 28, 37–39 and Transcript, November 13, pp 36–37; Evidence of J. Schalk, January 22, 2021, pp 124–26.

179 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 28, 37–39 and Transcript, November 13, pp 36–37; Evidence of J. Schalk, January 22, 2021, pp 123–25.

180 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 38–39.

responsibility there. They could investigate anywhere, any time, any place they wished that you really couldn't say that a police officer can't respond to something if he's called. Although there is a mandate for the illegal gaming endeavour.

Contrary evidence was provided by Mr. Begg, the director of police services throughout the time of IIGET's operation, as well as Tom Robertson and Wayne Holland, both of whom served as officers-in-charge of the unit. Mr. Robertson served in this capacity when the unit became operational in 2004. Mr. Holland did so prior to the unit's disbanding in 2009.

Mr. Begg's evidence was that while the unit was intended to focus on illegal gaming activity outside of legal venues, it was deliberately given a broad mandate that included illegal activity in legal venues to ensure that the unit's members had the latitude required to pursue investigations where they led.<sup>181</sup> Mr. Robertson and Mr. Holland likewise understood that illegal activity in legal gaming venues – including money laundering and cash facilitation – was within the formal mandate of the unit, but neither believed that the unit had the capacity to take on such investigations given the level of resourcing available at the time that each of those individuals led the unit.<sup>182</sup> Mr. Robertson testified that he believed “that there was some agreement that [money laundering investigations in legal casinos] did fall within IIGET's mandate and that IIGET would be responsible for these types of investigations,”<sup>183</sup> though he did not believe that IIGET had the capacity to take on such investigations without outside assistance.<sup>184</sup>

Fred Pinnock, who served as officer-in-charge of IIGET from 2005 to 2007 – between the tenures of Mr. Robertson and Mr. Holland – initially testified that his understanding was that illegal activity in legal gaming venues was not within the mandate of the unit.<sup>185</sup> When presented with a collection of documents related to this issue, however, Mr. Pinnock conceded that he was likely mistaken about the mandate of the unit he led for over two years and that it did include illegal activity in legal gaming venues, including money laundering.<sup>186</sup> Like Mr. Robertson and Mr. Holland, however, Mr. Pinnock maintained, even after conceding his misunderstanding, that it would not have been appropriate for the unit to conduct investigations in legal gaming

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181 Evidence of K. Begg, Transcript, April 21, 2021, pp 26–27.

182 Evidence of T. Robertson, Transcript, November 6, 2020, pp 33, 49, 109–10; Evidence of W. Holland, Transcript, December 2, 2020, pp 104–5.

183 Evidence of T. Robertson, Transcript, November 6, 2020, p 62.

184 Ibid, pp 49, 59.

185 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 58–60.

186 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 60–79; Exhibit 150, Memo from S/Sgt T. Robertson Re Introduction and Mandate of the RCMP's Integrated Illegal Gaming Enforcement Team (November 10, 2004); Exhibit 151, Integrated Illegal Gaming Enforcement Team – Implementation Plan of Operations (June 24, 2004); Exhibit 152, RCMP – Five Year Strategic Projection Provincial Policing – 2004–2009; Exhibit 153, S/Sgt F. Pinnock – IIGET Consultative Board Meeting Minutes (November 26, 2007); Exhibit 154, Integrated Illegal Gaming Enforcement Team RCMP and GPEB Consultative Board Meeting (November 29, 2004); Exhibit 155, RCMP Background (2003–05).

venues.<sup>187</sup> Unlike his predecessor and his successor, however, Mr. Pinnock identified the reasons why it would not have been appropriate for IIGET to conduct such investigations as being direction he had received from his superiors to “get along” with GPEB and that the Branch did not want IIGET to conduct investigations in legal casinos.<sup>188</sup> This issue and the relationship between IIGET and GPEB generally will be addressed in detail later in this chapter.

In order to resolve the conflict over the mandate of IIGET, it is necessary to distinguish between the unit’s formal mandate and what I will refer to as its “effective mandate.”

### ***Formal Mandate of IIGET***

Based on all of the evidence before me, I am satisfied that the formal mandate of IIGET included the investigation of illegal activity, including money laundering, in legal gaming venues. The witnesses most likely to have an intimate knowledge of the unit’s mandate, and therefore best positioned to speak to it, are those who were responsible for leading the unit – Mr. Robertson, Mr. Pinnock, and Mr. Holland – as well as Mr. Begg, who was directly involved in the efforts to establish the unit. Of these four witnesses, three clearly and unequivocally identified the unit’s mandate as including illegal activity in legal venues. The fourth, Mr. Pinnock, ultimately conceded that this was the case when taken to documentation that contradicted his previous understanding.

The documents that persuaded Mr. Pinnock that the unit’s mandate was broader than he previously understood are quite clear in setting out that the unit’s formal mandate did include investigation of illegal activity in legal casinos, including money laundering.<sup>189</sup> One such document is an RCMP “Implementation Plan” dated June 24, 2004, and prepared by Sergeant Bruce Hulan, a former officer-in-charge of the unit. Asked to explain the purpose of this document, Mr. Robertson advised that “[i]t lays out the reasons for the creation of the unit.”<sup>190</sup> Under the heading “Responsibilities” the implementation plan includes the following passage:<sup>191</sup>

Investigators with the IIGET unit are responsible, as with all members of the RCMP, with enforcement of all aspects of the Criminal Code. The specific mandate of the unit is the enforcement of Part VII of the Criminal

<sup>187</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, pp 78–79, 137–38.

<sup>188</sup> *Ibid.*, pp 74–81, 86–88, 105, 138.

<sup>189</sup> *Ibid.*, pp 60–79; Exhibit 150, Memo from S/Sgt T. Robertson Re Introduction and Mandate of the RCMP’s Integrated Illegal Gaming Enforcement Team (November 10, 2004); Exhibit 151, Integrated Illegal Gaming Enforcement Team – Implementation Plan of Operations (June 24, 2004); Exhibit 152, RCMP – Five Year Strategic Projection Provincial Policing – 2004–2009; Exhibit 153, S/Sgt F. Pinnock – IIGET Consultative Board Meeting Minutes (November 26, 2007); Exhibit 154, Integrated Illegal Gaming Enforcement Team RCMP and GPEB Consultative Board Meeting (November 29, 2004); Exhibit 155, RCMP Background (2003–05).

<sup>190</sup> Evidence of T. Robertson, Transcript, November 6, 2020, pp 38–39.

<sup>191</sup> Exhibit 151, Integrated Illegal Gaming Enforcement Team – Implementation Plan of Operations (June 2004), p 10.

Code as it relates to Illegal Gaming. *IIGET members will investigate unlawful activity in legal venues, such as loan sharking, threatening, intimidation and money laundering.* Investigating illegal gambling in common gaming houses where among other things poker games or video gambling machines are being played. [Emphasis added].

Commission exhibits 150,<sup>192</sup> 152,<sup>193</sup> 153,<sup>194</sup> 154,<sup>195</sup> and 155<sup>196</sup> provide further support for this finding. Each of these exhibits is a document created at or around the time that IIGET was established. While these exhibits are not all as directly germane to this issue as the passage reproduced above, each includes language that supports the view held by Mr. Robertson, Mr. Holland, and Mr. Begg that the investigation of illegal activity in legal venues, including money laundering, fell within the unit’s formal mandate. I was presented with no evidence of any documentation that would support the contrary view.

The witnesses that held this contrary view – Mr. Coleman, Mr. Vander Graaf, Mr. Schalk, and Mr. Sturko – were certainly well positioned to be knowledgeable about the purpose and, to some extent, activities of IIGET. However, each held positions likely to leave them somewhat removed from detailed knowledge of the technicalities of the unit’s mandate. It seems plausible to me that their evidence regarding the unit’s mandate may have been based on their understanding of the primary purpose for which the unit was created rather than knowledge of its formal mandate. While I do not doubt that their evidence was a genuine reflection of their understanding of the mandate of IIGET, for the reasons outlined above, I find that they were mistaken.

### ***Effective Mandate of IIGET***

The conclusion above regarding IIGET’s “formal mandate,” however, does not completely resolve the question of the mandate of the unit. Based on the evidence before me, it is necessary to consider whether the formal mandate identified above accurately reflects what was expected of the unit. This question of the unit’s “effective mandate” is important, as it may result in different conclusions regarding the significance of the creation, and eventual disbanding, of the unit and whether those charged with leading the unit effectively discharged their responsibilities.

There are numerous indications that the unit’s effective mandate may have differed from its formal mandate. First, as discussed above, Mr. Coleman, who was the minister responsible for gaming, advised that the rationale for the creation of the unit was to combat a perceived problem with illegal gambling outside of legal casinos, such as illegal video lottery terminals and common gaming houses.<sup>197</sup>

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192 Exhibit 150, Memo from S/Sgt T Robertson Re Introduction and Mandate of the RCMP’s Integrated Illegal Gaming Enforcement Team (November 10, 2004).

193 Exhibit 152, RCMP – Five Year Strategic Projection Provincial Policing – 2004–2009.

194 Exhibit 153, S/Sgt F. Pinnock – IIGET Consultative Board Meeting Minutes (November 26, 2007).

195 Exhibit 154, Integrated Illegal Gaming Enforcement Team RCMP and GPEB Consultative Board Meeting (November 29, 2004).

196 Exhibit 155, RCMP Background (2003–05).

197 Evidence of R. Coleman, Transcript, April 28, 2021, pp 39–41.

Secondly, Mr. Begg provided a compelling explanation for why the formal mandate of IIGET included illegal activity in legal gaming venues if that was not the unit's intended purpose. Mr. Begg's evidence was that illegal activity in legal venues was included in the unit's formal mandate to ensure that the unit could follow an investigation wherever it may lead, including into the realm of legal gaming.<sup>198</sup> Mr. Begg agreed that the intention at the time the unit was created was that the unit's focus would be on illegal gaming taking place outside of legal casinos.<sup>199</sup>

Thirdly, there is evidence that the IIGET consultative board provided direction to the unit to focus on illegal gaming outside of legal venues. Multiple witnesses indicated that there were three levels of investigative targets within the unit's mandate:<sup>200</sup>

- low-level – i.e., illegal lotteries, illegal bingos, illegal raffles;<sup>201</sup>
- mid-level – i.e., common gaming houses, video lottery terminals, pyramid schemes, animal fighting;<sup>202</sup> and
- high-level – i.e., loan sharking, money laundering, illegal online gaming, bookmaking, distribution of video lottery terminals.<sup>203</sup>

Mr. Begg, who chaired the consultative board, gave evidence that the board directed Mr. Pinnock to focus on “mid-level” targets.<sup>204</sup> Mr. Pinnock's evidence and materials from a 2007 consultative board meeting corroborate this direction.<sup>205</sup> Mr. Holland gave evidence that this direction remained in place when he took command of the unit and that he agreed with the direction.<sup>206</sup>

Finally, both Mr. Robertson and Mr. Holland gave evidence that they did not believe that IIGET had the resources to effectively investigate money laundering and cash facilitation in legal gaming venues and as such, both directed the unit to focus on mid-level illegal gaming investigations.<sup>207</sup> While the absence of resources adequate to

198 Evidence of K. Begg, Transcript, April 21, 2021, pp 26–27.

199 Ibid.

200 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 57–58; Evidence of K. Begg, Transcript, April 21, 2021, pp 32–33; Evidence of W. Holland, Transcript, December 2, 2020, pp 107–08, 111–12; Evidence of D. Sturko, January 28, 2021, pp 117–18; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 34–35.

201 Evidence of F. Pinnock, Transcript, November 5, 2020, p 58 and Transcript, November 6, 2020, pp 5–8; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 34–35.

202 Evidence of F. Pinnock, Transcript, November 5, 2020, p 58 and Transcript, November 6, 2020, pp 5–8; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 34–35.

203 Evidence of F. Pinnock, Transcript, November 5, 2020, p 58 and Transcript, November 6, 2020, pp 5–8; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 34–35; Evidence of W. Holland, Transcript, December 2, 2020, pp 108–9, 112.

204 Evidence of K. Begg, Transcript, April 21, 2021, pp 32–33.

205 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 57–58; Exhibit 315, IIGET Status Report – IIGET Consultative Board Meeting (July 25, 2007).

206 Evidence of W. Holland, Transcript, December 2, 2020, pp 109–10.

207 Evidence of W. Holland, Transcript, December 2, 2020, pp 109–10, 113–114; Evidence of T. Robertson, Transcript, November 6, pp 35, 46–48, 109–10.

investigate money laundering and cash facilitation is not determinative of whether the unit was intended to address those matters, the decision of two officers-in-charge of the unit to respond to that lack of resourcing by focusing the unit's attention elsewhere suggests that neither viewed illegal activity in legal venues as central to the unit's purpose.

Based on this evidence, I find that, the effective mandate of IIGET notwithstanding, the unit's formal mandate, was focused on mid-level illegal gaming investigations outside of legal gaming venues. The unit, as constituted, was never intended as a response to money laundering and cash facilitation in legal casinos, nor was it equipped to effectively address those issues.

Below I discuss requests by officers-in-charge of the unit for additional resources. Given its formal mandate, which did include the investigation of money laundering, had the unit's resources been increased as requested and had it not been disbanded, it is possible this unit could have played a role in identifying and disrupting the emerging money laundering problem that grew significantly following its disbandment. I do not suggest this would have been a complete answer to the problem, but as a unit created to work closely with GPEB, if sufficiently resourced, IIGET would have been well placed in the years following its disbandment to support GPEB in investigating suspicious cash and to use its full police powers to fulfill some of the investigative functions the Branch felt were beyond its capability. It was not until 2016 with the creation of the Joint Illegal Gaming Investigation Team that there was another gaming-focused investigative unit in the province.

## **Relationship Between IIGET and the GPEB Investigation Division**

As indicated above, the MOU establishing IIGET provided that GPEB would furnish office space and administrative support for the unit at no cost to the RCMP.<sup>208</sup> Based on the evidence before me, however, it appears that that relationship between these two units was intended to be much deeper than the sharing of space and administrative support.

The intention at the time that IIGET was created was that it would work closely with the GPEB investigation division in what Mr. Vander Graaf described as a “full-time partnership.”<sup>209</sup> Mr. Robertson offered a similar, but more detailed description of how the relationship between the two units was intended to function. Mr. Robertson's understanding was that the two units were intended to be co-located in four locations around the province, share information about illegal gaming as well as information arising from legal gaming environments and lend personnel to one another to assist in investigations as needed.<sup>210</sup>

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208 Exhibit 77, OR: IIGET, Appendix A, 2003 Integrated Illegal Gaming Enforcement Team Memorandum of Understanding, para 3.3.

209 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 25–26; see also Exhibit 181, Vander Graaf, para 95.

210 Evidence of T. Robertson, Transcript, November 6, pp 51–52; see also Evidence of K. Begg, Transcript, April 21, 2021, p 27.

While Mr. Robertson's evidence was that this relationship functioned as intended and offered benefits during his tenure as officer-in-charge of IIGET,<sup>211</sup> it is evident that the partnership did not continue as expected. Leadership from both units testified to the practical challenges in the relationship between the units. Mr. Vander Graaf gave evidence of his belief that joint initiatives involving members of both units became impossible due to differences in the powers, capabilities, and resourcing of the two units. According to Mr. Vander Graaf, GPEB investigators, for example, could not conduct surveillance or undercover investigations, could not manage informants, did not have the arrest powers of their counterparts in IIGET and were expected to use their own vehicles in conducting their work.<sup>212</sup> Mr. Pinnock attributed the inability of the two units to work together in part to differences in the nature of the investigations they undertook, with GPEB focused on "low-level" targets and IIGET on "mid-level" targets (and, as will be discussed further below, during Mr. Pinnock's tenure, a single high-level target).<sup>213</sup> Mr. Vander Graaf and Mr. Schalk both also pointed to staffing levels and priorities as impediments to the partnership as envisioned, as neither unit seemed to have sufficient personnel to regularly contribute to initiatives led by the other.<sup>214</sup> As a result of these challenges, both Mr. Vander Graaf and Mr. Pinnock described the functional relationship between the two units as "coordinated" rather than the "full partnership" originally envisioned.<sup>215</sup>

Alongside these practical challenges, there is some evidence before me of interpersonal conflict between the leadership of the two units. This evidence differed among the witnesses as to the nature, extent and impact of this conflict. Neither Mr. Robertson nor Mr. Holland identified any difficulties in the relationship between IIGET and the GPEB investigation division,<sup>216</sup> though Mr. Holland agreed that there was minimal coordination between the units during his tenure, as the investigations undertaken by IIGET during the time that he led the unit were not of the sort that would offer opportunities for joint investigations.<sup>217</sup> To the extent that interpersonal conflict between the leadership of the two units impeded the ability of IIGET and the GPEB investigation division to work together, it appears that it took place during Mr. Pinnock's tenure.

While Mr. Schalk, Mr. Vander Graaf and Mr. Pinnock all acknowledged some level of conflict, their evidence differed significantly as to its degree, source, and impact. Mr. Pinnock's evidence was that the relationship between the two units was unhealthy

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211 Evidence of T. Robertson, Transcript, November 6, pp 52-53.

212 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 25-26; Exhibit 181, Vander Graaf #1, para 95.

213 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 57-58, 80-82, 108-9.

214 Evidence of J. Schalk, Transcript, January 22, 2021, pp 126-28; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 26-28, 33-34.

215 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 25-26; Evidence of F. Pinnock, Transcript, November 5, 2020, p 80.

216 Evidence of W. Holland, Transcript, December 2, 2020, pp 114-15; Evidence of T. Robertson, Transcript, November 6, 2020, pp 52-53.

217 Evidence of W. Holland, Transcript, December 2, 2020, pp 114-16.

from the time that he took command of IIGET.<sup>218</sup> He identified the source of that conflict as disagreement as to the mandate of IIGET, as well as some level of “interpersonal hostility” between himself and Mr. Schalk.<sup>219</sup> As an example of this disagreement over the unit’s mandate, Mr. Pinnock cited an incident in which he asked a GPEB investigator about issues at Hastings Racecourse, which upset Mr. Schalk and prompted him to accuse Mr. Pinnock of “trying to build an empire.”<sup>220</sup> While Mr. Pinnock acknowledged that his relationship with Mr. Schalk did improve over time, he also attributed his decision to move IIGET out of GPEB’s Burnaby office to these tensions.<sup>221</sup>

Mr. Schalk and Mr. Vander Graaf both agreed that there was some level of personality conflict between Mr. Schalk and Mr. Pinnock but did not recall significant tensions between the two units.<sup>222</sup> Neither believed that the conflict between Mr. Schalk and Mr. Pinnock had an impact on the ability of IIGET or the GPEB investigation division to do their jobs.<sup>223</sup> Neither Mr. Vander Graaf nor Mr. Schalk believed that disagreements over whether IIGET’s mandate included illegal activity in legal gaming facilities were a major source of conflict with Mr. Pinnock.<sup>224</sup> Rather, both identified Mr. Pinnock’s decision to focus on a high-level illegal online gaming target as a source of disagreement between Mr. Pinnock and themselves.<sup>225</sup> In their evidence, both Mr. Vander Graaf and Mr. Schalk agreed that whether or not illegal activity in legal venues fell within IIGET’s mandate, as police officers, the members of that unit had the right, in the words of Mr. Vander Graaf, to “investigate anywhere, any time, any place they wished.”<sup>226</sup> Mr. Schalk denied accusing Mr. Pinnock of trying to build an empire – or of any knowledge of Mr. Pinnock’s request for information about the Hastings Racecourse<sup>227</sup> and testified that Mr. Pinnock’s assertion that the relocation of his unit was caused by conflict with Mr. Schalk was contrary to his understanding of the reasons for the move.<sup>228</sup>

The state of the personal relationship between Mr. Schalk and Mr. Pinnock is not itself of any particular significance to the mandate of this Commission. However, it is

218 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 135–36 and Transcript, November 6, 2020, p 10.

219 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 59–60, 79, 86–87, 135–37 and Transcript, November 6, 2020, pp 10–11.

220 Evidence of F. Pinnock, Transcript, November 5, 2020, p 59.

221 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 77, 82–84 and Transcript, November 6, 2020, pp 10–13; Exhibit 156, Memo from NCO IIGET “E” Division Re Status Report – Integrated Illegal Gaming Enforcement Team (March 14, 2007).

222 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 41–45; Evidence of J. Schalk, Transcript, January 22, 2021, pp 128–35.

223 Evidence of J. Schalk, Transcript, January 22, 2021, pp 133–35; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 44–45.

224 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 37–39; Evidence of J. Schalk, Transcript, January 22, 2021, pp 129–31.

225 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 37–39; Evidence of J. Schalk, Transcript, January 22, 2021, pp 129–31.

226 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 27–28, 37–39 and Transcript, November 13, pp 36–37; Evidence of J. Schalk, January 22, 2021, pp 123–25, 129–31.

227 Evidence of J. Schalk, Transcript, January 22, 2021, pp 128–30.

228 Ibid, pp 131–33.

deserving of comment in this report because it was relied on by Mr. Pinnock as one of two reasons why IIGET did not conduct investigations of illegal activity – including cash facilitation and money laundering – in legal gaming venues during his tenure as officer-in-charge of the unit. As discussed above, Mr. Pinnock initially relied on his understanding that such investigations were not within the mandate of the unit.<sup>229</sup> When presented with documentation suggesting the opposite,<sup>230</sup> however, Mr. Pinnock’s evidence was that the unit could not have conducted such investigations in any event because he had been directed by his management to “get along” with GPEB, which, he said, did not want his unit active in legal gaming venues.<sup>231</sup> Accordingly, on Mr. Pinnock’s version of events, the conflict between himself and the leadership of the GPEB investigation division (coupled with the direction to “get along” with his counterparts in the Branch) contributed to an absence of law enforcement engagement in the issues of money laundering and cash facilitation in legal casinos during the period that IIGET was active.

Despite Mr. Pinnock’s assertion to the contrary, I am convinced that, while there was certainly some degree of conflict between the leadership of these units, this conflict was not the cause of IIGET’s absence from legal gaming venues.

There are several factors that cause me to decline to accept Mr. Pinnock’s evidence in this regard. First, Mr. Pinnock’s evidence is lacking in internal coherence. As indicated above, Mr. Pinnock’s initial evidence was that IIGET’s mandate precluded the unit from conducting investigations in legal gaming establishments. It was only when Mr. Pinnock was presented with documentation to the contrary that he identified the tensions with the GPEB investigation division as a second rationale for failing to direct his unit to conduct such investigations. Mr. Pinnock offered no explanation for how conflict with the investigation division could have contributed to his unit’s absence from legal gaming venues if it was always his understanding that such venues were outside of the unit’s mandate in any event.

Secondly, Mr. Pinnock’s explanation that IIGET’s mandate was the source of any conflict with Mr. Schalk and Mr. Vander Graaf lacks credibility. Mr. Pinnock’s view that such investigations were outside of his unit’s mandate was shared by Mr. Vander Graaf and Mr. Schalk. As such it seems highly unlikely that this perspective would have led to tensions between these individuals, as there was simply no difference of opinion over which they could have disagreed. Further, even if there was a disagreement regarding the unit’s mandate, it seems unlikely to have led to a conflict of the sort described by Mr. Pinnock, given the perspective shared by Mr. Vander Graaf and Mr. Schalk, both

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<sup>229</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, pp 58–60.

<sup>230</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, pp 60–79; Exhibit 150, Memo from S/Sgt T. Robertson Re Introduction and Mandate of the RCMP’s Integrated Illegal Gaming Enforcement Team (November 10, 2004); Exhibit 151, Integrated Illegal Gaming Enforcement Team – Implementation Plan of Operations (June 24, 2004); Exhibit 152, RCMP – Five Year Strategic Projection Provincial Policing – 2004–2009; Exhibit 153, S/Sgt F. Pinnock – IIGET Consultative Board Meeting Minutes (November 26, 2007); Exhibit 154, Integrated Illegal Gaming Enforcement Team RCMP and GPEB Consultative Board Meeting (November 29, 2004; Exhibit 155, RCMP Background (2003–05).

<sup>231</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, pp 74–81, 86–88, 105, 138.

former RCMP officers, that police officers have the freedom to conduct investigations where and when they saw fit, regardless of the formal mandates of their units. In this regard, it is noteworthy that Mr. Pinnock's predecessor and successor both understood that IIGET's mandate *did* include illegal activity in legal venues. Despite the evidence that the unit conducted an operation in a legal venue during Mr. Robertson's tenure and that this operation prompted Mr. Vander Graaf to share his view that this was not within the unit's mandate,<sup>232</sup> both Mr. Robertson and Mr. Holland gave evidence of a healthy relationship with the GPEB investigation division.

I find that the explanation for these tensions offered by Mr. Schalk and Mr. Vander Graaf – that they arose from concerns about Mr. Pinnock's decision to focus on a high-level online gaming investigation and from interpersonal difficulties between Mr. Pinnock and Mr. Schalk – to be much more plausible. I am also satisfied that any such conflict was not a significant contributing cause of IIGET's absence from legal gaming venues.

## **Operations and Performance of IIGET**

### ***Initial Operations of IIGET***

Despite challenges in bringing the envisioned partnership between IIGET and the GPEB investigation division to fruition, IIGET seemed to show promise in fulfilling its effective mandate when it commenced operations. Under Mr. Robertson, the members of the unit undertook a two-week training course in Ontario and the unit became operational in the fall of 2004.<sup>233</sup>

Mr. Robertson gave evidence that he made the decision to initially focus the unit's attention on minor investigations of illegal video lottery terminals and common gaming houses because of the limited illegal gaming experience among the members of the unit and the Crown prosecutors that would be prosecuting any charges arising from the unit's investigations.<sup>234</sup> Mr. Robertson's rationale for this focus was that these minor investigations would offer valuable learning experiences, while ensuring that investigative or prosecutorial errors would not leave the unit with nothing to show for months of investigative effort dedicated to a single large investigation.<sup>235</sup> Mr. Robertson also gave evidence of an interest in ensuring that the unit could be responsive to requests for assistance from local detachments and an understanding that the consultative board was interested in seeing concrete results from the unit.<sup>236</sup>

The evidence suggests that Mr. Robertson's approach proved fruitful, and the unit successfully investigated a number of illegal gaming operations – including common

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232 Exhibit 165, Email from Donald Smith, Re IIGET File 05-661 Loansharking Investigation – February 2005; Evidence of T. Robertson, Transcript, November 6, 2020, pp 55–60.

233 Evidence of T. Robertson, Transcript, November 6, 2020, pp 31–32.

234 Ibid, pp 45–48, 79–80.

235 Ibid, pp 46–48.

236 Ibid.

gaming houses – during his tenure.<sup>237</sup> Mr. Robertson also gave evidence that the unit was actively investigating a number of targets at the time he left IIGET for another position after approximately a year with the unit.<sup>238</sup> Mr. Begg similarly recalled the unit's promising start, including warnings, charges, and active investigations of low and mid-level illegal gaming targets.<sup>239</sup>

### **High-Level Online Gaming Investigation**

In a shift that would come to feature prominently in the eventual dissolution of IIGET, the unit's focus changed significantly after Mr. Pinnock succeeded Mr. Robertson as officer-in-charge.<sup>240</sup> Mr. Pinnock's evidence was that, after he took command of the unit, it conducted a few illegal gaming investigations of the sort the unit had focused on under Mr. Robertson, but that, early in his tenure, Mr. Pinnock made the decision to take on a single high-level investigation into an internet gaming operation.<sup>241</sup> This investigation would come to consume most of the unit's resources, hampering its ability to focus on other targets to the point where the unit failed to make any arrests or successfully recommend charges over the span of approximately one year.<sup>242</sup> Despite this concentration of the unit's resources, the investigation failed to yield results and was eventually transferred to an American law enforcement agency.<sup>243</sup>

The lack of success of this endeavour should not have come as a surprise to Mr. Pinnock. Mr. Robertson gave evidence that Mr. Pinnock raised with him the prospect of IIGET taking on this high-level online gaming investigation when they met around the time that Mr. Pinnock took command of the unit. Mr. Robertson's evidence was that he advised Mr. Pinnock that the unit lacked the resources to undertake that investigation and that doing so would not be consistent with the guidance provided by the consultative board.<sup>244</sup> Mr. Vander Graaf and Mr. Begg both gave similar evidence that the decision to undertake this investigation was contrary to the direction of the consultative board, with Mr. Begg indicating that Mr. Pinnock made the decision without informing the consultative board and that the board ultimately requested that the unit refocus its efforts on mid-level

<sup>237</sup> Ibid, pp 31, 79.

<sup>238</sup> Ibid.

<sup>239</sup> Evidence of K. Begg, Transcript, April 21, 2021, pp 32–33.

<sup>240</sup> Evidence of T. Robertson, Transcript, November 6, 2020, p 66.

<sup>241</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, pp 57, 94–95, 108–110; Exhibit 162, Overview of the Report on the Integrated Illegal Gaming Enforcement Team (IIGET) Effectiveness Review by Catherine Tait (March 31, 2009).

<sup>242</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, pp 57, 94–95, 108–110; Evidence of W. Holland, Transcript, December 2, 2020, p 108; Evidence of K. Begg, Transcript, April 21, 2021, pp 32–33; Exhibit 162, Overview of the Report on the Integrated Illegal Gaming Enforcement Team (IIGET) Effectiveness Review by Catherine Tait (March 31, 2009); Exhibit 77, OR: IIGET, Appendix C: Effectiveness Review of the Integrated Illegal Gaming Enforcement Team (confidential draft report, November 26, 2007), p 23.

<sup>243</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, pp 108–10; Evidence of W. Holland, Transcript, December 2, 2020, p 108; Exhibit 162, Overview of the Report on the Integrated Illegal Gaming Enforcement Team (IIGET) Effectiveness Review by Catherine Tait (March 31, 2009); Evidence of K. Begg, Transcript, April 21, 2021, pp 32–33.

<sup>244</sup> Evidence of T. Robertson, Transcript, November 6, 2020, p 66–67.

illegal gaming investigations.<sup>245</sup> Mr. Schalk also gave evidence that he advised Mr. Pinnock against pursuing the investigation.<sup>246</sup> Mr. Pinnock acknowledged that he “disregard[ed] the direction of the consultative board” in deciding to focus on the online gaming investigation, but that he “felt it was necessary to make that [his] priority for a certain period of time.”<sup>247</sup>

### ***Return to Focus on Mid-Level Illegal Gaming Investigations***

In 2007, Mr. Pinnock was succeeded as officer-in-charge of IIGET by Mr. Holland.<sup>248</sup> Mr. Holland gave evidence that provided insight into the impact of the singular focus on the online gaming investigation. He testified that when he took command of the unit, there was a backlog of 400 files that had not been addressed while the unit was focused on the online gaming investigation.<sup>249</sup> Mr. Holland’s evidence was that the direction of the consultative board at that time – with which Mr. Holland agreed – was to refocus the unit’s priorities toward mid-level targets.<sup>250</sup>

Under Mr. Holland, the unit’s priorities were to clear the backlog of 400 files, which was eventually achieved,<sup>251</sup> produce a threat assessment and work toward implementation of the recommendations of an effectiveness review of the unit prepared by consultant Catherine Tait, discussed later in this chapter.<sup>252</sup>

### ***IIGET Threat Assessment***

Based in part on experience gained in previous roles, Mr. Holland identified early on in his tenure with IIGET that a threat assessment would assist in setting a future course for the unit.<sup>253</sup> Mr. Holland described the nature and purpose of the threat assessment as follows:<sup>254</sup>

A threat assessment is the – it involves all partners. All municipal police departments, all the RCMP departments nationwide and as of 2003 it was determined by the RCMP with the support of municipal chiefs across the land that there would be an annual provincial threat assessment which would be put together with the ten other bureaus and be produced and developed into a national threat assessment that showed the scope and extent of criminal – organized criminal and serious crime across the nation. That’s because criminals travel, enterprises are often international in scope.

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245 Evidence of K. Begg, Transcript, April 21, 2021, pp 32–33; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 41–43.

246 Evidence of J. Schalk, Transcript, January 22, 2021, pp 129–30.

247 Evidence of F. Pinnock, Transcript, November 5, 2020, p 57.

248 Evidence of W. Holland, Transcript, December 2, 2020, pp 97–98.

249 Ibid, pp 107–12, 177.

250 Ibid, p 109.

251 Ibid, p 177.

252 Ibid, pp 109–12, 116, 121.

253 Ibid, pp 109, 119–20, 132–35.

254 Ibid, pp 133–35.

So our threat assessment would have been simply that a data collection plan instrument in writing, electronic, would have been sent out to every police agency and criminal intelligence service throughout the RCMP and the municipal police agencies. They would collect information over a certain period. In this case it would be 2005 to 2008. They would send in their submissions to [the RCMP “E” Division Criminal Analysis Section], who would produce the provincial threat assessment annually.

Our end of things would be to accumulate all information relating to illegal gaming, putting it into a document that would go into the provincial report and then subsequently into the national report. It really dealt with any individual or group who was engaged in illegal activity. And let’s call illegal gaming a commodity. That commodity would be broken down into various activities, everything from book-making to pyramid schemes to common gaming houses, internet gaming, video game machine distributions, et cetera, in possession, illegal raffles. All those things would have gone in and a professional analyst would have put that into a succinct report and a proper report.

... It’s getting all your information and putting it through an analytical process, coming up with hard confirmed facts as opposed to speculation.

The completed threat assessment seemed to confirm that there were significant ongoing issues with illegal gaming in the province that would have fallen within IIGET’s “effective mandate.”<sup>255</sup> It identified, for example, that in the time period covered by the assessment, there were 284 reports of illegal gaming in the province, often involving common gaming houses and illegal video gaming machines,<sup>256</sup> but also including animal fighting,<sup>257</sup> illegal bookmaking,<sup>258</sup> and pyramid schemes.<sup>259</sup>

Of particular relevance to the mandate of this Commission, the threat assessment also identified concerns related to “loan sharking” and money laundering, including activity connected to legal gaming facilities.<sup>260</sup> The report described concerns about “loan sharking” in the province as follows:<sup>261</sup>

As mentioned in the Executive Summary, our research identified forty-seven individuals who were involved in suspected loan sharking activities. This number includes “runners”, who act as a go-between the client and the actual loan shark. Anecdotally, some loan sharks are possessive of

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255 Exhibit 77, OR: IIGET, Appendix Y, Extent and Scope of Illegal Gaming in British Columbia 2005 to 2008 (2009).

256 Ibid, pp 14, 20.

257 Ibid, pp 10–11.

258 Ibid, pp 11–13.

259 Ibid, p 19.

260 Ibid, pp 29–36.

261 Ibid, p 29.

their “clients” and don’t like another loan shark to deal with them. They can also be involved in associated criminal activities such as money laundering and extortion.

...

There are several PRIME files about loan sharks threatening their “clients” in order to get them to pay back money. However, as explained in the Executive Summary, victims of crimes associated to illegal gaming are often reluctant to call the police unless they feel they are in significant danger. Anecdotal information suggests that victims will sometimes contact the police as a way of buying more time with the loan shark.

The report continues on to identify individuals believed to be responsible for several “loan sharking rings,” including those identified as active at legal Lower Mainland gaming venues.<sup>262</sup>

With respect to money laundering, the threat assessment focuses on the contents of a 2008 report prepared by the Criminal Analysis Branch of the RCMP Criminal Intelligence Directorate titled “Project Streak – Money Laundering in Casinos: A Canadian Perspective.”<sup>263</sup> The threat assessment’s summary of the conclusions of this report included the following:<sup>264</sup>

In June the 2008 RCM Police Criminal Intelligence Directorate, Criminal Analysis Branch produced a comprehensive report called Project Streak – Money Laundering in Casinos: A Canadian Perspective. The purpose of this report was to determine the vulnerability of Canadian casinos to money laundering and illicit organized crime activities. This document was very informative and had many points relative to the British Columbian situation. Particular points of interest were:

- Canadian casinos are extremely vulnerable to money laundering because they deal in cash and handle tens of millions of dollars every day.
- Organized crime is present in casinos at several levels. Members of organized crime regularly visit Canadian casinos to gamble. Many investigations have shown that members of organized crime also use casinos for criminal purposes (e.g. loan sharking and money laundering) and that some of these criminal elements have successfully infiltrated the industry.

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262 Ibid, pp 29–31.

263 Ibid p 32; see also Exhibit 77, OR: IIGET Appendix X, Strategic Intelligence Assessment – Project Streak Money Laundering in Casinos: A Canadian Perspective (December 2007).

264 Exhibit 77, OR: IIGET, Appendix Y, Extent and Scope of Illegal Gaming in British Columbia 2005 to 2008 (2009), pp 32–33.

- Since 2003, FINTRAC (Financial Transactions and Reports Analysis Centre of Canada) has sent several disclosure reports to the RCMP on suspicious transactions involving casinos throughout Canada, with amounts totaling over \$40 million. Anecdotally, police managers have suggested that because of other priorities and a lack of resources, at this time, nothing is being done to investigate these situations.

The threat assessment detailed a number of reports regarding suspicious transactions or potential money laundering in British Columbia casinos.<sup>265</sup>

Mr. Holland spoke of his reaction to the conclusions of the threat assessment with respect to cash facilitation and money laundering in legal casinos and his views of their significance:<sup>266</sup>

It was persuasive. I forget the number. It might've been – it was certainly more than a few loan sharks that were identified just in a short time period of our data collection plan. It certainly confirmed, thanks to the excellent efforts of specialized RCMP sections, that money laundering was [occurring] and had been investigated and had been confirmed in written detail. And frankly the contents I can't speak of here, but certainly one has only to turn to open source media over the past years to be aware – made aware of the volume of currency that was being allegedly laundered through legal casinos.

Not to blame anyone, but it was occurring. And frankly I'd seen a lot and heard a lot. As a police officer, I was absolutely amazed, as I'm sure the general public was subsequently when it came out, of the extent of this illegal activity. Our colleagues in GPEB had been telling for all my tenure there, it's just now it was confirmed it was solid evidence to move forward.

The implications of these conclusions for the future of IIGET will be addressed below. It is worth pausing at this point however, to note that as of the date of the threat assessment, January 5, 2009, it is evident that, at least within the RCMP, concerns were being raised about suspicious transactions in British Columbia casinos and connections drawn between cash facilitation in casinos and money laundering. Further, it is significant that, even at this time, the threat assessment identified an absence of any meaningful response from law enforcement due to competing priorities and a lack of resources.

### ***IIGET Effectiveness Review***

The third priority identified by Mr. Holland was the implementation of IIGET Effectiveness Review, completed in 2007 by Catherine Tait Consulting.<sup>267</sup>

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265 Ibid, pp 34–36.

266 Evidence of W. Holland, Transcript, December 2, 2020, pp 136–37.

267 Ibid, pp 110, 112, 116, 121; Exhibit 77, OR: IIGET, Appendix C, Effectiveness Review of the Integrated Illegal Gaming Enforcement Team (2007).

The purpose of this review, which was required by the MOU that established IIGET,<sup>268</sup> was to “[provide] an assessment of the extent to which IIGET has achieved its objectives to date, as well as recommendations to improve the operation and performance of IIGET.”<sup>269</sup> The report produced at the conclusion of the review provided an assessment of the unit’s objectives in the areas of “education and partnerships,”<sup>270</sup> “intelligence,”<sup>271</sup> and “enforcement.”<sup>272</sup>

The fourth chapter of the effectiveness review, titled “Achievement of Objectives” concludes on a relatively positive note, commenting on the unit’s successes as follows:<sup>273</sup>

In terms of its stated objectives, IIGET has had some successes. The educational efforts of the early period did result in an increase in reports of illegal gaming activity, indicating increased awareness, likely among law enforcement agencies and non-profit organizations. In 2005 and 2007, take downs conducted by IIGET have shut down several mid-level illegal gaming operations. Hundreds of organisations operating illegal lotteries have been warned that their activity must be licensed.

In addition to the results of the program, staff report that they feel well supported and have the equipment and training that they need to do their work. Almost everyone in GPEB has worked for the RCMP in the past and they feel comfortable with, and understand the RCMP working environment of their colleagues. Staff on both the GPEB and the RCMP side report that the two components get along well and there is a good atmosphere of open communication and co-operation between themselves. While the division of responsibilities between GPEB and the RCMP staff has evolved over time, most staff have a clear understanding of, and accept, their respective roles.

While this section of Ms. Tait’s report does not focus on the impact of the high-level illegal online gaming investigation initiated under Mr. Pinnock’s leadership, the following section of that report speaks to the challenges this investigation posed for the unit.<sup>274</sup> Mr. Tait noted that a shift toward high-level targets had been raised with, but not endorsed by, the consultative board in April 2006. However, she observed that by the time of the next consultative board meeting in December 2006, the unit had been working on the high-level online gaming investigation “for almost a year to the near exclusion of mid-level investigations” prompting the board to direct the unit to refocus its efforts on mid-level targets.<sup>275</sup>

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268 Exhibit 77, OR: IIGET, Appendix A, Integrated Illegal Gaming Enforcement Team Memorandum of Understanding (2003), para 4.3(c).

269 Ibid, Appendix C, Effectiveness Review of the Integrated Illegal Gaming Enforcement Team (2007), p 2.

270 Ibid, pp 12–15.

271 Ibid, pp 15–19.

272 Ibid, pp 20–27.

273 Ibid, p 27.

274 Ibid, pp 28–31.

275 Ibid, p 29.

In her report, Ms. Tait noted that there appeared to be a consensus among those who participated in the review that, at then-current levels of resourcing, IIGET would not be able to successfully target both mid- and high-level targets.<sup>276</sup> Ms. Tait recommended that the consultative board be provided with additional information regarding resourcing levels for the unit, including through the development of a business case (discussed in more detail later in this chapter), to assist in determining whether resourcing for the unit should be increased, and if not, whether the unit should focus on mid-level or high-level targets.<sup>277</sup> In the interim, Ms. Tait recommended that the MOU establishing the unit be extended for one year, during which the unit would continue to focus on mid-level investigations.<sup>278</sup>

Significantly, while Ms. Tait declined to make a recommendation as to whether the unit should have been expanded, the report clearly advised against disbanding the unit entirely:<sup>279</sup>

Based on the information compiled for this review, a decision to discontinue IIGET at this point does not seem appropriate. Such a decision would likely see enforcement by GPEB staff continue (as they are not funded through the IIGET MOU), but an end to the RCMP investigation of mid-level and (potentially) high level targets. There is a backlog of outstanding cases, largely at the mid-level of investigation, an area where IIGET has demonstrated its ability to succeed. In addition, it appears that no other police agency is likely to fill the void left by the RCMP component if IIGET were to disband. Mid-level targets could, in theory, be taken on by local police departments and detachments as was done prior to the establishment of IIGET. Most staff feel however, that local police lack the time and specialised knowledge to undertake these types of investigations. IIGET now has trained and experienced staff who have demonstrated their ability to handle mid level targets.

To the extent that organised crime is involved in high level illegal gaming, it is possible that the [Combined Forces Special Enforcement Unit] may target some of the same individuals that IIGET would target in high level investigations. However, the focus of that unit is on particular organisations and individuals rather than on a particular type of activity such as illegal gaming. E-Division RCMP have indicated that it is very unlikely that CFSEU would take on major illegal gaming investigations as such.

In addition to this suggestion that the unit not be disbanded, the report also included recommendations in other areas including staff turnover and vacancies; integration and coordination with GPEB; the addition of municipal police department members on

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276 Ibid, pp 29–30.

277 Ibid, p 31.

278 Ibid.

279 Ibid, p 95.

secondment to the unit; data collection and analysis; First Nations gaming; the role of the BCLC in funding the unit; and the operation of the consultative board.<sup>280</sup>

In accordance with the recommendations made as part of the effectiveness review, Mr. Holland sought a one-year extension of IIGET on January 15, 2008.<sup>281</sup> The extension was granted.<sup>282</sup>

## **Proposals to Reform IIGET**

Over the course of the tenures of Mr. Pinnock and Mr. Holland as officers-in-charge of IIGET, the two officers prepared three proposals to expand the size and/or mandate of the unit.<sup>283</sup> Two of these – one to expand the size of the unit and one to form a “Provincial Casino Enforcement / Intelligence Unit” – were prepared in 2007 during Mr. Pinnock’s tenure as officer-in-charge of the unit.<sup>284</sup> The third was prepared in 2008 during Mr. Holland’s tenure.<sup>285</sup>

### ***June 27, 2007: Business Case for the Formation of a Provincial Casino Enforcement / Intelligence Unit***

The first business case prepared by Mr. Pinnock was dated June 27, 2007 and titled “Business Case for the Formation of a Provincial Casino Enforcement / Intelligence Unit.”<sup>286</sup>

While this business case was developed before the threat assessment discussed above, Mr. Pinnock seems to anticipate the conclusions of that threat assessment regarding the absence of a meaningful law enforcement presence in legal gaming venues to combat what Mr. Pinnock presents as a “significant organized crime presence” in casinos:<sup>287</sup>

Legal gaming venues within British Columbia exist primarily in the form of licensed casinos and horse racing tracks. There is a significant organized crime presence already firmly entrenched within several of these venues. This is manifested in many forms, specifically loansharking, money laundering, counterfeiting, drug trafficking, institutional corruption and frequent acts of violence and intimidation. A major part of the problem lies in the fact that there is little, if any, enforcement effort being initiated

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280 Ibid, pp 32–38

281 Exhibit 77, OR: IIGET, para 52; Appendix T, Request for Renewal of the Memorandum of Understanding

282 Ibid, para 55.

283 Ibid, paras 32–37, 41–43, 50–51.

284 Ibid, paras 32–37, 41–43; Appendix O, Business Case for the Expansion of Integrated Illegal Gaming Enforcement Team; Appendix Q, Business Case for the Formation of a Provincial Casino Enforcement / Intelligence Unit; Evidence of F. Pinnock, Transcript, November 5, 2020, pp 95–99, 102–3.

285 Exhibit 77, OR: IIGET, paras 50–51; Appendix S, “Building Capacity”: Expansion of the Integrated Illegal Gaming Enforcement Team (IIGET).

286 Ibid, Appendix Q, Business Case for the Formation of a Provincial Casino Enforcement / Intelligence Unit.

287 Ibid, para 41; Appendix Q, Business Case for the Formation of a Provincial Casino Enforcement / Intelligence Unit.

by the police at these locations. Police agencies of jurisdiction do respond to calls for service at these locations. These agencies do not, however, operate at resource and training levels which are sufficient to target the criminal element which thrives in these environments.

Mr. Pinnock explained the basis for these beliefs during his oral testimony. He explained that, based on briefings he received during his tenure with IIGET, he formed the view that “the offences of money laundering and loan sharking were escalating in frequency, particularly in the River Rock Casino, but to a lesser extent in other big ones.”<sup>288</sup> While Mr. Pinnock did not receive information about suspicious cash in casinos from GPEB during this time period, he indicated that he learned from “police officers within [his] circle that they had heard rumblings that things were getting out of hand in those environments.”<sup>289</sup>

In this business case, Mr. Pinnock recommends that the mandate of IIGET be expanded to include legal venues or that, alternatively, a separate unit focused on legal casinos, but reporting to the officer-in-charge of IIGET, be established.<sup>290</sup>

IIGET does not currently possess the mandate to target criminal activity within legal gaming venues. It would seem appropriate to broaden the mandate to permit this to happen or, alternatively, to create a casino/racetrack unit to report to [the non-commissioned officer-in-charge of] IIGET under [the officer-in-charge of the] Major Crime Section (outside of the IIGET structure). As the majority of targets operate freely between legal and illegal gaming environments, it would be unwise to create an artificial firewall between separate units. For optimal effectiveness, constant communication must be fostered under one central command. IIGET with a broadened mandate is the recommended vehicle to ensure this occurs.

Mr. Pinnock’s recollection was that this proposal was forwarded to his superiors within the RCMP, but he was unsure if it was provided to the consultative board.<sup>291</sup> Based on the evidence of Mr. Begg, who had no recollection of receiving this business case, or of it being reviewed by the consultative board,<sup>292</sup> it does not seem that it was provided to the board or the provincial government.

While it does not seem that this business case advanced beyond the RCMP hierarchy, there is evidence to suggest that it received some level of support among Mr. Pinnock’s superiors and colleagues. An email written by Mr. Pinnock indicated that his preparation of the business case had been approved by his superior, Dick Bent, and that Mr. Clapham

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288 Evidence of F. Pinnock, Transcript, November 5, 2020, p 90.

289 Ibid, pp 92–93; Exhibit 77, OR: IIGET, Appendix Q, Business Case for the Formation of a Provincial Casino Enforcement / Intelligence Unit.

290 Ibid, para 42.

291 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 97–98, 132–33.

292 Evidence of K. Begg, Transcript, April 21, 2021, pp 37–38.

supported the creation of the unit proposed by Mr. Pinnock. It also indicated that, were any gaming-focused resources for the Richmond detachment to be approved by the City of Richmond, Mr. Clapham was prepared to dedicate those resources to Mr. Pinnock's unit.<sup>293</sup>

### ***July 20, 2007: Business Case for the Expansion of IIGET***

The second business case prepared by Mr. Pinnock was dated July 20, 2007, and titled "Business Case for the Expansion of Integrated Illegal Gaming Investigation Team (IIGET)."<sup>294</sup>

In this document, Mr. Pinnock recognizes that the unit was not adequately resourced to target both mid- and high-level targets:<sup>295</sup>

Operationally, the IIGET Consultative Board has received consistent reporting from a succession of unit commanders. This integrated unit, while founded upon the three tenets of enforcement, intelligence and education, is expected to deliver measurable enforcement results impacting low, medium and high level targets. At current resource levels, IIGET is capable of addressing two of these, while unable to target at the high level. It is unlikely that high level gaming targets will be among those selected for targeting by CFSEU or any other similarly mandated unit. As a result, it naturally falls to IIGET to target at this level. At current resource levels, however, IIGET is positioned to target at the medium *or* high enforcement levels, but not both. [Emphasis in original.]

Mr. Pinnock recommended that 12 staff members be added to the unit's existing complement of 13, resulting in an expanded unit structured as follows:<sup>296</sup>

- one unit commander – staff sergeant
- Team A: one sergeant / one corporal / four constables
- Team B: one sergeant / one corporal / four constables
- one criminal intelligence analyst
- two clerical staff
- three outlying district offices, each comprised of: one corporal / two constables

According to Mr. Pinnock, this business case was forwarded to and received consideration from the RCMP "E" Division senior leadership. Mr. Pinnock's recollection

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293 Exhibit 100, Email from Ward Clapham to Mahon and Pinnock Re: River Rock Casino – A Policing Response; Evidence of W. Clapham, Transcript, October 27, 2020, pp 156–60.

294 Exhibit 77, OR: IIGET, Appendix O, Business Case for the Expansion of Integrated Illegal Gaming Enforcement Team.

295 Ibid, para 34; Appendix O, Business Case for the Expansion of Integrated Illegal Gaming Enforcement Team.

296 Ibid, para 35; Appendix O, Business Case for the Expansion of Integrated Illegal Gaming Enforcement Team.

is that it was returned with suggested revisions and, while it was not implemented during his tenure, it was also not formally rejected.<sup>297</sup>

Mr. Begg recalled that this business case was reviewed by the IIGET consultative board, but that the consultative board did not respond to the business case, as the effectiveness review was then ongoing and no action could be taken on the business case until the results of the review were known.<sup>298</sup> Mr. Begg also testified that it would not have been the role of the consultative board to determine whether to implement the changes proposed in the business case, which would have required Treasury Board approval if additional funding was needed.<sup>299</sup> In this instance, the business case was not forwarded to the Treasury Board, nor was it provided to then Solicitor General John Les.<sup>300</sup>

### ***December 19, 2007: “Building Capacity” Business Case***

At the end of 2007, early in Mr. Holland’s tenure as officer-in-charge of IIGET, he, along with Acting Staff Sergeant Andrew Martin, prepared a third business case, also proposing the expansion of the unit. This business case was prepared with the benefit of the results of the effectiveness review and was prepared in response to Ms. Tait’s identification of the need for additional information to permit consideration of whether the unit should be expanded.<sup>301</sup> It is clear from this business case that Mr. Holland, at least, believed the expansion of the unit to be justified.

Like Mr. Pinnock’s second business case, Mr. Holland’s sought a significant increase in the size of IIGET in order to fulfill its existing mandate:<sup>302</sup>

It is proposed that there be a doubling of IIGET’s existing authorized strength, which currently consists of twelve (12) regular RCMP members, one (1) temporary civilian employee and one (1) public service employee.

Specifically, the proposal stipulates the need for additional police officers of varying ranks as well as additional administrative support and a full-time person who is capable of conducting strategic as well as tactical analysis. The additional resources will be allocated within the existing satellite IIGET offices in Victoria, Kelowna, Prince George and Burnaby.

The resources are required in order to address a significant backlog of files that remain in the “still under investigation” status due to a lack of investigative, analytical and clerical personnel.

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297 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 97–98.

298 Evidence of K. Begg, Transcript, April 21, 2021, pp 34–37.

299 Ibid.

300 Ibid.

301 Exhibit 77, OR: IIGET, Appendix S, “Building Capacity”: Expansion of the Integrated Illegal Gaming Enforcement Team (IIGET), p 1; Evidence of W. Holland, Transcript, December 2, 2020, p 122.

302 Exhibit 77, OR: IIGET, Appendix S, “Building Capacity”: Expansion of the Integrated Illegal Gaming Enforcement Team (IIGET), p 1.

The IIGET budget for fiscal 2007-2008 is projected to \$2,013,295. The cost for a doubling of establishment, provided in detail within the “budget” component of this document, will be an additional \$2,372,105 annually, exclusive of any and all start up and/or infrastructure costs in fiscal 2008-2009.

An annual budget of \$4,210,600 will therefore be required.

Unlike Mr. Pinnock, Mr. Holland did not propose changes to IIGET’s mandate. As indicated above, however, Mr. Holland understood that the unit’s mandate already encompassed illegal activity in legal gaming venues, including “loan sharking” and money laundering. Mr. Holland made clear in his oral evidence that, had this business case been implemented and the unit expanded as proposed, he believed that IIGET would have been able to dedicate investigative resources to investigating “loan sharking” and money laundering in legal gaming venues.<sup>303</sup>

In addition to recommending the expansion of the unit, Mr. Holland’s business case also recognized the disbanding of IIGET as an option. Like Ms. Tait, Mr. Holland described the likely outcomes of that option in unfavourable terms:<sup>304</sup>

*Option #1 – The Consultative Board could collapse and disband IIGET*

Should such an eventuality occur:

- Illegal gaming enforcement would be the responsibility of each municipal jurisdiction.
- The likelihood of effective and collaborative integrated intelligence and enforcement action would be diminished.
- There are presently no other trained, competent police personnel to fill the void left should IIGET cease to exist.
- Mid and high level targets would conduct their illicit operations with impunity, given the fact that GPEB is prohibited by virtue of their provincial special constable status to take full enforcement action against them.

Mr. Holland explained in his evidence that, in this final bullet point, the “high level targets” and “their illicit operations” that would operate with “impunity” if the unit was disbanded included “loan-sharking” and money laundering.<sup>305</sup> Despite these warnings, the multiple proposals from the officers-in-charge of the unit for its expansion, and the threat assessment prepared under Mr. Holland’s leadership, IIGET was disbanded in 2009, within 16 months of the date of Mr. Holland’s proposal. The events leading to the dissolution of the unit are described below.

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303 Evidence of W. Holland, Transcript, December 2, 2020, pp 129–31.

304 Exhibit 77, OR: IIGET, Appendix S, “Building Capacity”: Expansion of the Integrated Illegal Gaming Enforcement Team (IIGET), p 10.

305 Evidence of W. Holland, Transcript, December 2, 2020, pp 125–26.

## Disbanding of IIGET

Mr. Holland gave evidence that he understood the consultative board was supportive of the “Building Capacity” business case and that he received indications that there was support for expansion of IIGET.<sup>306</sup> These indications included the commencement of renovations to the unit’s office and a decision to permit the unit to retain all of its members during the 2010 Vancouver Winter Olympics, a time of extensive redeployment of law enforcement personnel to focus on the security of the Games.<sup>307</sup>

From Mr. Holland’s perspective, the first indication that the unit’s existence was in jeopardy came during a consultative board meeting in December 2008. Mr. Holland recalled that, at this meeting, Mr. Begg indicated that the unit may be disbanded.<sup>308</sup> In response, Mr. Holland asked for confirmation that Mr. Coleman, then the minister responsible for gaming, was aware that the disbanding of the unit was under consideration. Mr. Begg confirmed this.<sup>309</sup>

In his evidence, Mr. Begg provided additional insight into what took place during this period that was beyond Mr. Holland’s visibility. Mr. Begg confirmed that he had received Mr. Holland’s business case.<sup>310</sup> While Mr. Begg did not purport to speak for all members of the consultative board and said that the members of the board were individually responsible for briefing the ministers to whom they reported, he confirmed that he was not in favour of disbanding the unit and that the consultative board did not issue a recommendation to that effect.<sup>311</sup>

Mr. Begg’s evidence was that, following receipt of Mr. Holland’s business case, Mr. Begg’s office prepared a proposal, consistent with the business case, for consideration by the Treasury Board.<sup>312</sup> This was one of two proposals related to the unit forwarded to the Treasury Board at that time. The second proposal was to shift the source of funding for the unit – at existing levels – from BCLC to government.<sup>313</sup> This second proposal was necessitated by a recommendation in the Tait report that BCLC should not continue to fund the unit, and a decision by BCLC that, consistent with that recommendation, it would not continue to provide funding.<sup>314</sup>

After submitting the two proposals, Mr. Begg learned that both had been rejected by the Treasury Board, jeopardizing not only the expansion of IIGET, but also the unit’s continued existence.<sup>315</sup> Mr. Begg told me that, upon learning of this decision,

306 Ibid, pp 142–48.

307 Ibid, pp 143–47.

308 Evidence of W. Holland, Transcript, December 2, 2020, pp 148–51; Exhibit 316, IIGET Consultative Board Meeting Agenda (December 16, 2008).

309 Evidence of W. Holland, Transcript, December 2, 2020, pp 150–53.

310 Evidence of K. Begg, Transcript, April 21, 2021, pp 41–42.

311 Ibid, p 48.

312 Ibid, pp 43–44.

313 Ibid.

314 Ibid, pp 44–45, 63–66.

315 Ibid, pp 44–45.

he approached Mr. Sturko, then general manager of GPEB, and asked that he contact Mr. Coleman to see if he would intervene with the Treasury Board or BCLC in order to secure funding to ensure the unit could continue to operate.<sup>316</sup> Mr. Begg testified that four days later, Mr. Coleman contacted him, expressed concern about IIGET's performance, and indicated that Mr. Begg should advise the RCMP that funding would expire at the conclusion of the extension of the MOU that had been granted following the completion of Ms. Tait's review.<sup>317</sup> Mr. Begg then contacted Solicitor General John van Dongen, but Mr. van Dongen viewed the matter as principally a gaming issue and deferred to Mr. Coleman, the minister responsible for gaming.<sup>318</sup>

While Mr. Coleman's recollection of the events that led to the decision to disband the unit differed somewhat, the rationale he offered for the decision was consistent with Mr. Begg's. Mr. Coleman explained the decision in his evidence as follows:<sup>319</sup>

IIGET unfortunately never did get to be that functional. It wasn't that successful. It was – it had trouble with focus on what its files were. And it was a five-year pilot project funded in a relationship with the BC Lottery Corporation.

So its five years was coming up, and there were varying basic summaries and things that I read about its inefficiencies, the fact that we couldn't keep a full complement of officers in the particular operation and those things that led me to have some pretty significant concerns about it. And in light of that, when I met with these folks we had a roundtable discussion about the future of IIGET, one of them being whether it would continue or not.

At the same time a recommendation had been to go in and get money from general revenue for the budget for this no longer to be funded by BC Lotteries.

...

My information is the Treasury Board analyst was not going to recommend the continued funding of IIGET. So that coupled with the rest of that led me to the – to thinking to have this discussion and say look, given the fact that we've made one of the largest investments in policing in decades, I can't justify an operation that is effectively not very operational and not being successful and I think the gap can be picked up by this investment in the other police officers and in the Crown prosecutors. And so the decision was made that we wouldn't continue funding IIGET.

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316 Ibid, pp 45–47.

317 Ibid.

318 Ibid, p 47.

319 Evidence of R. Coleman, Transcript, April 28, 2021, pp 101–2.

Mr. Coleman recalled the decision to disband IIGET being made in a meeting involving Mr. Coleman's deputy minister, Lori Wanamaker, Mr. Sturko, and Mr. Begg.<sup>320</sup> Mr. Coleman had no recollection of Mr. Begg advocating for the continuation of the unit and did not recall receiving any recommendation to that effect from the consultative board.<sup>321</sup>

Given the time that has passed since these events transpired, it is unsurprising that there are some differences in the recollections of the witnesses as to the details of the events leading to the decision to disband IIGET. Between the versions of events offered by Mr. Begg and Mr. Coleman, I prefer the evidence of Mr. Begg. Mr. Coleman's evidence regarding a meeting between himself, Mr. Begg, Mr. Sturko, and Ms. Wanamaker is contradicted not only by the evidence of Mr. Begg, but also by that of Ms. Wanamaker. Ms. Wanamaker gave evidence that she joined the Ministry of Public Safety and Solicitor General in 2010, more than a year after the decision to disband the unit was made and had no role in gaming prior to that time.<sup>322</sup> It does seem likely that Mr. Coleman would have met with Mr. Sturko at that time, given Mr. Sturko's role and Mr. Begg's evidence that members of the consultative board were responsible for briefing the ministers to whom they reported. While Mr. Sturko did not give detailed evidence about the events leading to the decision to disband the unit, he did testify that he supported the decision and recommended that the unit be disbanded.<sup>323</sup> He also said that he understood that "[t]he consultative board was not satisfied with what IIGET had accomplished or the level of staff turnover within IIGET."<sup>324</sup>

Accordingly, while Mr. Coleman may have been mistaken about who he met with in advance of the decision to disband the unit, I find his explanation for the decision to disband the unit credible and consistent with the evidence of other witnesses. Mr. Coleman likely was advised that the unit was ineffective, had difficulties with staffing, and had lost the support of the consultative board. While this may not have reflected Mr. Begg's views, it seems to be consistent with those of Mr. Sturko, who would have had primary responsibility for advising Mr. Coleman on such matters.

## **Impact of the Decision to Disband IIGET**

As the dissolution of IIGET occurred relatively early in the growth of large and suspicious cash transactions and significant money laundering in several Lower Mainland casinos, it is logical to query whether this decision contributed to the proliferation of money laundering in these casinos in the years that followed and whether a different decision could have had a preventive effect. Some have gone so far as to query whether the decision to disband the unit amounted to a deliberate attempt by government to avoid law enforcement scrutiny of illegal activity in legal

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320 Ibid, p 100.

321 Ibid, pp 104–6.

322 Evidence of L. Wanamaker, April 22, 2021, pp 2, 4–5.

323 Exhibit 507, Sturko #1, para 60–61; Evidence of D. Sturko, Transcript, January 28, 2021, pp 129–30.

324 Exhibit 507, Sturko #1, para 60–61; Evidence of D. Sturko, Transcript, January 28, 2021, pp 129–30.

gaming venues. I will begin by answering this latter question in the negative. I have been presented with no evidence to support this theory. On the contrary, the evidence before me supports a conclusion that the decision to disband the unit, while not uncontroversial (at the time and now), was motivated by concerns about the unit's performance. I accept that Mr. Coleman concluded that the unit should be disbanded because it was ineffective, a view shared by Mr. Sturko. Even Mr. Begg, who sought to save the unit, had concerns about its effectiveness.<sup>325</sup>

While Mr. Holland had begun an impressive reversal of the unit's ineffectiveness, Mr. Coleman's assessment of the unit's past performance was sound.

The question of whether the decision to disband the unit ultimately had an impact on the growth of money laundering in British Columbia casinos is more nuanced. While there may be reason to question whether the decision to disband the unit was the right one – and many of the witnesses who gave evidence on the subject did question that<sup>326</sup> – I see no basis to conclude that if the unit had continued as constituted it would have had any meaningful impact on money laundering in legal gaming venues. As discussed above, while the unit's formal mandate included illegal activity in legal venues, it is clear that this was not the unit's primary function, nor was it activity that the unit was targeting at the time. Throughout its entire existence, the only instance of the unit targeting potential illegal activity connected with suspicious cash in a legal casino was a single cash seizure carried out during Mr. Robertson's tenure as officer-in-charge of the unit. There were also legitimate concerns about the unit's vacancy rates, turnover, and historic ineffectiveness that cause me to further doubt that continuing the unit as it was would have had any meaningful impact on money laundering in legal casinos.

What is not so easy to dismiss as irrelevant to the growth of money laundering in legal casinos was failure on the part of the RCMP to respond to the mounting body of evidence raising concerns about "loan sharking" and money laundering in legal casinos. There were multiple sources who had identified high-level targets, including money laundering, in legal casinos, as an enforcement gap.

Mr. Pinnock and Mr. Holland both proposed an expansion of IIGET in order to play a larger role addressing high-level targets, including in legal venues – and there seems little doubt, based on the threat assessment prepared under Mr. Holland's direction, that there was a need for such a unit. It is not insignificant that two of the individuals appointed to lead this unit identified a need for greater law enforcement engagement on this issue. Alongside the 1998 proposal to establish an illegal gambling enforcement unit and Mr. Clapham's proposals to create a "casino crime" unit within the Richmond RCMP, the business cases prepared by Mr. Pinnock and Mr. Holland form a growing record that, even by 2008, there was a well-recognized need for greater law enforcement engagement

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<sup>325</sup> Evidence of K. Begg, Transcript, April 21, 2021, pp 50–51.

<sup>326</sup> Evidence of F. Pinnock, Transcript, November 5, 2020, p 111; Evidence of W. Holland, Transcript, December 2, 2020, pp 158–64; Exhibit 181, Vander Graaf #1, para 100; Evidence of K. Begg, Transcript, April 21, 2021, p 48.

with the province’s evolving gaming industry and raises important questions about why it would be many years before any action was taken to address this need.

One possible approach (though not the only one) to begin to fill this enforcement gap would have been to continue and expand the size and role of IIGET as proposed by Mr. Holland and Mr. Pinnock. Even at the increased strength proposed, the unit would not have been a complete, or perhaps even substantial, answer to the growing money laundering problem. However, if it was well managed (as it seems it was under Mr. Holland), and was operating in co-operation with GPEB, an expanded unit with an effective mandate that included high-level targets including money laundering in legal gaming venues held real potential to unearth additional evidence of what was occurring and disrupt at least some of that activity.

Regardless of the decision to disband IIGET, the failure on the part of the RCMP to pay heed to the mounting evidence of an enforcement vulnerability, which was not being addressed, and to take some steps to fill that enforcement gap did contribute to the growth of money laundering in the province’s casinos. This failure perpetuated this enforcement gap and created an environment where such activity could continue to grow largely unchecked. As I discuss in Chapters 10, 11, and 39 the warnings that preceded the disbanding of IIGET were followed by many more, which similarly did not prompt any substantial law enforcement response for many years.

## **Mr. Pinnock’s Interactions with Mr. Heed**

In addition, and indirectly related, to his role with IIGET, Mr. Pinnock’s evidence also addressed interactions he had with former Minister of Public Safety and Solicitor General Kash Heed in 2009, after the conclusion of his tenure with IIGET. In the fall of that year, Mr. Pinnock gave an interview to a reporter during which he related his concerns about what was happening in the casinos. A short time later, Mr. Pinnock saw public comments by Mr. Heed, in which Mr. Heed expressed “displeasure” with Mr. Pinnock’s interview.

Mr. Pinnock and Mr. Heed had a long-standing personal relationship and, in early November 2009, following Mr. Pinnock’s interview and Mr. Heed’s public comments, the two men met for lunch and discussed Mr. Heed’s comments. Mr. Pinnock could not recall how this meeting was arranged<sup>327</sup> while Mr. Heed recalled that it was suggested by a caucus mate who was then in a relationship with, and is now married to, Mr. Pinnock.<sup>328</sup> Neither Mr. Pinnock nor Mr. Heed recorded or took notes of the discussion at the time that it took place. During his testimony, however, Mr. Pinnock referred to a “will-say” that he prepared, according to him, initially in 2019.<sup>329</sup> This initial version of the “will-say” was the first time that Mr. Pinnock made any record

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327 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 119–20.

328 Evidence of K. Heed, Transcript, April 30, 2021, pp 34–35.

329 Evidence of F. Pinnock, Transcript, November 17, 2020, pp 16–17.

of his 2009 conversation with Mr. Heed.<sup>330</sup> Mr. Pinnock provided this document to the Commission.<sup>331</sup> He revised the “will-say” in October 2019, June 2020, and August 2020, and also provided these revised versions to the Commission.<sup>332</sup> The “will-say” and the subsequent revisions to that document were prepared by Mr. Pinnock at his own instigation and not at the request of Commission counsel.<sup>333</sup>

Mr. Pinnock testified that, in the November 2009 meeting, he told Mr. Heed that he was “convinced that Rich Coleman knows what’s going on inside those casinos.” According to Mr. Pinnock, Mr. Heed confirmed this assertion. Mr. Pinnock said that Mr. Heed indicated that he felt that “Rich Coleman had created this and it received the sort of tacit support of senior Mounties in this province.”<sup>334</sup>

Mr. Pinnock testified that he believed that Mr. Heed understood there to be an issue of organized crime and cash in casinos. He told me that he recalled Mr. Heed stating, “[I]t’s all about the money.”<sup>335</sup>

Mr. Pinnock said that Mr. Heed did not tell him why he believed Mr. Coleman knew what “was going on inside those casinos.”<sup>336</sup>

With respect to the “senior Mounties” supposedly referred to by Mr. Heed, Mr. Pinnock testified that Mr. Heed referenced “three or four officers” but “didn’t get into details” about their involvement or the relevance they had to the issues they were talking about.<sup>337</sup>

Mr. Pinnock testified that this was the extent of Mr. Heed’s reference to senior police involvement. The context, according to Mr. Pinnock, was that “it was a game being played by senior police officers, who were ... ‘puppets for Coleman.’”<sup>338</sup>

Mr. Pinnock’s knowledge about what was going on in the casinos, apart from media reports, was based on “anecdotal references to former police officers working in the casino environment... who had statements attributed to them along the lines of, ‘I really wish I hadn’t seen that,’ referring to some form of criminal activity within the casinos.”<sup>339</sup> Mr. Pinnock did not speak to the former officers himself but said that “statements were attributed to them by friends of mine.”<sup>340</sup>

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330 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 121–22 and Transcript, November 17, 2020, p 18.

331 Evidence of F. Pinnock, Transcript, November 5, 2020, p 120.

332 Ibid, pp 120–21.

333 Ibid, pp 120–21; Evidence of F. Pinnock, Transcript, November 17, 2020, p 17.

334 Evidence of F. Pinnock, Transcript, November 5, 2020, p 122.

335 Ibid, p 123.

336 Ibid, p 124.

337 Ibid, pp 125–26.

338 Ibid, p 126.

339 Ibid, pp 127–28.

340 Ibid, p 128.

As I will discuss further below, Mr. Pinnock and Mr. Heed had discussions in 2018 during which they discussed the issue of cash and casinos. Mr. Pinnock was asked at the close of Commission counsel's examination of him:<sup>341</sup>

Subsequent to 2009 [until those 2018 conversations] during the time [Mr. Heed] was still in government, did you have any further conversations with Minister Heed about the issues of organized crime or cash in British Columbia casinos?<sup>342</sup>

Mr. Pinnock responded: "No, I don't believe so."<sup>343</sup> During his examination by counsel for Canada, Mr. Pinnock explained that his recollection of the conversation he had with Mr. Heed in 2009 led him to surreptitiously audio record three conversations he had with Mr. Heed in 2018, because he wanted to "secure and preserve" the evidence.<sup>344</sup> These audio-recorded conversations took place on July 10, September 7, and December 31, 2018. The contents of these recordings are discussed below.

Mr. Pinnock agreed with the suggestion made to him by counsel for GPEB that, from the time he left the RCMP in December 2007 forward, his "knowledge [about matters related to suspicious cash in casinos] is based on what [he] heard or had been told by others or what [he has] gleaned from [the media]."<sup>345</sup>

Mr. Heed applied for and was granted limited participant status in the Commission's proceedings on November 12, 2020, to enable him to examine Mr. Pinnock on his evidence related to his discussions with Mr. Heed. Mr. Pinnock was recalled as a witness for this purpose on November 17, 2020.

In the course of his testimony, Mr. Pinnock was asked by Mr. Heed's counsel about the following passage found in one of the versions of his "will-say":<sup>346</sup>

In November 2009 Kash Heed and I met to discuss what had been said in his interview and his and my interviews. He said "of course you're right, Freddy, but I can't say that publicly." When I, Pinnock, said that I was totally convinced that Rich Coleman knows all about the organized crime going on in our casinos, Mr. Heed said, "There's no doubt about it, but it's all about the money. You know that. What's the BCLC generating in casinos, 2 billion a year? Wayne Holland says Fred was right."

In his evidence in response to questions from Commission counsel on November 5, 2020, Mr. Pinnock testified that he did not take any notes of the 2009 conversation with Mr. Heed until he "paraphrased" it in the "will-say" he prepared to provide to the

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341 Ibid, p 128.

342 Ibid.

343 Ibid.

344 Ibid, p 133; Evidence of F. Pinnock, Transcript, November 6, 2020, p 18.

345 Evidence of F. Pinnock, Transcript, November 6, 2020, p 15.

346 Evidence of F. Pinnock, Transcript, November 17, 2020, pp 20-21.

Commission. During his examination by Commission counsel, Mr. Pinnock confirmed that his “will-say” “was the first time he wrote down what [he] recalled occurring in that conversation.”<sup>347</sup>

As the first iteration of Mr. Pinnock’s “will-say” was not drafted until 2019, it is clear that he did not commit himself in writing to describing the content of the 2009 conversation with Mr. Heed until after he had acquired recorded conversations between Mr. Heed and himself on July 10, September 7, and December 31, 2018.

In his examination by Mr. Heed’s lawyer, Mr. Pinnock testified further about his “will-say.” He confirmed it contained a summary of the conversation he had with Mr. Heed nine or ten years earlier, describing the summary as “a very close version” of the conversation that he remembered because he was “absolutely gobsmacked” by what Mr. Heed told him that day.<sup>348</sup> He agreed, however, that his summary did not include a reference to the three or four senior RCMP officers who he claimed Mr. Heed characterized as “puppets for Coleman” in the November 2009 conversation. He explained that “it was nine years earlier, and I forgot to include it.”<sup>349</sup>

When challenged as to whether Mr. Heed said those words, Mr. Pinnock said, “[Y]es, I believe he did.”<sup>350</sup> When asked what the basis of his belief was, he responded:<sup>351</sup>

Because over the course of the period 2009 to 2013, I probably interacted with Kash on eight or ten occasions, most of them in a social environment, and it was almost like a broken record, the reference to Rich Coleman’s willful blindness and the manipulation of senior police officers in BC. So that’s my best answer.

Mr. Pinnock described his failure to include reference to the senior officers being “puppets for Coleman” as “a drafting error.”<sup>352</sup> He explained, “I knew when I hit the record button during our first recorded conversation in 2018 I knew what he was going to say. He had said it so often to me.”<sup>353</sup>

Mr. Pinnock originally estimated there were seven occasions within the eight or nine interactions he had with Mr. Heed when Mr. Heed made those or similar comments about the senior Mounties. He then changed his estimate to six times out of the eight to 10 interactions and he characterized the recorded conversation of July 10, 2018, as confirmatory of what Mr. Heed said to him in 2009: “If they contained elements of his earlier disclosure to me ... it contained elements of what he had said before.”<sup>354</sup>

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347 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 119–20.

348 Evidence of F. Pinnock, Transcript, November 17, 2020, pp 18–20.

349 Ibid, pp 21–22.

350 Ibid, p 22.

351 Ibid, p 22.

352 Ibid, pp 23–24.

353 Ibid, p 23.

354 Ibid, pp 23–24.

Mr. Pinnock agreed that, although he made amendments to his will-say on three occasions, he never “caught the absence” of a reference to the three or four senior officers whom he later testified that Mr. Heed described as “puppets for Coleman.”<sup>355</sup>

Mr. Heed’s lawyer asked Mr. Pinnock if he was asked by Commission counsel whether subsequent to 2009, while Mr. Heed was still in office, he had “any further conversations with Minister Heed about the issues of organized crime or cash in British Columbia casinos,” and whether he responded “no I don’t believe so.”<sup>356</sup> Mr. Pinnock, who had, in fact, been asked that question and given that answer,<sup>357</sup> responded:<sup>358</sup>

I’m disappointed in myself for saying that. I guess I didn’t understand the question or my stress level was so high I was not grasping the spirit of the question. Of course I had numerous conversations with Kash Heed between 2009 and 2013 before he left government about this very matter.

## **Kash Heed’s Evidence**

Mr. Heed served as a police officer with the Vancouver Police Department from 1979 until 2007, when, having reached the rank of Superintendent, he was appointed Chief Constable for the West Vancouver Police Department. He remained in that role until 2009, when he successfully ran in the Vancouver-Fraserview riding for the BC Liberal Party seeking a seat in the Legislative Assembly. Following his election, he was appointed minister of public safety and solicitor general in May 2009 and served in that role until April 2010.<sup>359</sup>

Mr. Heed testified that the topic of money laundering was never brought to his attention in any formal document or formal briefing or even discussion among government ministers during his time in cabinet.<sup>360</sup> He also recalled nothing coming up with respect to money laundering in casinos while he was minister of public safety and solicitor general. He was not aware of it “as an emerging problem.”<sup>361</sup> He similarly recalled no discussion of the topic in the years after he left cabinet, but remained an MLA.<sup>362</sup> Despite this evidence, I note that, as discussed below, Mr. Heed did refer in his evidence to a small number of conversations with his fellow cabinet and caucus members on related issues.

Mr. Heed denied speaking to Mr. Coleman about gaming while Mr. Heed was the solicitor general.<sup>363</sup> He testified that he remembered gaming issues coming up in caucus

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355 Ibid, pp 24–25.

356 Ibid, pp 34–35.

357 Evidence of F. Pinnock, Transcript, November 5, 2020, p 128

358 Evidence of F. Pinnock, Transcript, November 17, 2020, p 35.

359 Evidence of K. Heed, Transcript, April 30, 2021, pp 2–3, 20–21.

360 Ibid, p 27.

361 Ibid, p 30.

362 Ibid.

363 Ibid, p 38.

meetings. Mr. Heed recalled Mr. Pinnock’s partner raising the issue and Mr. Coleman “rightfully,” according to Mr. Heed, responding that it was not the time or place to discuss it.<sup>364</sup>

Mr. Heed denied knowing of any government officials who turned a blind eye to money laundering activity. He did not run for re-election in the 2013 election. Instead, he started a consulting business and also conducted a radio talk show and did some teaching on the subject of criminology and criminal justice.<sup>365</sup>

Prior to his meeting with Mr. Pinnock in 2009, Mr. Heed recalled being “scrummed” in the Legislature in November 2009. He was asked a question by a reporter about money laundering in casinos. It “[came] out of the blue.”<sup>366</sup> He described himself as responding in a way that was “a little curt.”<sup>367</sup> He said it was not an issue that he was familiar with. He said to the reporter that people are entitled to their opinions but “there’s a different set of facts.”<sup>368</sup> He recalled the reporter mentioning the acronym IIGET and he later learned that it was no longer in existence. He did not at the time know what IIGET was, nor what GPEB was.<sup>369</sup>

Mr. Heed said that he sat next to Mr. Pinnock’s partner at caucus meetings. According to Mr. Heed, it was she who suggested he have lunch with Mr. Pinnock. He agreed and they had lunch a day or a few days later. Mr. Heed described his relationship with Mr. Pinnock over the years, explaining that they had initially met in 1983 or 1984 when both were young police officers. They became friends but never worked together.<sup>370</sup>

Mr. Heed recalled meeting with Mr. Pinnock in Victoria in November 2009 for lunch. The lunch only lasted about 40 minutes. Most of it was catching up, talking about personal issues and common friends in policing. Near the end of the lunch, according to Mr. Heed, Mr. Pinnock said he wanted to fill him in on a few things related to gaming because he thought Mr. Heed had been dismissive and negative about him to the reporter.<sup>371</sup> Mr. Heed described Mr. Pinnock’s tone as really changing and he, Mr. Heed, got “a little bit defensive.”<sup>372</sup> He said Mr. Pinnock talked for about five minutes about being badly treated by the RCMP while he was at IIGET.<sup>373</sup>

According to Mr. Heed, Mr. Pinnock talked about how positions at IIGET were not filled (at IIGET) and about to whom he reported. Mr. Heed said the lunch

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364 Ibid, p 41.

365 Ibid, pp 44–45.

366 Ibid, p 32.

367 Ibid.

368 Ibid.

369 Ibid, pp 32–33.

370 Ibid, pp 34–35, 46–47.

371 Ibid, pp 47–48.

372 Ibid, p 48.

373 Ibid, p 49.

ended with him saying that he would look into Mr. Pinnock's concerns and see if he could do anything about them, but he advised Mr. Pinnock that gaming was not in his ministry.<sup>374</sup> Mr. Heed denied saying anything about members of government knowing what was going on in casinos and turning a blind eye to it. He denied commenting about the police failing to deal with money laundering in the casinos. He denied saying that Mr. Coleman knew what was going on inside the casinos. He denied saying "it's all about the money."<sup>375</sup> He denied saying Mr. Coleman was largely responsible and that senior Mounties were complicit. He denied that he said that Mr. Coleman created the situation and had the tacit support of senior Mounties. He denied saying anything about organized crime and cash in casinos. He denied saying anything about senior police officers "being puppets for Coleman" – in 2009.<sup>376</sup>

After his meeting with Mr. Pinnock, Mr. Heed contacted Gary Bass and Al Macintyre, command staff at RCMP "E" Division, in late 2009 or early 2010. He had several meetings with command staff, mostly Macintyre and Bass. They did discuss proceeds of crime and loan sharking in and around casinos. He "was never told that it was a priority for them to deal [with those particular issues]." He was told they lacked the resources to deal with the issue.<sup>377</sup> Mr. Heed also had a brief discussion with Attorney General Michael de Jong about gaming. It was not expressed to Mr. Heed that cash in casinos was a priority issue. Mr. Heed never had a conversation with any other cabinet colleagues, including the premier, about that issue.<sup>378</sup>

Mr. Heed was unaware of money laundering in casinos at that time and no one brought it to his attention. He was asked if he had any meetings or discussions with Mr. Pinnock between 2009 and 2018. He recalled when he was teaching, he had Mr. Pinnock and his partner attend his class circa 2013 and Mr. Pinnock gave a lecture on undercover operations. He recalled another time circa February 2010 while he was still in the role of solicitor general, that he and his wife had dinner in Vancouver with Mr. Pinnock and his partner. They did not discuss anything related to "what we're discussing here."<sup>379</sup>

Mr. Heed became aware that Mr. Pinnock had secretly recorded his conversations with Mr. Heed in 2018, the day before Mr. Heed was first interviewed by Commission counsel in January 2020.<sup>380</sup> Mr. Heed and Mr. Pinnock met for coffee in Kerrisdale and Mr. Pinnock told him that he was going to provide the recordings to Commission counsel. Mr. Heed regarded Mr. Pinnock's conduct as "absolutely a breach of ... trust."<sup>381</sup>

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374 Ibid, pp 49–50.

375 Ibid, pp 53–54.

376 Ibid, pp 54–55.

377 Ibid, p 43.

378 Ibid, pp 38–40.

379 Ibid, pp 56–58.

380 Ibid, pp 58–59.

381 Ibid, p 59.

The three recorded conversations took place on July 10, 2018,<sup>382</sup> September 7, 2018,<sup>383</sup> and December 31, 2018.<sup>384</sup> Mr. Heed described the conversations with Mr. Pinnock as “personal opinions” he expressed while “shooting the breeze.”<sup>385</sup>

He denied that what he said in the recorded conversations in 2018 mirrored anything he said to Mr. Pinnock in 2009. He testified that the July 2018 conversation referred to a discussion he had with Attorney General David Eby, “based on two areas of concern” about who was conducting a gaming review and the fact that Ross Alderson, “the whistleblower was most likely going to be terminated by the BC Lottery Corporation.”<sup>386</sup>

The December 31, 2018, conversation took place because the *W5* television program was doing something related to money laundering issues and the executive producer was looking to speak to someone in British Columbia apart from Mr. Alderson.<sup>387</sup>

Mr. Heed testified he thought of Mr. Pinnock and phoned him to see if he would take the opportunity. When he realized that Mr. Pinnock was not interested, he disengaged.<sup>388</sup> In response to questions from his own counsel, Mr. Heed agreed that as part of his speech pattern he would say “yeah” or “yeah, yeah,” not to confirm the correctness of what a person who was talking to him was saying, but rather to move the conversation forward.<sup>389</sup>

## **The Surreptitious Recordings of Mr. Heed’s Conversations with Mr. Pinnock**

As I earlier noted, Mr. Pinnock had three conversations with Mr. Heed, which he surreptitiously recorded. The first recorded conversation was on July 10, 2018, in a telephone call initiated by Mr. Pinnock to Mr. Heed. The transcript of the July 10, 2018, recorded conversation was 24 pages long.<sup>390</sup>

The second recorded conversation was on September 7, 2018, at the Cactus Club restaurant located in Richmond Centre in Richmond which, according to Mr. Pinnock, commenced sometime after 11:25 a.m., lasting until 1:06 p.m. The transcript was 87 pages long.<sup>391</sup>

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382 Exhibit 163, Transcript of a phone call between Mr. Heed and Mr. Pinnock on July 10, 2018 (July 10, 2018 Recording).

383 Exhibit 164, Redacted transcript of a lunch meeting between Mr. Heed and Mr. Pinnock on September 7, 2018 (September 7, 2018 Recording).

384 Exhibit 269, Transcript of phone call between Heed and Pinnock on December 31, 2018 (December 31, 2018 Recording).

385 Evidence of K. Heed, Transcript, April 30, 2021, pp 62–63.

386 *Ibid*, pp 66–67.

387 *Ibid*, p 67.

388 *Ibid*, pp 67–68.

389 *Ibid*, p 79.

390 Exhibit 163, July 10, 2018 Recording.

391 Exhibit 164, September 7, 2018 Recording.

The third recorded conversation took place, according to Mr. Pinnock, on December 31, 2018, “just before noon” and ended at 12:17 p.m. The transcript was 18 pages long. It was a telephone call from Mr. Heed to Mr. Pinnock.<sup>392</sup>

In the July 10, 2018, recording, after Mr. Heed greeted Mr. Pinnock, Mr. Pinnock said: “Kash, it’s been about eight years too late for me to call you to say hi. How are you brother?”<sup>393</sup>

Mr. Heed responded by telling Mr. Pinnock not to “worry about that ... It doesn’t matter how many years go by.”<sup>394</sup> After that Mr. Pinnock asked if Mr. Heed was “was still teaching?”<sup>395</sup> The conversation between the two men then covered what the two of them were doing occupationally and personally, including speaking about what Mr. Pinnock’s partner had been doing.

Mr. Heed then raised the issue of money laundering, noting that he himself had been commenting on it “overtly and covertly” and that Mr. Pinnock “finally ... did come out, and ... said exactly what is going on.”<sup>396</sup> He then told Mr. Pinnock that he called the attorney general when he hired Peter German “to do his thing” telling the attorney general that Dr. German “was the assistant commissioner of the [Lower Mainland Division] when the decision was made, and he was part of that decision-making. It was [Dr. German and others] that were part of the decision-making, were puppets for Coleman, to pull IIGET.”<sup>397</sup>

There is a clear conflict in the evidence between Mr. Pinnock and Mr. Heed concerning the context and content of their interaction with each other in November 2009. According to Mr. Pinnock, what Mr. Heed said to him in 2009 was confirmed by Mr. Heed in the three conversations which Mr. Pinnock recorded in 2018, and in six or seven unrecorded interactions between 2009 and 2013.

According to Mr. Heed, neither he nor Mr. Pinnock spoke about Rich Coleman, the four senior members who were “puppets for Coleman” and the presence of organized crime and cash in casinos in 2009. He denied telling Mr. Pinnock that it was “all about the money” in 2009 or that he told Mr. Pinnock that Mr. Coleman created the problem “with the tacit support of senior Mounties” at the 2009 lunch meeting. He also denied seeing Mr. Pinnock again after the meeting with him, except on two occasions, once in February 2010 when he and his wife had dinner with Mr. Pinnock and his partner and again around 2013 when Mr. Pinnock came to one of Mr. Heed’s criminology classes to give his class a lecture.

According to Mr. Heed, on neither of those two occasions did he and Mr. Pinnock discuss the issue of money laundering in casinos. He agreed with a suggestion put to

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<sup>392</sup> Exhibit 269, December 31, 2018 Recording.

<sup>393</sup> Exhibit 163, July 10, 2018 Recording, p 1.

<sup>394</sup> Ibid.

<sup>395</sup> Ibid.

<sup>396</sup> Ibid, pp 5–6.

<sup>397</sup> Ibid, p 6.

him by BCLC’s lawyer that in his recorded conversations with Mr. Pinnock, some of his statements “were based on speculation and maybe hyperbole.”<sup>398</sup>

Mr. Pinnock’s account of what unfolded at their meeting in early November 2009 and Mr. Heed’s version of what took place in that meeting are at odds. After carefully considering their respective testimony, the recordings made of their 2018 conversations, and their counsels’ respective submissions, I find Mr. Heed’s version of what transpired between them in November 2009 to be more believable than Mr. Pinnock’s account.

Before turning to my reasons for finding Mr. Heed’s account to be more believable, I consider it important to review the basis on which and the sequence in which the three transcripts of the 2018 recordings were admitted into evidence. Mr. Pinnock’s first reference during his evidence to his 2018 conversations with Mr. Heed, and his recording of them was in his evidence on November 5, 2020.

In response to a question by Commission counsel about “a lack of response to the developing issue of organized crime in British Columbia casinos.”<sup>399</sup> Mr. Pinnock referenced a telephone conversation with Mr. Heed in 2018 “where we both went into greater detail about that and ... his belief in terms of what has led to the current circumstances in casinos and racetracks.”<sup>400</sup>

Counsel for Canada, in their examination of Mr. Pinnock, suggested that “all [he has] on this conversation with Minister Heed in 2009 is a recollection of a conversation where these allegations may have been made.”<sup>401</sup> Mr. Pinnock responded:<sup>402</sup>

Yes. But I do remember having that conversation, and this – this led to my decision to audio record my conversation with Kash Heed on the 10th of July 2018. I wanted him to repeat to me the essence of what he told me in 2009. I wanted to secure and preserve that evidence. That’s what I did.

Later, during an examination by counsel for BCLC, Mr. Pinnock was asked about his decision to tape record the July 10, 2018, telephone conversation and a conversation he had with Mr. Heed over lunch in early September 2018. Mr. Pinnock responded, “That’s right. And there was a subsequent recorded phone call on the 31<sup>st</sup> of December, but there was nothing said that would be of assistance to the commission.”<sup>403</sup>

As of that date (November 5, 2020), Mr. Pinnock had not disclosed the recording of the December 31, 2018, phone call to the Commission. Mr. Pinnock subsequently produced a recording of that telephone call to Commission counsel and redacted versions of the three recordings were ultimately marked as exhibits.<sup>404</sup>

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398 Ibid, p 68.

399 Evidence of F. Pinnock, Transcript, November 5, 2020, p 123.

400 Ibid.

401 Ibid, p 133.

402 Ibid.

403 Ibid, p 141.

404 Exhibit 163, July 10, 2018 Recording; Exhibit 164, September 7, 2018 Recording; Exhibit 269, December 31, 2018 Recording. See Ruling 18, Ruling on Admissibility of Transcripts.

As I noted in Ruling 18 (regarding the admissibility of the transcripts), the issue that confronts me is “whether the 2009 conversation took place as Mr. Pinnock said it did or not” and “the transcripts are relevant and probative insofar as they assist in making a determination” on that issue. Whether the 2009 conversation took place as Mr. Pinnock said it did or not.<sup>405</sup>

When Mr. Pinnock called Mr. Heed on July 10, 2018, he greeted him by saying “Kash, it’s been about eight years too late for me to call you to say hi. How are you brother?”<sup>406</sup> When Mr. Heed responded, “Oh, no, don’t worry about that. Once a friend, always a friend. It doesn’t matter how many years go by,” Mr. Pinnock then responded with, “Good for you. I feel the same. So how’s life with you? Are you still teaching?”<sup>407</sup>

Taken in context, Mr. Pinnock’s comments appear more consistent with Mr. Heed’s version of what unfolded after their meeting in November 2009 than with Mr. Pinnock’s. According to Mr. Pinnock’s version, he saw Mr. Heed approximately eight or ten times, most of them in a social setting between November 2009 and 2013 while Mr. Heed was still in government.<sup>408</sup> That was part of Mr. Pinnock’s explanation for how he was able to recall the November 2009 conversation with Mr. Heed so well despite not making any notes, because Mr. Heed continually repeated himself about what they spoke of in November 2009, six or seven times in all.<sup>409</sup>

Mr. Pinnock’s comment to Mr. Heed during the July 10 recorded call, however, suggests that it had been eight years since he had seen him, not that he had seen him around 10 times at least until 2013. Further, Mr. Pinnock’s question whether Mr. Heed was “still teaching” appears consistent with Mr. Heed’s evidence that Mr. Pinnock came to his class to give a lecture and is not consistent with Mr. Pinnock’s evidence that when he saw Mr. Heed eight or ten times between 2009 and 2013, it was mainly on social occasions.

There is other evidence given by Mr. Pinnock that casts doubt on his explanation for being able to remember the details of the 2009 conversation with Mr. Heed (because he consistently repeated himself between 2009 and 2013). As earlier noted, when Mr. Pinnock was asked by Commission counsel on November 5, 2020, “[S]ubsequent to 2009 during the period he was still in government, did you have any further conversations with Minister Heed about the issues of organized crime or cash in British Columbia casinos?” he responded, “No, I don’t believe so.”<sup>410</sup>

It is notable that Mr. Pinnock’s first reference to these subsequent meetings where he says Mr. Heed referred to Mr. Coleman and the senior police officers being his puppets was during his examination by counsel for Mr. Heed about his failure to reference the four senior police officers being “puppets for Coleman,” in his “will-say” statement that

405 Ruling 18, Ruling on Admissibility of Transcripts, para 53.

406 Exhibit 163, July 10, 2018 Recording, p 1.

407 Ibid.

408 Evidence of F. Pinnock, Transcript, November 17, 2022, p 22.

409 Ibid, pp 23–24.

410 Evidence of F. Pinnock, Transcript, November 5, 2020, p 128.

he prepared in 2019.<sup>411</sup> Mr. Pinnock gave as an explanation for that failure that “[i]t was nine years earlier, and [he] forgot to include it.”<sup>412</sup> When it was suggested to Mr. Pinnock that Mr. Heed “didn’t say those words to [him] in 2009.” He responded, “Yes, I believe he did.”<sup>413</sup> It was then he first referred to the eight or 10 interactions with Mr. Heed between 2009 and 2013. Mr. Pinnock described Mr. Heed as being “like a broken record” he “knew when [he] hit the record button during [their] first recorded conversation in 2018 [he] knew what he was going to say.”<sup>414</sup>

He was asked if the three 2018 recordings “include Kash Heed confirming everything he said to you in 2009 and then some[?]” he responded, “Particularly I think in the July 10, 2018, recorded conversation, yes.”<sup>415</sup>

A significant focus of Mr. Heed’s comments in the July 10, 2018, recording of his conversation with Mr. Pinnock was his discussion with Attorney General David Eby:

I said, Peter German was the assistant commissioner of [Lower Mainland Division] when the decision was made, and he was part of that decision-making. It was [Dr. German and others] that were part of the decision-making, were puppets for Coleman, to pull IIGET.<sup>416</sup>

According to Mr. Heed in the recorded conversation he said to Mr. Eby: “Now, you’re bringing one of the decision makers back to review it. I said, how hypocritical is that, David?”<sup>417</sup>

It is significant that, despite Mr. Heed’s emphasis to Mr. Pinnock about Dr. German being one of the four senior officers who were “puppets for Coleman” in the July 10, 2018, recording, the one name that Mr. Pinnock failed to mention at any time in his evidence before the Commission is Dr. German’s. While one can speculate why that is so, speculation is not an appropriate basis for resolving a conflict in the evidence. It is sufficient to say that Mr. Pinnock’s evidence about his recollection of who Mr. Heed named as being “puppets for Coleman” appears to have been selected and presented artfully, rather than forthrightly.

In my view, that is characteristic of Mr. Pinnock’s evidence. His invocation of seeing Mr. Heed eight or ten times while Mr. Heed was still in government and Mr. Heed consistently repeating his allegations about Mr. Coleman, the four senior Mounties who were “puppets for Coleman,” and others in government who were willfully blind to what was afoot in casinos, as a reason why he was able to remember the November 2009 conversation nine years after it happened has the air of a contrivance. It is particularly

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411 Evidence of F. Pinnock, Transcript, November 17, 2020, pp 21–22.

412 Ibid, p 21.

413 Ibid, p 22.

414 Ibid, p 23.

415 Ibid, p 24.

416 Exhibit 163, July 10, 2018 Recording, p 6.

417 Ibid, p 7.

so in the face of his denial to Commission counsel that he spoke to Mr. Heed about “organized crime or cash in casinos” while Mr. Heed was still in government between 2009 and 2013.

Mr. Pinnock’s assertion that, in 2009 Mr. Heed told him, in effect, the reason that there was no action taken against those involved in money laundering through casinos was because “it’s all about the money” seems to have been taken from what Mr. Heed said in 2018 in the December 31 recorded conversation. It seems likely that Mr. Pinnock simply poached these words from the recording he had recently made of Mr. Heed saying those words.

I conclude that Mr. Pinnock’s initial account of his conversation with Mr. Heed reflected in his “will-say” was primarily based on his later recorded conversations with Mr. Heed in 2018. I accept Mr. Heed’s evidence that he had little or no knowledge of what was going on in the casinos in 2009. I find that Mr. Heed was prone to hyperbole in his later recorded conversations with Mr. Pinnock, and I do not find in those recordings confirmation of Mr. Pinnock’s account of what transpired between the two men in their 2009 conversation. Although in the December 31, 2018, recording, Mr. Heed appeared to confirm Mr. Pinnock’s account of what Mr. Heed said to him in 2009, I accept that it is more likely, in the circumstances, that he was simply moving the conversation onward rather than verifying specific words used nine years earlier in a discussion between them.

As I see it, both Mr. Pinnock in his testimony before the Commission and Mr. Heed in his recorded assertions to Mr. Pinnock have wrongly alleged that Mr. Coleman and senior members of the RCMP were complicit in the growth of money laundering and organized crime in the gaming industry.<sup>418</sup> Mr. Heed characterized his recorded assertions to Mr. Pinnock, during his testimony before the Commission, as “personal opinions well after the fact ... not based on any first-hand knowledge or experience from my time in policing or in government.”<sup>419</sup> He described his comments as “strictly stuff that I had heard, you know, through mostly media sources.”<sup>420</sup> In other words, Mr. Heed essentially disavowed his comments concerning Mr. Coleman and the senior officers as being a product of third-hand information. He did not present them as reliable.

Mr. Pinnock, on the other hand, maintained his allegations against Mr. Coleman, and the senior RCMP officers, based largely on Mr. Heed’s disavowed recorded comments to him and on Mr. Heed’s disputed comments to him while he was solicitor general in 2009. I do not find Mr. Pinnock’s evidence to be reliable or credible insofar as his allegations against Mr. Coleman or the four senior RCMP officers are concerned.

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418 Whether the actions of the RCMP and Mr. Coleman (and others) may have nevertheless contributed to money laundering in the gaming industry is addressed in Chapter 14.

419 Evidence of K. Heed, Transcript, April 30, 2021, p 65.

420 Ibid.

## Chapter 10

### Gaming Narrative: 2004–2015

The enactment of the *Gaming Control Act*, SBC 2002, c 14, in 2002 came just before a time of significant and rapid change in the province's gaming industry. The years that followed would see a string of new, larger, and more sophisticated casinos open throughout the Lower Mainland, beginning with the River Rock Casino Resort in Richmond in 2004. As these new casinos opened, the industry began to turn its focus toward a new group of high-value VIP patrons who were willing and able to gamble substantial quantities of money. The industry developed new VIP spaces and services to accommodate these patrons' tastes and increased betting limits to enable play at higher levels.

As the gaming industry functioned exclusively in cash until 2009, and remained predominantly cash-based following that time, the increased business enabled by higher betting limits and encouraged by efforts to cater to VIP patrons was conducted primarily in cash. In or around 2008 and 2009, investigative staff within both the Gaming Policy and Enforcement Branch (GPEB) and the British Columbia Lottery Corporation (BCLC) developed concerns, based on the size and other features of increasingly large cash transactions observed in casinos, that British Columbia's gaming industry had begun to accept significant quantities of cash generated through illicit activity and that these transactions were connected to money laundering.

The size and frequency of these transactions grew in the years that followed and continued to attract the attention and concern of some within the industry. The GPEB investigation division, in particular, repeatedly identified the risk of money laundering associated with these transactions internally within GPEB as well as externally to BCLC, law enforcement, and government. While these actors took some limited action aimed at reducing the gaming industry's reliance on cash and risk of money laundering during this

time period, casinos in the Lower Mainland continued, almost without exception, to accept cash transactions regardless of their size or the presence of characteristics suggesting that the funds used in those transactions were the proceeds of crime. As they did so, the industry continued to fuel the growth of large cash transactions by further increasing betting limits and investing in efforts to attract VIP patrons to British Columbia's casinos. In this context, the size and frequency of suspicious cash transactions continued to grow such that, by 2014, BCLC was reporting to the Financial Transactions Report Analysis Centre of Canada (FINTRAC) an average of more than \$500,000 in suspicious transactions per day.

In this chapter, I describe the growth and evolution of the province's gaming industry following the enactment of the *Gaming Control Act* in 2002 and the rise of large and suspicious cash transactions in British Columbia's casinos to their peak in 2014 and 2015. I begin with a discussion of changes observed in the gaming industry as new casinos opened across the Lower Mainland between 2004 and 2008. I then turn to the initial rise of suspicious cash in the province's casinos beginning in 2008, their acceleration in the years that followed, and the actions taken in the industry that fuelled their growth. I consider how various actors and stakeholders connected to the industry responded to the growth of large and suspicious cash transactions, focusing first on the response observed between 2008 and 2013 and then addressing actions taken in 2014 and early 2015. Chapter 11 continues this narrative beginning with a series of significant events that took place during the summer of 2015.

## **2004–2008: Development of Gaming Industry Following Enactment of the *Gaming Control Act***

The enactment of the *Gaming Control Act* in 2002 preceded significant changes in British Columbia's gaming industry. In the years that followed its enactment, new gaming facilities were constructed throughout the Lower Mainland and a new focus on high-limit VIP play began to emerge. As this evolution took place, BCLC recognized that the security needs of the industry were also changing and made investments and policy and organizational changes to better meet these needs. Despite these security enhancements, there were signs at this time that these new facilities had begun to attract the interest of a criminal element, foreshadowing how the industry's development had set the stage for the rapid growth of suspicious cash in the province's casinos that would begin in earnest in or around 2008.

### **Development of New Gaming Facilities**

The first of the new gaming facilities developed in the Lower Mainland was the River Rock Casino Resort, which opened in Richmond in 2004. The River Rock was soon followed by other facilities in nearby municipalities, including the Edgewater Casino in Vancouver and the Cascades Casino in Langley, both of which opened in 2006, the Starlight Casino in New Westminster in 2007, and the Grand Villa Casino in Burnaby in 2008.<sup>1</sup> It is clear that the evolution of British Columbia's new regulatory

<sup>1</sup> Exhibit 559, Affidavit #1 of Walter Soo, made on February 1, 2021 [Soo #1], paras 34, 50–54.

environment, beginning with the entry of BCLC into casino gaming in 1998, had created an opportunity to exploit what those engaged in the industry believed to be significant untapped potential in the province’s gaming market, justifying substantial investments in the development of new facilities.

A number of these municipalities, including Richmond, Vancouver, Burnaby, and New Westminster, housed casinos prior to the development of these new facilities. As such, casino-style gaming was not new to these cities. However, the new casinos represented a significant change in both the nature and scale of gaming in the Lower Mainland. The evidence of Rick Duff, whose tenure with Great Canadian Gaming Corporation (GCGC) spanned this evolution of the industry and who served as the River Rock Casino’s first assistant general manager when it opened in 2004, offered some insight into the nature and scale of the changes observed in the industry at this time. Mr. Duff described the change from the old Richmond Casino to the River Rock:<sup>2</sup>

We went from having 30 gaming tables at the old Richmond Casino and no slot machines to, I believe, 70 gaming tables and a thousand slot machines. We went from having a cafeteria style snack bar to having three or four different restaurant options. We went from having no alcohol to having alcohol in the casino with a lounge and things like that. So, we basically went from a card room to ... a casino.

Mr. Duff went on in his evidence to explain that, in addition to these physical changes, the development of the River Rock also introduced a new clientele to the casino:<sup>3</sup>

[T]he old players certainly did come over to River Rock, but we cultivated and brought in a lot of other players, and it was just by name. At that point River Rock was the largest casino in the Lower Mainland, and the particular games that we were having is some of the games that they would like to play. Games – not just baccarat, but, like, craps. We were one of the first casinos to have a craps table in the province.

Mr. Duff’s comments speak to his experience at the River Rock and provide some insight into the magnitude of the changes that took place in the gaming industry at this time.

### ***Impact on BCLC and Casino Revenue***

The changes that took place in the province’s gaming industry at this time are also evident in the financial data contained in BCLC’s annual reports. Table 10.1 sets out BCLC’s annual total revenue, net income, and casino revenue as identified in its 2000–01 to 2009–10 annual reports:<sup>4</sup>

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2 Evidence of R. Duff, Transcript, January 25, 2021, pp 19–20.

3 Evidence of R. Duff, Transcript, January 25, 2021, p 20.

4 Exhibit 72, Overview Report: British Columbia Lottery Corporation Annual Reports; Total revenue and net income rounded to nearest thousand dollars.

**Table 10.1: BCLC annual revenue, 2000–2010**

<b>Year</b>	<b>Total Revenue</b>	<b>Net Income</b>	<b>Casino Revenue</b>
2000–01	\$1,483,041,000	\$562,000,000	\$492,277,734
2001–02	\$1,607,418,000	\$606,068,000	\$552,385,682
2002–03	\$1,792,411,000	\$670,937,000	\$628,123,546
2003–04	\$1,889,637,000	\$727,643,000	\$733,485,672
2004–05	\$2,027,317,000	\$818,876,000	\$892,879,909
2005–06	\$2,260,706,000	\$922,967,000	\$1,085,345,811
2006–07	\$2,425,208,000	\$1,018,798,000	\$1,208,891,368
2007–08	\$2,559,187,000	\$1,088,893,000	\$1,322,123,327
2008–09	\$2,550,200,000	\$1,090,700,000	\$1,341,239,607
2009–10	\$2,517,300,000	\$1,079,100,000	\$1,321,625,000

Source: Exhibit 72, Overview Report: British Columbia Lottery Corporation Annual Reports.

In addition to demonstrating the steady growth in BCLC’s casino revenue as the industry evolved, this data also illustrates the increasing significance of casinos within BCLC’s business during this time period. In 2000–01, casino revenue represented approximately 33 percent of BCLC’s total revenue. By 2009–10, casino revenue accounted for more than 52 percent, suggesting that as casino facilities were growing and evolving during this time period, so too was the prominence of casino gaming in BCLC’s overall business.

## **Development of VIP Facilities and Programs**

As the gaming industry evolved and new facilities were constructed, play of VIP patrons became increasingly important to the industry and a focus of competition between service providers. “VIP” is not a precisely defined term within the gaming industry in this province.<sup>5</sup> It does not refer to any particular threshold of frequency or monetary value of play and seems, at times, to be used more or less interchangeably with the terms “high limit” and “premium.” When I refer to VIP play, VIPs or VVIPs, I am using these terms and phrases in a manner that I understand to be consistent with how they have been used by witnesses in the Commission’s hearings; they refer generally to players gambling substantial sums of money, typically in areas of the casinos designated for high-limit play.<sup>6</sup>

While much of the attention devoted to the development of VIP amenities during the Commission’s hearings was focused on the River Rock Casino, there is evidence before me that facilities operated by multiple service providers took steps to enhance their VIP

<sup>5</sup> Exhibit 148, Affidavit #1 of Daryl Tottenham, sworn on October 30, 2020 [Tottenham #1], para 12.

<sup>6</sup> Ibid.

offerings at various times.<sup>7</sup> I do not suggest that the actions taken by the River Rock in this regard are necessarily representative of the actions or experiences of other casinos or service providers, but it is clear that there was a general increase in efforts to attract VIP players to casinos throughout the Lower Mainland in the years that followed the enactment of the *Gaming Control Act*.

When the River Rock Casino first opened in 2004, it included two high-limit areas – one devoted to baccarat, the other to blackjack.<sup>8</sup> The high-limit blackjack space was soon converted to baccarat due to player demand.<sup>9</sup> According to Walter Soo, vice-president of gaming development for Great Canadian at the time the River Rock opened,<sup>10</sup> even before the new casino was completed, there was concern within Great Canadian that these offerings were insufficient, as greater competition for VIP play from new facilities elsewhere in the Lower Mainland loomed on the horizon.<sup>11</sup> Mr. Soo described to me the competitive landscape into which the River Rock opened in 2004:<sup>12</sup>

[B]y the beginning of 2004, about half a year before the casino was going to open, [Great Canadian] became very concerned and I think it graduated there that knowledge had come to us, it was very open that [cities] that had originally opposed casino expansion were changing that decision. In particular, in 2004, we knew that the following year, 2005, the Edgewater Casino was going to open at the Plaza of Nations in Vancouver. We knew that Gateway was opening out in Langley, the Cascades Casino with a small hotel. We even knew back then that there was going to be one somewhere in Queensborough, which ended up being the Starlight Casino, and we knew as well, too, that Burnaby, the existing casino was going to go on a major redevelopment across the street, combine that with a hotel. So, there was excitement at the same time for the opening, but there was also extreme concern that the market and our market shares specific to that could quickly be cannibalized, and it was a major component of building the resort that the whole – the casino and the gaming revenues there justified the viability of having that resort built.

### ***2005 International Premium Player Program Proposal***

In response to this anticipated competition, Mr. Soo was appointed to oversee the development of a proposal to establish an “international premium player

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7 Evidence of R. Duff, Transcript, January 25, 2021, pp 4–5, 22–24, 27–28; Evidence of M. Chiu, Transcript, January 21, 2021, pp 4–7; Exhibit 148, Tottenham #1, para 26; Exhibit 166, Affidavit #1 of Michael Hiller, sworn on November 8, 2020 [Hiller #1], para 30; Exhibit 1040, Affidavit #2 of Bill Lang, affirmed on May 21, 2021 [Lang #2].

8 Evidence of R. Duff, Transcript, January 25, 2021, pp 22–23.

9 Ibid, p 23.

10 Exhibit 559, Soo #1, para 12.

11 Ibid, paras 26–32; Evidence of W. Soo, Transcript, February 9, 2021, pp 11–13.

12 Evidence of W. Soo, Transcript, February 9, 2021, pp 12–13.

program” designed to attract players from outside of the province.<sup>13</sup> To assist in the development of this proposal, Great Canadian engaged Macomber International, a consulting firm based in Nevada, which prepared a report dated April 2005 and titled “An Analysis of Premium Table Game Incentive Programs and a Recommendation for the Initialization of a Program at the River Rock Casino.”<sup>14</sup> The report contains more than 100 pages of analysis and discussion, concluding with a description of a “proposed program” for the River Rock, which it estimates would generating revenue increases “entirely attributable to new play” of \$9.6 million in the first year of its implementation.<sup>15</sup> The proposed program identifies four “target markets” as follows:<sup>16</sup>

1. Asian business travelers from Mainland China, Hong Kong and Taiwan (and their party) who are traveling through Vancouver to other points on the North American continent.
2. Asian business travelers from Mainland China, Hong Kong and Taiwan (and their party) who are traveling to Greater Vancouver as their final destination.
3. Gamers from Mainland China, Hong Kong and Taiwan (and their party), who are visiting Greater Vancouver specifically to gamble at the River Rock Casino.
4. Well-healed [sic] Asian gamers who reside part-time and/or permanently in the Vancouver region and who currently do not gamble at River Rock because of a lack of minimum desired products and services. These gamers currently play in Las Vegas and, to a lesser extent, Asia and wherever else they can get the game conditions they seek. It is worth noting that the major Las Vegas casino operators have had satellite marketing offices in Vancouver for years to identify and attract Premium Table Game Players to Las Vegas.

The proposed program also identifies “tactics” to be implemented as part of this program, including the following:<sup>17</sup>

1. Offer a “squeeze” Baccarat game on at least one, “big” baccarat game (i.e., one that seats 14 players).
2. Offer credit to premium table game players under rules developed by BCLC and GCGC.
3. Offer maximum table game limits of \$12,000 (US\$10,000) per bet.

<sup>13</sup> Exhibit 559, Soo #1, paras 30–32, 34–35; Evidence of W. Soo, Transcript, February 9, 2021, pp 11–14.

<sup>14</sup> Exhibit 559, Soo #1, exhibit C.

<sup>15</sup> Ibid, exhibit C, pp 97–98.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid, exhibit C, p 98.

4. Upgrade the design and decor of the current “high limit” room in keeping with Asian culture preferences (as reviewed and adjusted for by a Vancouver respected *Feng Shui* master) as a first step to initialize the program. If demand builds as expected, add a dedicated exclusive room, possibly with private, invitation only areas.
5. Recruit table game hosts and staff that are multi-lingual in Cantonese, Mandarin, and English.
6. Activate the ENDX Casino Management System’s player tracking module to accommodate premium table game player tracking. Develop chip tracking systems commensurate with incentive programs employed, i.e., cash chip turnover, nonnegotiable chip turnover, rebate on loss, front money, and other incentive-based programs.
7. Establish licensing criteria for third party representatives [engaged to assist in marketing to and recruiting players] (if utilized).

Of particular significance to the mandate of this Commission, and related to the second of these “tactics,” the report identifies that, for the program to succeed, the casino would need to offer sufficient cash alternatives to facilitate play by VIPs at the levels referred to in the passage reproduced above.<sup>18</sup> Significantly, the report linked the need for cash alternatives – and particularly the availability of credit – to the risks of “loan sharking” and money laundering:<sup>19</sup>

While each element of the product mix is important, the availability of credit is one of the critical factors when building a premium table game player program. International currency laws as well as heightened suspicions in this post 9/11 era precludes gamers from traveling with large sums of cash. It is simply inappropriate to expect an international traveler to carry in excess of \$25,000 in cash for gambling purposes. The gamer not only exposes himself to possible confrontations with customs authorities, he is exposing himself to theft or currency confiscation. Therefore, BCLC and River Rock must establish some form of credit that will allow premium table game players to access a sufficient amount of money to gamble with during their visits. *Credit issuance also significantly reduces the potential for criminal activities such as loan sharking or money laundering to occur.* [Emphasis added.]

Great Canadian proposed the development of a program of the sort described in the Macomber International report, but BCLC ultimately declined to proceed with the proposal. In a letter dated February 6, 2006, Brian Lynch, then vice-president of casino gaming for BCLC, focused on the need to offer credit to support the program proposed

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18 Exhibit 559, Soo #1, paras 40–43; Evidence of W. Soo, Transcript, February 9, 2021, pp 15–20.

19 Exhibit 559, Soo #1, exhibit C, p 30; Evidence of W. Soo, Transcript, February 9, 2021, pp 28–29, 40–42.

by Great Canadian and noted that doing so would be contrary to GPEB's July 2005 Responsible Gaming Standards.<sup>20</sup> He also noted that the use of “player agents to bring foreign players into the province who are unknown to BCLC and Great Canadian [would] open BCLC and the Provincial government to the possibilities of terrorist participation, international money laundering and organized crime activities.”<sup>21</sup> Mr. Lynch concluded this letter by distinguishing the role of BCLC as a Crown corporation from that of privately run gaming entities discussed in the Macomber International report:<sup>22</sup>

Given the rather modest potential increase in revenue of \$9.6m when faced with the substantial risk, the risk is far greater than the potential reward. BCLC is a Crown Corporation acting as an agent for the Provincial government and is held to a very high standard by the citizens of BC, that is a higher standard than privately run gambling entities, and therefore we must ensure that the highest standards and integrity are maintained.

### ***2007 Player Development Program Proposal***

Following BCLC's decision to decline to proceed with the 2005 proposal, Mr. Soo was again directed to examine the prospects of attracting more VIP play, including international and out-of-province players, to the River Rock.<sup>23</sup> In response, in 2006 and 2007, Mr. Soo prepared a new proposal, titled “Player Development Program: Review on Strategic Alliances.”<sup>24</sup>

This proposal suggested offering incentives to “premium players,” the use of player agents to “source, deliver, and host premium players” at Great Canadian properties, increased bet limits, changes to baccarat game play, and adjustments to the structure of revenue distribution between BCLC and Great Canadian.<sup>25</sup> This proposal again highlighted the need for enhanced cash alternatives to support the proposed offerings.<sup>26</sup> Mr. Soo told me that this proposal was presented to various executives within Great Canadian, but did not suggest that it was advanced to BCLC.<sup>27</sup> The proposal was never implemented in full, though elements of it would later be introduced at the River Rock.<sup>28</sup>

## **Casino Security Enhancements**

As the gaming industry evolved, so did security concerns surrounding casinos. Rich Coleman, who was the minister responsible for gaming when the River Rock

<sup>20</sup> Exhibit 559, Soo #1, exhibit D.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid, paras 50–54, 58 and exhibit E.

<sup>24</sup> Ibid, paras 54–59 and exhibit E.

<sup>25</sup> Ibid, exhibit E, pp 2–3

<sup>26</sup> Ibid, paras 53–54 and exhibit E, pp 4, 11.

<sup>27</sup> Ibid, paras 57–58.

<sup>28</sup> Ibid, para 58.

opened in 2004, identified enhanced security as one of the rationales for government's efforts to modernize the gaming industry following the 2001 provincial election discussed in Chapter 9.<sup>29</sup>

BCLC recognized some of the security challenges that came with an evolved gaming industry and made enhancements in response. Among these were updates to existing surveillance and security policies<sup>30</sup> including requirements that service providers implement digital surveillance systems and, eventually, license plate recognition technology.<sup>31</sup> Repeated attempts were also made to implement facial recognition technology.<sup>32</sup>

Around this time, BCLC also acquired and customized a computer system called iTrak to support mandatory reporting to GPEB and later FINTRAC.<sup>33</sup> Use of this system was required for all gaming service providers and provided BCLC with greater visibility into incident reports from facilities across the province as these reports were created.<sup>34</sup>

### ***Stationing BCLC Investigators in Casinos***

With the construction of new, more sophisticated gaming facilities, BCLC began to refine the manner in which it deployed its investigative staff. Whereas BCLC investigators had previously been based out of BCLC's headquarters and travelled to casinos as needed,<sup>35</sup> by 2006,<sup>36</sup> BCLC was permanently stationing investigators at gaming facilities. This began with a pilot program in which two investigators were stationed at the River Rock. It was eventually implemented at other Lower Mainland casinos.<sup>37</sup>

The decision to station investigators at casinos was made by Terry Towns, then BCLC's director of security.<sup>38</sup> In his evidence, Mr. Towns explained that he made this decision to ensure that the investigators under his direction received information about incidents occurring in casinos and could take appropriate action in a timely manner. It was also done to assist investigators in developing relationships with service provider staff

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29 Evidence of R. Coleman, Transcript, April 28, 2021, pp 30–31.

30 Evidence of T. Towns, Transcript, February 1, 2021, pp 24–26.

31 Exhibit 517, Affidavit of Terry Towns made January 22, 2021 [Towns Affidavit], para 22; Evidence of T. Towns, Transcript, February 1, 2021, p 24.

32 Exhibit 517, Towns Affidavit, para 22.

33 Ibid, para 21; Evidence of T. Towns, Transcript, February 1, 2021, p 24.

34 Exhibit 517, Towns Affidavit, para 21; Evidence of T. Towns, Transcript, February 1, 2021, p 24.

35 Evidence of G. Friesen, Transcript, October 28, 2020, pp 34–37.

36 There is some disagreement in the evidence as to precisely when BCLC began stationing investigators in casinos. All witnesses place the beginning of this approach between 2004 and 2006. The balance of the evidence suggests this took place in 2006: Exhibit 517, Towns Affidavit, para 40; Evidence of T. Towns, Transcript, February 1, 2021, p 27; Evidence of P. Ennis, Transcript, February 4, 2021, pp 27–28; Exhibit 78, Affidavit #1 of Steve Beeksma, affirmed on October 22, 2020 [Beeksma #1], paras 27, 31, 32; Evidence of G. Friesen, Transcript, October 28, 2020, pp 37–38; Evidence of J. Karlovcec, Transcript, October 29, 2020, p 82.

37 Exhibit 517, Towns Affidavit, para 40; Evidence of T. Towns, Transcript, February 1, 2021, p 27; Evidence of P. Ennis, Transcript, February 4, 2021, pp 27–38; Exhibit 78, Beeksma #1, paras 27, 31, 32; Evidence of G. Friesen, Transcript, October 28, 2020, pp 37–38; Evidence of J. Karlovcec, Transcript, October 29, 2020, p 82.

38 Exhibit 517, Towns Affidavit, para 40; Evidence of T. Towns, Transcript, February 1, 2021, p 27.

and law enforcement in the jurisdictions in which casinos operated.<sup>39</sup> Mr. Towns said that the River Rock was selected as the site for this pilot because it was the province's busiest casino, and it had dedicated office space for the investigators.<sup>40</sup>

The first two investigators stationed at the River Rock were Gordon Friesen and John Karlovcec.<sup>41</sup> Mr. Friesen and Mr. Karlovcec both described this pilot project as a success. Following what both perceived to be an initial period of skepticism or trepidation on the part of casino management, the investigators soon developed a strong relationship with service provider staff and law enforcement, and the casino management came to welcome the presence of the investigators.<sup>42</sup> I heard from several Great Canadian employees (including Mr. Duff, Steve Beeksma and Patrick Ennis),<sup>43</sup> all of whom agreed that having investigators on site enabled the development of a productive relationship between casino staff and the investigators and facilitated the discussion and resolution of issues that arose within the casino.<sup>44</sup> None of these witnesses evidenced any skepticism or trepidation arising from the presence of the investigators at the River Rock. In their evidence, both Mr. Ennis and Mr. Beeksma contrasted the regular presence of BCLC investigators with those working for GPEB, who were present in casinos regularly, but much less frequently than their BCLC counterparts.<sup>45</sup>

## **Increase in Criminal Activity and Cash Facilitation**

Despite these enhancements to casino security, it is evident that the evolution of the province's gaming industry and, in particular, the opening of the River Rock Casino, precipitated an increase in suspicious activity connected to the casino. The evidence before me suggests these changes were followed by an increase in criminal activity in the vicinity of the River Rock, as well as the growth of cash facilitation observed at the casino.

### ***General Increase in Criminal Activity in the Vicinity of River Rock***

In his evidence before the Commission, Ward Clapham, officer-in-charge of the Richmond RCMP detachment when the River Rock Casino opened in 2004, described a significant and unexpected increase in criminal activity in the vicinity of the casino following its opening:<sup>46</sup>

<sup>39</sup> Exhibit 517, Towns Affidavit, para 40; Evidence of T. Towns, Transcript, February 1, 2021, p 27.

<sup>40</sup> Exhibit 517, Towns Affidavit, para 41.

<sup>41</sup> Exhibit 78, Beeksma #1, paras 27, 31; Evidence of G. Friesen, Transcript, October 28, 2020, pp 37–38; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 81–82.

<sup>42</sup> Evidence of G. Friesen, Transcript, October 28, 2020, pp 37–38, 43; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 82–83.

<sup>43</sup> At the time that BCLC began to station investigators at the River Rock in 2006, Mr. Duff was manager of the River Rock Casino, Mr. Beeksma was a surveillance shift manager at the River Rock, and Mr. Ennis was Great Canadian's director of security.

<sup>44</sup> Exhibit 78, Beeksma #1, paras 31–32; Evidence of P. Ennis, Transcript, February 4, 2021, pp 27–28; Evidence of R. Duff, Transcript, January 25, 2021, pp 38–39.

<sup>45</sup> Exhibit 78, Beeksma #1, para 34; Evidence of P. Ennis, Transcript, February 4, 2021, pp 28–29.

<sup>46</sup> Evidence of W. Clapham, Transcript, October 27, 2020, pp 134–35.

[B]y 2005, I don't think anyone could have predicted what we started to see was – because it was a degree of unknown, but the kidnappings – we saw a couple kidnappings, and we were getting lots of [intelligence] reports and briefings regarding money laundering, robberies, loan sharking. Now, these generally speaking are not reported to the police. The bad guys, bad girls, they're not going to report to us and, generally speaking, the victims, so a lot of this was intelligence that we were picking up and/or when we were called in to get involved in 2005 the two kidnappings, for example, or just the other large issues that we were starting to see come from the River Rock.

Mr. Clapham described how, in response to this increase in criminal activity, he directed his general duty officers to maintain a greater presence in the area of the casino. This increased presence included foot patrols in the facility itself, though due to limited resources, these patrols were infrequent.<sup>47</sup> When even these limited patrols prompted a phone call from a vice-president with Great Canadian (whose name Mr. Clapham could not remember) asking that they stop because they were bad for business, Mr. Clapham and other senior members of the detachment began to lead these patrols personally.<sup>48</sup>

Mr. Clapham also sought to address the increased criminal activity in the vicinity of the River Rock by twice proposing to the City of Richmond the creation of a small police unit dedicated to the casino. The first of these proposals, made in 2005, was for a four-person unit including uniformed and plainclothes officers that would be responsible for both foot patrols and investigations based on available intelligence. After this proposal was rejected by the City of Richmond, Mr. Clapham made a more modest proposal for a two-officer unit the following year. This proposed casino unit was the third-highest priority in the detachment's budgetary proposal that year, and while the City did agree to fund additional positions for the detachment, they were insufficient to satisfy the detachment's two highest priorities and, as such, the casino unit was not created. A gaming-focused unit remained a priority for Richmond RCMP detachment when Mr. Clapham retired in 2008. To his knowledge, no such unit was ever established.<sup>49</sup>

### ***Increased Cash Facilitation***

At the same time that the Richmond RCMP recognized an increase in criminal activity generally in the area of the River Rock casino, those working within the gaming

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47 Ibid, pp 137–38.

48 Ibid, pp 138–39.

49 Ibid, pp 143–63; Evidence of W. Clapham, Transcript, October 28, 2020, pp 6–12, 17–19; Exhibit 94, RCMP Briefing Note – Supt. Ward Clapham – Richmond RCMP Annual Reference Level Update 2007/2008; Exhibit 95, Calls for Service – Site Specific – The Great Canadian Casino and River Rock; Exhibit 96, Serious and Unreported Crime at the Casinos (adapted from a report by Cst. David Au of Richmond CIS); Exhibit 97, City of Richmond – Report to Committee (September 1, 2006); Exhibit 98, City of Richmond – Additional Level Request Form for Budget Year 2007; Exhibit 101, RCMP Memorandum to City of Richmond (December 11, 2006); Exhibit 102, City of Richmond Regular Council Meeting (February 26, 2007); Exhibit 103, City of Richmond – Law & Community Safety 2007 Achievements / 2008 Priorities; Exhibit 104, 2007 Annual Report, City of Richmond.

industry identified an increase in cash facilitation activity at the casino. As discussed in Chapter 9, cash facilitators had become a regular presence in the province's casinos in the latter part of the 1990s. Mr. Beeksma, who worked as a surveillance shift manager at the River Rock beginning in May 2004, spoke of his observations of growth in cash facilitation at the new casino relative to the old Richmond Casino:<sup>50</sup>

When River Rock first opened in July 2004, the problematic activity at that time was mainly cash and chips being passed to players by suspected loan sharks. I noticed a significant increase in the number of individuals that I suspected were working as loan sharks compared to the number of such individuals at the Richmond Casino ... The suspected loan sharks I saw at River Rock when it first opened included some of the suspected loan sharks I had seen at the Richmond Casino, but also included people ... who seemed to be higher up the food chain.

Similar observations were made by employees of BCLC and GPEB in the years that followed the River Rock's opening. Mr. Friesen and Mr. Karlovcec, the first two BCLC investigators stationed at the River Rock in 2006, testified that they observed cash facilitation at the casino when first stationed there and that it was a high priority issue at the time.<sup>51</sup> Larry Vander Graaf, then executive director of the GPEB investigation division, gave evidence that cash facilitation was a priority for the Branch's investigation division by 2007.<sup>52</sup> Similarly Joe Schalk, who worked under Mr. Vander Graaf as the senior director in the investigation division, testified that it had been a matter of concern for the division from the time he joined GPEB in 2002, but that it became more prevalent over time.<sup>53</sup>

Mr. Towns said that cash facilitation actually *decreased* when the River Rock opened.<sup>54</sup> Based on the evidence of Mr. Beeksma, however, who was present in the casino on a daily basis and directly responsible for monitoring activity on the casino floor, and whose evidence is corroborated by the observations of Mr. Friesen, Mr. Karlovcec, Mr. Vander Graaf, and Mr. Schalk, I am satisfied that there was a marked increase in cash facilitation at the new River Rock Casino as compared to the old Richmond Casino.

Though BCLC and GPEB seemed to make similar observations regarding the increasing prevalence of cash facilitation at the River Rock, the two organizations responded differently to these observations. Their distinct responses are described below.

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50 Exhibit 78, Beeksma #1, para 28.

51 Evidence of G. Friesen, Transcript, October 28, 2020, pp 39–40; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 83–84.

52 Exhibit 181, Affidavit #1 of Larry Vander Graaf, made on November 8, 2020 [Vander Graaf #1], paras 31–32; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 45, 48.

53 Evidence of J. Schalk, Transcript, January 22, 2021, pp 186–87.

54 Exhibit 517, Towns Affidavit, para 57.

### ***BCLC Response to Cash Facilitation***

As cash facilitation increased, BCLC recognized that there was a risk that this activity could be connected to criminality and took action to remove it from casinos. Mr. Towns acknowledged in his evidence that BCLC's concerns about cash facilitation were linked to concerns that the funds distributed by cash facilitators could be the proceeds of crime.<sup>55</sup> Mr. Friesen referred in his testimony to cash facilitation as a “red flag” for money laundering.<sup>56</sup>

BCLC investigators were trained to identify cash facilitation on the gaming floor.<sup>57</sup> When observed, investigators would gather as much information as possible and submit reports to their superiors requesting that the individuals engaged in the activity be barred from casinos across the province.<sup>58</sup>

Mr. Beeksma, then a surveillance shift manager at the River Rock, shared his observations of BCLC's response to cash facilitation following the opening of the River Rock.<sup>59</sup>

In response to the presence of suspected loan sharks and the cash and chip passing that was occurring when River Rock first opened, there was a blitz of efforts by BCLC casino investigators to get these people out of the casino. The measures BCLC casino investigators took were very aggressive, with people being removed from the casino for even passing a few chips to a friend. Most of these individuals would end up banned from the casino as well, which I could see had occurred when I was reviewing subject profiles in iTRAK. For example, iTRAK allows a user to filter subject profiles according to whether there have been any changes to the profile in the last 24 hours. I would typically come in and review such subject profiles and could see that a particular person had been banned for chip passing.

Mr. Beeksma testified that cash facilitation remained an issue following this “blitz of efforts,” but he recalled that BCLC was successful in significantly reducing this activity at the River Rock.<sup>60</sup> This assessment was shared by Mr. Vander Graaf, who described BCLC's response as taking on the task of barring cash facilitators “with a vengeance.”<sup>61</sup>

It is clear that BCLC took significant steps to address the issue of cash facilitation occurring at the River Rock in the years immediately following the casino's opening and that these actions achieved some success. There were limits to these efforts, however. First, while BCLC was able to remove cash facilitators from casinos, it had little ability

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55 Evidence of T. Towns, Transcript, January 29, 2021, p 142.

56 Evidence of G. Friesen, Transcript, October 28, 2020, p 43.

57 Exhibit 517, Towns Affidavit, paras 45–46.

58 Evidence of G. Friesen, Transcript, October 28, 2020, p 40.

59 Exhibit 78, Beeksma #1, para 33.

60 Evidence of S. Beeksma, Transcript, October 26, 2020, p 35.

61 Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 50.

to directly combat cash facilitation occurring off casino property.<sup>62</sup> This meant that cash facilitators could continue to provide cash to patrons outside casino property or by entering the property only to deliver cash and departing immediately afterward. Mr. Schalk and Mr. Vander Graaf both observed that the impact of BCLC's efforts was not to eliminate cash facilitation but to move cash facilitators off site, from where they began to deliver cash to patrons at the casino.<sup>63</sup> By 2006, BCLC did seek to engage law enforcement on the issue of cash facilitation, although this does not appear to have yielded any response or had any significant impact on cash facilitation based outside casino property.<sup>64</sup>

Another factor that limited the success of BCLC's efforts to address cash facilitation was a focus on the cash facilitators themselves, as opposed to the funds the cash facilitators were providing or the patrons who used those funds. Despite the acknowledgements of Mr. Towns and Mr. Friesen that the funds provided by cash facilitators may have been the proceeds of crime and may have been linked to money laundering, cash obtained from cash facilitators generally continued to be accepted by casinos, and the patrons who gambled those funds continued to be allowed to do so.<sup>65</sup> While BCLC could have barred players receiving suspicious cash from cash facilitators or directed service providers to refuse cash delivered by cash facilitators, it did not take either of these steps during this time period.

### ***GPEB Response to Cash Facilitation***

Whereas Mr. Towns and Mr. Friesen acknowledged that it was possible that cash facilitation during this time period was linked to proceeds of crime and money laundering, the leadership of GPEB's investigation division firmly believed that this was the case. Based on his law enforcement experience, which included significant experience conducting proceeds-of-crime investigations, as well as the presentation of the cash provided by cash facilitators – particularly the predominant use of \$20 bills – Mr. Vander Graaf was convinced that the funds provided by cash facilitators were the proceeds of crime and that they should not have been accepted by casinos.<sup>66</sup>

Mr. Schalk reached a similar conclusion based on his own law enforcement experience and the advice of others with relevant expertise. Mr. Schalk told me that the GPEB's investigation division was in contact with members of the RCMP Integrated Proceeds of Crime (IPOC) unit about this issue and that, by 2008, had received advice that supported the division's own conclusions as to the illicit origins of the funds provided by cash facilitators.<sup>67</sup>

<sup>62</sup> Evidence of T. Towns, Transcript, January 29, 2021, p 143.

<sup>63</sup> Evidence of J. Schalk, Transcript, January 22, 2021, pp 186–87; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 54–55 and Transcript, November 13, 2020, pp 155–56.

<sup>64</sup> Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 83–85.

<sup>65</sup> Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 155–56.

<sup>66</sup> Exhibit 181, Vander Graaf #1, para 34; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 50–51.

<sup>67</sup> Evidence of J. Schalk, Transcript, January 22, 2021, pp 181–82.

Despite the strength of their beliefs that the funds provided by cash facilitators were the proceeds of crime, the actions taken by the GPEB investigation division to address this issue during this time period were limited. When asked what the division was doing about the issue at this time, Mr. Schalk responded:<sup>68</sup>

Well, initially it was to collect as much information as possible about the actual transactions, including video recapture, all of the information relevant to the individual coming in with that information. And then certainly having the availability, if not directly, providing it to the police or police authorities.

Despite the concerns of Mr. Schalk, Mr. Vander Graaf, and their colleagues in the GPEB investigation division regarding the origins of the funds provided by cash facilitators, the actions taken by the division to address those concerns seem to have been largely limited at this time to collecting information about these activities as described by Mr. Schalk above. Mr. Vander Graaf, Mr. Schalk, and Derek Dickson, a former GPEB investigator, all sought to explain the Branch's limited action by pointing to limits on the authority granted to GPEB, including the absence of any authority to bar patrons from casinos – something Mr. Vander Graaf unsuccessfully sought to change – and limits on GPEB's investigative authority.<sup>69</sup> While I acknowledge there were some limits on the investigation division's authority, it nevertheless remains the case that, despite their expressions of grave concern over the source of funds being provided by cash facilitators in the years following the opening of the River Rock and other new casinos in the Lower Mainland between 2004 and 2008, GPEB took little meaningful direct action to address this problem.

## **2008–2015: Rise of Suspicious Cash**

With the benefit of hindsight, it is now clear that the developments in the gaming industry described above set the stage for a dramatic increase in the volume of cash accepted in the province's casinos in the years that followed. Beginning in 2008 and 2009, individuals working in various capacities in the gaming industry noticed an increase in the size and frequency of cash buy-ins at some Lower Mainland casinos. At the same time, the number of cash transactions reported by service providers to GPEB and by BCLC to FINTRAC, as well as the cumulative and individual values of those transactions, increased rapidly.

### **Beginning of the Rise in Suspicious Cash**

Multiple witnesses gave evidence of an increase in the size and frequency of cash transactions observed in Lower Mainland casinos beginning in or around 2008.

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<sup>68</sup> Ibid, p 182.

<sup>69</sup> Evidence of D. Dickson, Transcript, January 22, 2021, pp 45–47, 70, 99–101; Evidence of J. Schalk, Transcript, January 22, 2021, pp 199–201; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 45–48.

Mr. Karlovcec, for example, testified that he observed a steady increase in the volume of cash accepted at the River Rock during the period he was stationed at the casino (2006 to 2008) and that he would commonly see buy-ins of \$10,000 to \$25,000 or higher.<sup>70</sup> Mr. Friesen, who was based at the River Rock alongside Mr. Karlovcec, indicated that buy-ins of \$50,000, while unusual, did occur during this period.<sup>71</sup> Mr. Schalk and Mr. Vander Graaf told me that the GPEB investigation division also identified increases in cash transactions at this time.<sup>72</sup> Mr. Schalk gave the following evidence regarding the size of the transactions observed during this period:<sup>73</sup>

Well, the volumes of buy-ins were in the 30-, 50-, \$100,000 was often significant – really significant at that time, and there [were] very few of those. But the volume, the dollar volume or dollar value was more in the tens of thousands of dollars, up to, say, 50-or-so thousand initially. We did have a couple of odd times where there was more, 100,000 or more, that had come in and certainly we became very, very conscious of looking at those.

Similar observations were made by Mr. Ennis, who told me that he began to regularly observe six-figure buy-ins at the River Rock Casino after bet limits were increased to \$5,000 “per position.”<sup>74</sup> Mr. Ennis was not certain of when this bet limit increase occurred but suspected that it took place in or around 2008.<sup>75</sup> This timing is corroborated by the evidence of Jim Lightbody, chief executive officer and president of BCLC beginning in 2014.<sup>76</sup> Mr. Vander Graaf also tied the acceleration in suspicious transactions to an increase in bet limits around this time.<sup>77</sup>

That the frequency and value of suspicious cash transactions began to increase in or around 2008 is supported by reporting data available from that time. By 2012, the GPEB investigation division had begun to produce “reports of findings” that included data regarding transactions reported as “suspicious currency transactions” (SCTs) pursuant to section 86 of the *Gaming Control Act*. The first such report, dated November 19, 2012, sets out the number of such reports received each year from 2007 to 2011, identifying a significant jump between 2007 and 2008:<sup>78</sup>

70 Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 86–88; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 126.

71 Evidence of G. Friesen, Transcript, October 28, 2020, p 42.

72 Exhibit 181, Vander Graaf #1, para 35, exhibit G; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 51–52, 165–66 and Transcript, November 13, 2020, p 39.

73 Evidence of J. Schalk, Transcript, January 22, 2021, p 110.

74 Exhibit 530, Affidavit #1 of Patrick Ennis, made on January 22, 2021 [Ennis #1], para 15; Evidence of P. Ennis, Transcript, February 3, 2021, p 72; Evidence of P. Ennis, February 4, 2021, pp 23–24.

75 Evidence of P. Ennis, Transcript, February 3, 2021, p 72.

76 Exhibit 505, Affidavit #1 of Jim Lightbody, sworn on January 25, 2021 [Lightbody #1], exhibit 22.

77 Exhibit 181, Vander Graaf #1, para 36; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 51–52.

78 Exhibit 181, Vander Graaf #1, exhibit G, p 2.

**Table 10.2: Suspicious Cash Transactions, 2007–2011**

<b>Calendar Year</b>	<b>Section 86 SCT Reports</b>
2007	59
2008	213
2009	211
2010	295
2011	676

Source: Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit G.

### **Growth in Suspicious Cash**

The data found in this and later reports of findings suggest that the frequency and volume of suspicious cash accepted by the province’s casinos continued to increase in the years that followed.

Reports for subsequent years, which present data for 12-month periods, but not according to the calendar year, show that the number of suspicious currency transactions continued to rise:<sup>79</sup>

**Table 10.3: Suspicious Cash Transactions, 2010–2014**

<b>Year</b>	<b>Section 86 SCT Reports</b>
2010–11	459
2011–12	861
2012–13	1,062
2013–14	1,382

Source: Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit O and Q.

The reports of findings also include information that demonstrates that the cumulative amount of cash accepted in these transactions increased along with the number of suspicious transactions. For example, an October 2013 report indicates that the total value of “suspicious currency transactions” reported to GPEB between July 1, 2010, and June 30, 2011, was \$39,572,313. This increased to \$87,435,297 for the one-year period beginning on January 1, 2012.<sup>80</sup> A subsequent report indicates that the value of such transactions had increased again to \$118,693,215 in the 2013–14 year.<sup>81</sup>

Further evidence of the rate at which cash transactions increased during this period is found in large cash transaction reporting data and suspicious transaction

<sup>79</sup> Ibid, exhibit O, p 2 and exhibit Q, p 195.

<sup>80</sup> Ibid, exhibit O, p 2.

<sup>81</sup> Ibid, exhibit Q, p 1.

reporting data from BCLC.<sup>82</sup> Table 10.4 below sets out the number and value of large cash transaction (LCT) reports submitted by BCLC to FINTRAC between 2010 and 2015. It is important to bear in mind that, unlike the data from section 86 SCT reports, which includes only transactions identified as suspicious by the reporting party (service providers or BCLC), this data represents *all* transactions of \$10,000 or more during these years, including those *not* deemed suspicious by service providers and/or BCLC. While these data do not speak to the character of the transactions, other than their value, they do provide an indication of the number and value of all large cash transactions, and some insight into the rate at which the volume of cash present in the industry was growing during this time period.<sup>83</sup>

**Table 10.4: Large Cash Transaction Reports, 2010–2015**

<b>Year</b>	<b>Number of LCTs of \$10,000 or More</b>	<b>Cumulative Value of LCTs of \$10,000 or More</b>
2010	17,976	\$342,260,480
2011	19,117	\$388,316,963
2012	21,525	\$492,417,655
2013	27,449	\$750,664,064
2014	34,720	\$1,184,603,543
2015	35,655	\$968,145,428

Source: Exhibit 784, Affidavit #2 of Cathy Cuglietta, exhibit A.

While it is important to bear in mind that the transactions represented in this table are not limited to those identified by service providers or BCLC as suspicious, these figures demonstrate the acceleration of large cash transactions in the industry during this time period. In just five years between 2010 and 2014, the number of cash transactions of \$10,000 or more nearly doubled and the value of those transactions nearly quadrupled.

Additional insight into the nature and volume of suspicious cash that was entering the gaming industry by the end of this period is found in BCLC data for suspicious transaction reporting. This type of data is unavailable prior to 2014 and, therefore, is not of assistance in illustrating the growth of such transactions leading up to that year. It does indicate, however, that in 2014, BCLC reported a total of 1,631 suspicious transactions, including 493 with a value between \$50,001 and \$100,000 and 595 with a value over \$100,000.<sup>84</sup> The following year, BCLC reported 1,737 suspicious transactions,

82 Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020 [Cuglietta #1]; Exhibit 784, Affidavit #2 of Cathy Cuglietta, sworn on March 8, 2021 [Cuglietta #2]. Note: “Cathy Cuglietta” and “Caterina Cuglietta” refer to the same witness.

83 Exhibit 784, Cuglietta #2, exhibit A.

84 Exhibit 482, Cuglietta #1, exhibit A.

including 524 between \$50,001, and \$100,000 and 527 with a value over \$100,000.<sup>85</sup> The total value of all transactions reported as suspicious in these years was \$195,282,332 in 2014 and \$183,841,853 in 2015.<sup>86</sup>

The growth in cash transactions indicated by these data is also consistent with the evidence of a number of witnesses active in the gaming industry at the time.<sup>87</sup> Mr. Beeksma, for example, described a \$460,000 buy-in at the River Rock in May 2010 and his general observations of the evolution of large cash transactions at the River Rock following this transaction:<sup>88</sup>

I recall that this was the incident that made BCLC, as well as other stakeholders such as GPEB and service providers, start to take a second look at what more could be done about the volume of cash coming into casinos. This was, to the best of my recollection, the beginning of the period in which significant amounts of cash began entering the casinos. At River Rock, a cash buy-in for \$400,000 became a much more common occurrence in the years that followed this incident, with the volume of cash buy-ins peaking in 2014–2015. To the best of my recollection, at their peak, cash buy-ins in the range of \$100,000 to \$200,000 were fairly common in the high limit rooms at River Rock, and some cash buy-ins could be as high as in the range of \$800,000 in the high limit rooms at River Rock. \$20 bills were the most common denomination for these cash buy-ins.

While this passage from Mr. Beeksma’s evidence is focused on activity at the River Rock, the evidence before me establishes that these issues were not limited to a single casino. Multiple witnesses gave evidence of activity that was similar in kind – if not necessarily extent – at other facilities in the Lower Mainland, including the Starlight, Grand Villa, and Edgewater casinos. Mr. Beeksma,<sup>89</sup> Michael Hiller,<sup>90</sup> Daryl Tottenham,<sup>91</sup> and Mr. Karlovcec<sup>92</sup> – all current or former BCLC investigators – and Mr. Dickson<sup>93</sup> all gave evidence of similar transactions at the Starlight Casino. Mr. Hiller also gave evidence that he was aware of this kind of activity at the Edgewater and Grand Villa

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85 Ibid.

86 Exhibit 784, Cuglietta #2, exhibit A. These figures include eGaming and “external request” suspicious transaction reports: *ibid*, para 6.

87 Exhibit 148, Tottenham #1, paras 18 and 64; Exhibit 87, Affidavit #1 of Stone Lee, sworn on October 23, 2020 [S. Lee #1], paras 29–33; Exhibit 144, Affidavit #3 of Ken Ackles, made on October 28, 2020 [Ackles #3], paras 18–24; Exhibit 181, Vander Graaf #1, paras 35–38; Exhibit 78, Beeksma #1, para 50; Exhibit 166, Hiller #1, para 34; Exhibit 145, Affidavit #1 of Robert Barber, made on October 29, 2020 [Barber #1], paras 20–33; Evidence of D. Dickson, Transcript, January 22, 2021, pp 11–12; Evidence of R. Barber, Transcript, November 3, 2020 pp 13–15.

88 Exhibit 78, Beeksma #1, paras 45–47, 50.

89 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 37–38.

90 Evidence of M. Hiller, Transcript, November 9, 2020, p 13.

91 Exhibit 148, Tottenham #1, para 18; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 5–6, 181–82.

92 Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 87–90.

93 Evidence of D. Dickson, Transcript, January 22, 2021, pp 4–7.

casinos.<sup>94</sup> Stone Lee, a BCLC investigator and former Great Canadian surveillance manager, was stationed at the Edgewater from 2008 to 2012 and gave evidence of cash facilitators lending upwards of \$100,000 at a time at that casino.<sup>95</sup> Documents in evidence before the Commission further demonstrate that transactions of this sort took place at these casinos in and around this time period.<sup>96</sup>

## Observations of Suspicious Cash Transactions

In addition to the size of these buy-ins, witnesses who gave evidence about cash transactions observed in casinos during this period also spoke of other distinctive features of these buy-ins. Mr. Karlovcec, for example, told me that the cash used in the transactions that he observed while stationed at the River Rock and Starlight casinos as a BCLC investigator tended to be predominantly in \$20 bills, was sometimes bundled in elastic bands, and would often be brought into the casino in knapsacks, shopping bags, or paper bags.<sup>97</sup>

When asked about the distinctive features of large cash transactions that he was aware of during this period, Mr. Schalk offered a similar description:<sup>98</sup>

[W]e were seeing this coming in in \$10,000 lots and predominantly in \$20 bills. What you would see is \$10,000 of \$20 bills stacked in a stack about this big, and it had usually three sets of elastic around it, two on the ends and one in the middle. And so, it would come in \$10,000 packs, as I referred to them as, at least. Often, they came in in the form of large cases that people had, whether it be shopping bags, sometimes even suitcases, boxes, large bags, almost grocery shopping bags with – whether it be 100-, 200-, 300,000.

Oftentimes they were also using kit bags or sporting bags. And we were seeing evidence of this via video where people would take a kit bag that ended up being full of \$20 bills in \$10,000 lots out of the trunk of their car in the parking lot of the casino, into the casino, up to the cash cage at the – usually the high limit room and deposit these cash bundles at the cash cage, asking that it be counted and then converted to chips that could be used for gaming.

Mr. Karlovcec and Mr. Schalk were not alone in making these observations.

<sup>94</sup> Evidence of M. Hiller, Transcript, November 9, 2020, pp 12–13.

<sup>95</sup> Evidence of S. Lee, Transcript, October 27, 2020, pp 16–18; Exhibit 87, S. Lee #1, paras 28–29, 33.

<sup>96</sup> See, for example, Exhibit 488 (previously marked as Exhibit A), Letter from Joe Schalk, re Suspicious Currency Transactions – Money Laundering Review Report (December 27, 2012); Exhibit 145, Barber #1, exhibit F; Exhibit 507, Affidavit #1 of Derek Sturko, made on January 18, 2021 [Sturko #1], exhibit E; Exhibit 148, Tottenham #1, exhibits 3, 38; Exhibit 760, Casino – Investigational Planning & Report – IPOC (January 30, 2012); Exhibit 79, Affidavit #2 of Steve Beeksma, affirmed on October 22, 2020, exhibits 12, 32; Exhibit 87, S. Lee #1, paras 28–30; Exhibit 78, Beeksma #1, exhibit B.

<sup>97</sup> Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 89–90.

<sup>98</sup> Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–12.

Numerous other witnesses gave similar evidence describing the nature of the transactions they observed in the province’s casinos during this time period.<sup>99</sup>

Many of these witnesses had significant law enforcement experience, gained prior to joining the gaming industry, and drew on this experience to offer insight into the significance of these features of the large cash transactions they observed in the province’s casinos.<sup>100</sup> Ken Ackles, who joined GPEB as an investigator in 2013, drew on his 37 years of experience as a member of the RCMP in forming his opinion that the funds used in transactions that occurred daily at the River Rock Casino were likely the proceeds of crime:<sup>101</sup>

My experience as a policeman gave me the impression that the way that these bills were presented and in the fashion that they were presented, wrapped in elastic bands, packaged in bundles with misorientated bills – and I mean that by either face up, face down, reversed within the bundles – was significant to me from my experience in other investigations where I also had an opportunity to view bundled cash at the scenes of investigations that I conducted where cash was seized, it was the proceeds of crime or significantly the result of a commodity exchange in a criminal investigation.

Mr. Vander Graaf, who was a member of the RCMP from 1969 to 1998,<sup>102</sup> had led the Integrated Anti-Drug Profiteering unit (the predecessor to the RCMP IPOC unit),<sup>103</sup> and lectured around the world on subjects related to proceeds of crime,<sup>104</sup> formed a similar view based on his own experience:<sup>105</sup>

Based on my past experience, I held the strong belief that the bags containing large volumes of cash being brought into casinos by persons dealing with loan sharks / organized crime and consisting of \$20 bills wrapped in elastic bands in \$10,000 bundles (known as “bricks” in the drug trade) were proceeds of crime.

I will reserve for later in this Report my own conclusions as to whether these funds were, in fact, the proceeds of crime, but it is clear from the evidence before me that

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99 See example: Exhibit 166, Hiller #1, para 58; Evidence of M. Hiller, Transcript, November 9, 2020, pp 8–9; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–15; Evidence of R. Alderson, Transcript, September 9, 2021, pp 11–12, 117–18; Evidence of G. Friesen, Transcript, October 28, 2020, pp 84–87; Evidence of J. Karlovcec, October 29, 2020, pp 74–75, 90.

100 Evidence of K. Ackles, Transcript, November 2, 2020, p 11; Evidence of R. Barber, Transcript, November 3, 2020, pp 14–15; Exhibit 145, Barber #1, paras 6, 29–30; Evidence of M. Hiller, Transcript, November 9, 2020, p 12; Exhibit 181, Vander Graaf #1, para 54; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–13.

101 Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12.

102 Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 3.

103 Ibid.

104 Ibid, pp 5–7; Exhibit 182, Curriculum Vitae of Larry Peter Vander Graaf.

105 Exhibit 181, Vander Graaf #1, para 54.

those engaged in the gaming industry at the time were aware of the distinctive features of this cash and drew their own conclusions as to the significance of those features.

## Continued Development of VIP Offerings and Increased Bet Limits

Even as the rate at which large and suspicious cash transactions were being accepted in the province's casinos accelerated, the industry continued to implement measures intended to grow VIP business. These measures came in two forms. First, casinos in the Lower Mainland, particularly the River Rock, continued to develop VIP facilities and programs to attract additional high-limit play. Second, BCLC raised maximum betting limits on multiple occasions, enabling play at higher and higher levels.

### Development of VIP Facilities

Earlier in this chapter, I described the concern that arose within Great Canadian, even as the River Rock was in development, about competition with other planned Lower Mainland facilities. In response to these concerns, Mr. Soo was asked to develop two proposals for plans to attract international VIP patrons. While neither of these proposals were implemented, soon afterward, Mr. Soo had the opportunity to guide significant enhancements to the River Rock's VIP amenities.

Mr. Soo explained how this opportunity arose from the 2010 Vancouver Winter Olympics, which overlapped with the Chinese New Year season. He gave evidence that the Chinese New Year was typically a lucrative period for the River Rock and that he was concerned that the VIP patrons who usually frequented the casino at that time of year might find increased crowds from the Olympics disruptive.<sup>106</sup> As a solution, Mr. Soo proposed that the River Rock's third-floor poker room be repurposed to create "an exclusive, restricted access gaming area which segregates premium table game players from mass market games and Olympic party guests."<sup>107</sup> Great Canadian proceeded to implement Mr. Soo's proposal.<sup>108</sup>

According to Mr. Soo and Mr. Duff, the general manager of the River Rock at the time, these developments were highly successful in increasing VIP business both at the time of the Olympics and afterwards.<sup>109</sup> This success led to further enhancements to the River Rock's VIP offerings in the years that followed, typically introduced in time for Chinese New Year.<sup>110</sup> Mr. Soo explained the annual cycle of VIP enhancements following the success of the 2010 project:<sup>111</sup>

<sup>106</sup> Exhibit 559, Soo #1, paras 61–62; Evidence of W. Soo, Transcript, February 9, 2021, pp 33–37.

<sup>107</sup> Exhibit 559, Soo #1, paras 63–64; Evidence of W. Soo, Transcript, February 9, 2021, pp 33–37.

<sup>108</sup> Exhibit 559, Soo #1, para 65; Evidence of W. Soo, Transcript, February 9, 2021, pp 33–37.

<sup>109</sup> Exhibit 559, Soo #1, para 65; Evidence of W. Soo, Transcript, February 9, 2021, pp 36–37; Evidence of R. Duff, Transcript, January 25, 2021, pp 25–26.

<sup>110</sup> Evidence of W. Soo, Transcript, February 9, 2021, pp 36–37; Exhibit 559, Soo #1, paras 65–66.

<sup>111</sup> Evidence of W. Soo, Transcript, February 9, 2021, pp 36–37.

[O]nce it worked out for us, for years to come we adopted that model. What we did was look at what enhancements can we try out for the following Chinese New Year, specific to Chinese New Year because we knew there was a huge cluster of people coming back to repatriate with their families, and so that gave us the storefront for when they left and went back and told their friends, who all had status in Vancouver as well, too, that would come back throughout the year. They would be our walking advertising boards of saying hey, I was just in River Rock during Chinese New Year; they've created this product; it's really good, we like it; the next time you go there ... And so, from a marketing perspective for year-round and also for the height of Chinese New Year it worked out for us and it worked out for us every year I would say from 2010 to 2014.

Specific changes proposed to the River Rock's high-limit space in late 2014 will be discussed later in this chapter.

While these changes may have enhanced the River Rock's VIP business, it is clear that they also accelerated the rate at which large volumes of cash were accepted at the casino. Attracting new VIP patrons and additional high-limit play, in an industry that remained cash-dominant, were certain to lead to increases in the volume of cash being used in the casino. Mr. Soo, Mr. Duff, and Mr. Ennis, who all worked for Great Canadian in different capacities at the time, each agreed that an increase in the cash accepted by the casino was the likely outcome of these changes.<sup>112</sup> As Mr. Soo put it, “[I]f your business is going to grow and it's a cash-only business, obviously the amount of cash is going to grow.”<sup>113</sup> I note as well that it is clear from Mr. Soo's evidence that much of the VIP business being courted through these enhancements consisted of players with business interests in, or other connections to, China.<sup>114</sup> These individuals were highly likely to have difficulty accessing wealth held in that country for the purpose of gambling and, as such, would be reliant on local sources of cash to use at the River Rock and other casinos.

Much of the focus on this issue in the Commission's hearings was centred on the development of VIP facilities at the River Rock. It is clear from the record before me, however, that it was not the only casino in the Lower Mainland with an interest in recruiting VIP patrons. Mr. Duff referred in his evidence to the construction of VIP rooms at the Grand Villa and Starlight casinos and that he was hired away from the River Rock by the Parq Vancouver Casino in 2013, four years before it opened, to lead their efforts to “go after the VIP play.”<sup>115</sup> Mr. Hiller indicated that the Starlight was the second most popular casino among VIPs and that it expanded its VIP room during his tenure as a BCLC investigator.<sup>116</sup> An affidavit sworn by Bill Lang, executive director of VIP for

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112 Evidence of P. Ennis, Transcript, February 3, 2021, pp 116, 119; Evidence of R. Duff, Transcript, January 25, 2021, pp 29–30; Evidence of W. Soo, Transcript, February 9, 2021, pp 37–39.

113 Evidence of W. Soo, Transcript, February 9, 2021, p 38.

114 Evidence of W. Soo, Transcript, February 9, 2021, pp 33–37.

115 Evidence of R. Duff, Transcript, January 25, 2021, p 27.

116 Evidence of M. Hiller, Transcript, November 9, 2020, pp 10, 20.

Gateway Casinos & Entertainment Limited, attaches records indicating hundreds of thousands of dollars in “comps,” including meals and hotel accommodations, provided to a VIP patron I will refer to as “Patron B”<sup>117</sup> between 2013 and 2017.<sup>118</sup> While I do not suggest that the VIP amenities at these casinos were equivalent in nature, scale, or outcomes to those at the River Rock, it is clear from this evidence that interest in attracting VIP patrons was an industry-wide phenomenon and not the exclusive domain of any one casino or service provider.

## Increased Bet Limits

As service providers enabled the growth of large cash transactions in the gaming industry by seeking to attract VIP patrons to their casinos, BCLC did so by repeatedly raising maximum bet limits between 2008 and 2014.<sup>119</sup> Following the increase in bet limits to \$5,000 in or around 2008, referred to earlier in this chapter, BCLC effectively raised high-limit room limits again in October 2012 by permitting players at private baccarat tables to bet all nine positions at the table, enabling a single patron to bet up to \$45,000 on one hand.<sup>120</sup> Limits were raised again for high-limit rooms in January 2014 to \$10,000 per hand<sup>121</sup> and an aggregate of \$100,000 for patrons playing all positions at a private table,<sup>122</sup> meaning that a single player could wager up \$100,000 on a single hand of baccarat. A further bet limit increase to \$250,000 received some consideration within BCLC in 2014 but was ultimately not implemented.<sup>123</sup> In addition to these increases to high-limit betting limits, increases to limits applicable on the “main gaming floor,” outside of high-limit areas, were also implemented during this time period.<sup>124</sup>

When asked about the motivation for these increases in bet limits, Michael Graydon, CEO of BCLC between 2008 and 2014,<sup>125</sup> agreed that they were motivated by a desire to increase revenue and attract new players to the province’s casinos.<sup>126</sup> He explained that underlying these bet limit increases was a desire on the part of BCLC to compete with leading global gaming jurisdictions:<sup>127</sup>

117 The names of casino patrons have been anonymized throughout this Report in order to protect their privacy and because I did not conclude that it was necessary to identify them in order to fulfill my Terms of Reference. Unique identifiers (e.g., “Patron A” and “Patron B”) are used in the place of patron names in order to identify where anonymized references to patrons in different parts of this Report refer to the same patron.

118 Exhibit 1040, Lang #2.

119 Exhibit 505, Lightbody #1, exhibit 22.

120 Ibid.

121 This increased betting limit was implemented on a trial basis in at least one casino in 2013: Exhibit 505, Lightbody #1, paras 40–44.

122 Exhibit 505, Lightbody #1, exhibit 22.

123 Ibid, para 55 and exhibit 21.

124 Ibid, exhibit 22.

125 Exhibit 576, Affidavit #1 of Michael Graydon, made on February 8, 2021, para 1.

126 Evidence of M. Graydon, Transcript, February 11, 2021, p 11.

127 Ibid.

The lottery division in consultation with high-value players and with the service providers believed that there was an opportunity to be more competitive with other gambling markets like Macao, Las Vegas, Singapore and an opportunity to attract more high-value players to our business. And so [increased bet limits were] put in place for those purposes.

Mr. Graydon went on to indicate that the risks of these increases were considered and that BCLC reviewed the responsible gaming and anti-money laundering implications of these increases prior to their implementation.<sup>128</sup>

The potential impact of increased bet limits on the volume of cash present in a cash-dominant gaming industry is obvious. As high-limit VIP patrons were permitted to place higher bets on a single hand, they would be able to gamble greater amounts of money in shorter periods of time. Given the industry's continued reliance on cash, it was highly predictable that they would do so using cash, fuelling an increase in large cash transactions. The correlation between the increase in betting limits identified above and the growth in large and suspicious cash transactions discussed previously suggests that this is precisely what occurred during this time period. This conclusion is further supported by the evidence from a range of witnesses who were active in the industry throughout this time period and who connected increases in the volume of suspicious cash accepted by casinos to rising bet limits.<sup>129</sup> Mr. Beeksma, who has worked continuously in the industry since 2000, described his observations of the relationship between the two as follows:<sup>130</sup>

[Bet limit increases] had a direct impact on [the quantity and size of cash buy-ins]. Casinos – for many years the biggest chip was a \$500 chip. I don't remember the exact years or dates, but \$1,000 chips were introduced and eventually \$5,000 chips were introduced, and then VIP rooms were developed. And as these chips were introduced, the table limits increased as well in specific areas of the casino. So it's not at all surprising to me that there's a correlation there between the amount you can wager and how much cash was coming in.

Like Mr. Beeksma, I am not at all surprised that the size and frequency of cash buy-ins increased alongside betting limits. It is clear, in my view, that these increased betting limits played an important and predictable role in fuelling the increase in large and suspicious cash transactions in British Columbia's casinos between 2008 and 2015.

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128 Ibid, p 12.

129 Evidence of P. Ennis, Transcript, February 3, 2021, pp 72–73; Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 38; Evidence of G. Friesen, Transcript, October 28, 2020, p 6; Evidence of G. Friesen, Transcript, October 29, 2020, pp 1–2, 50–51; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 87–88; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 126; Evidence of S. Lee, Transcript, October 27, 2020, p 18; Evidence of Steven Beeksma, Transcript, October 26, 2020, p 77; Exhibit 530, Ennis #1, para 15.

130 Evidence of Steven Beeksma, Transcript, October 26, 2020, p 77.

### **Role of Service Providers in Implementing Bet Limit Increases**

In considering the role that BCLC played in increasing betting limits throughout this time period, it is important to bear in mind that BCLC was not solely responsible for determining how much a patron could bet at one time. While BCLC set maximum bet limits, service providers had the discretion to decide whether to permit betting up to those limits in the casinos they operated.<sup>131</sup> Mr. Lightbody described the shared responsibility for setting maximum betting limits as follows:<sup>132</sup>

It is important to note that \$100,000 for aggregate bets for one hand at a baccarat table was the upper limit that a Service Provider could offer to a player or players at a table. It is a Service Provider's decision whether to allow a player to bet the maximum bet based on their table bet risk management. I am not aware of how often or whether Service Providers ever allowed a patron to bet \$100,000 on one hand of Baccarat.

I accept Mr. Lightbody's evidence that it is the responsibility of service providers to set bet limits applicable in the casinos they operate within the limits approved by BCLC. It is surprising to me, however, that Mr. Lightbody is unaware of whether service providers *ever* allowed a patron to bet \$100,000 on a single hand of baccarat. I would not expect the CEO of BCLC to be kept apprised of the details of how service providers are setting bet limits in each of the province's casinos on a day-to-day basis. Given the magnitude of the increases in maximum betting limits implemented in 2014, however, and the money laundering and other risks associated with these changes, I would have expected that the CEO of the Crown corporation responsible for the conduct and management of gaming in British Columbia would have monitored their impact at least to the point of knowing whether they had ever been applied in practice.

It is apparent from the evidence of former Great Canadian staff members that the discretion to adjust betting limits within the maximums established by BCLC was exercised in casinos operated by Great Canadian.<sup>133</sup> While Great Canadian-operated casinos do not seem to have reflexively permitted betting up to BCLC-permitted maximums at all times in all casinos, it does not appear that the money laundering risk associated with permitting higher levels of betting in a cash-dominant environment, or whether players would be able to access the funds needed to play at these elevated levels from legitimate sources, factored into this decision-making process.<sup>134</sup> Mr. Duff, who was involved in such decisions as general manager of the River Rock, described this decision-making process in his evidence:<sup>135</sup>

<sup>131</sup> Exhibit 505, Lightbody #1, para 53; Evidence of P. Ennis, Transcript, February 3, 2021, p 118; Evidence of R. Duff, Transcript, January 25, 2021, p 31; Evidence of W. Soo, Transcript, February 9, 2021, pp 46–47.

<sup>132</sup> Exhibit 505, Lightbody #1, para 53.

<sup>133</sup> Evidence of R. Duff, Transcript, January 25, 2021, pp 31–33; Evidence of P. Ennis, Transcript, February 3, 2021, pp 117–20; Evidence of W. Soo, Transcript, February 9, 2021, pp 46–48.

<sup>134</sup> Evidence of R. Duff, Transcript, January 25, 2021, pp 31–33; Evidence of P. Ennis, Transcript, February 3, 2021, pp 117–20.

<sup>135</sup> Evidence of R. Duff, Transcript, January 25, 2021, pp 31–33.

Q [A]m I correct that throughout your time at River Rock maximum bet limits were set by BCLC?

A Yes. The service providers can request to raise their limit, depending on the game type, depending on the year. Around the time of Chinese New Year casinos may want to increase their bet limit and things like that. But yes, the increases would be discussed at the corporate level and the operational level and sent to BCLC for approval.

Q And ... once BCLC agreed or increased the maximum bet limit, it would be up to the individual casinos to decide whether to allow play up to that limit; is that correct?

A Yes. It depends on what type of risk that the casino wants to do. At River Rock we would – having a \$50,000 limit on a baccarat table, we would allow at a casino – like when I was at the Hard Rock at the end of my career, that risk would have been too great to have.

Q Can you explain why that would be the case? Why – what could cause the risk to be too great? ...

A Well, the risk comes into it – if you have more players playing it, then the house's risk goes down. If we have 20 players playing a certain level, say at \$10,000, then we have 20 players that are going to win, going to lose, going to win, going to lose, and then our risk is taken down because we've got that many players. If you have just one or two players playing that and if they win right off the hop and they leave, well, we can't get that money back because we don't have any other players to generate that risk.

Q So you need enough players to sort of average out the wins and losses that you know the casino is going to come out on top; is that fair?

A Absolutely.

Q And ... were you involved in making decisions at the River Rock about whether to allow play up to maximum bet limits?

A It was discussed. It was more of – from, again, the development team. It was discussed as to, I think we can put this risk up, and that I'd be part of those discussions, but it wasn't at a point where I was walking around the floor saying okay, I need \$100,000 table there.

...

Q In the course of those discussions do you recall anyone ever suggesting ... that River Rock should not allow play up to maximum BCLC limits

because you weren't confident players would be able to access ... the cash they would need from legitimate sources?

- A No, that was never suggested. If we wanted limits – if we suggested the limits and they said, you could go that way, we basically did.

### **January 2013 and 2014 Bet Limit Increases**

I heard extensive evidence about the 2014 bet limit increases to \$10,000 per hand and \$100,000 table aggregate in high-limit rooms, referred to above. Mr. Lightbody, who was BCLC's vice-president of casino and community gaming at the time these bet limit increases were implemented, understood these increases to have arisen from a request from Great Canadian.<sup>136</sup> Mr. Lightbody explained that these increases were initially tested as a trial program in 2013.<sup>137</sup> From a business standpoint, it appears that this trial was a resounding success. In an email written to BCLC's senior executives on March 7, 2013, Mr. Lightbody identified increased bet limits as a "key driver" of the "simply outstanding results" achieved during the 2013 Chinese New Year period.<sup>138</sup> No reference is made in this email to the impact of these increases on large and suspicious cash transactions.<sup>139</sup>

BCLC subsequently made this trial increase of individual position bet limits permanent. At the same time, it also sought to increase table aggregate limits to \$100,000 for private tables and to permit patrons to bet the entirety of the aggregate table limit from a single position.<sup>140</sup> While BCLC had not sought GPEB's approval for the trial increase in individual position limits to \$10,000,<sup>141</sup> it did seek approval of the increase to table aggregate limits in or around June 2013.<sup>142</sup> Based on emails between Mr. Lightbody and Mr. Graydon dated December 12, 2013, it is apparent that, by December 2013, Mr. Graydon had grown impatient with the time it had taken to obtain a response from GPEB and the resulting missed "revenue and player development opportunities." Mr. Lightbody indicated an eagerness to see the proposal in place for the upcoming Chinese New Year holiday.<sup>143</sup>

GPEB ultimately concluded that its approval was not required for the increase in bet limits sought by BCLC.<sup>144</sup> As part of its review of BCLC's proposal, however, GPEB forwarded to BCLC a draft briefing note, requesting BCLC's input and feedback before it was submitted to the general manager of GPEB.<sup>145</sup> In addition to communicating GPEB's

<sup>136</sup> Exhibit 505, Lightbody #1, para 40.

<sup>137</sup> Ibid, paras 41–46.

<sup>138</sup> Ibid, paras 45–46 and exhibit 14.

<sup>139</sup> Ibid, exhibit 14.

<sup>140</sup> Ibid, para 47 and exhibits 15, 22; Exhibit 543, MOF Briefing Document, Limits in Casinos (December 13, 2013), p 3; Evidence of J. Lightbody, Transcript, January 28, 2021, p 10.

<sup>141</sup> Exhibit 505, Lightbody #1, para 41.

<sup>142</sup> Ibid, para 47.

<sup>143</sup> Ibid, exhibit 16.

<sup>144</sup> Evidence of J. Mazure, Transcript, February 5, 2021, pp 56–57.

<sup>145</sup> Exhibit 544, BCLC letter from Michael Graydon to John Mazure, re High Limit Table Changes (December 19, 2013); Exhibit 505, Lightbody #1, paras 50–51 and exhibits 19, 20.

position that its approval was not required to raise bet limits, the draft briefing note identified, among other potential repercussions of the proposed bet limit increase, the possibility that raising the limits would “[increase] the ability to launder large sums of money for current high limit games.”<sup>146</sup> This does not appear to have caused BCLC to reconsider the proposed betting limit increase.

On December 19, 2013, two days after receiving this draft briefing note, Mr. Graydon wrote to John Mazure, then assistant deputy minister and general manager of GPEB.<sup>147</sup> In addition to registering his concern with the time it had taken to resolve this “very simple decision,” Mr. Graydon advised that BCLC would proceed with the proposed bet limit increase for high-limit table games.<sup>148</sup>

First, as it pertains to the decision to increase the betting limits on high limit tables, I have provided my approval for BCLC’s Casino and Community Gaming Division to work with the casino service providers to implement changes to these limits so that they are in place prior to January 31, 2014, and in particular, at the Edgewater and River Rock Casinos.

Consistent with Mr. Graydon’s evidence (referred to above) about BCLC’s internal processes related to bet limit increases generally, Mr. Lightbody advised me of his understanding that the anti-money laundering implications of this betting limit increase were considered by BCLC:<sup>149</sup>

The decision to increase the bet limits was not taken lightly. Before approving the increase in betting limits, I asked the project management team if the BCLC Security team had reviewed the proposal. I recall that I received confirmation from Mr. Darren Jang, the Manager of Casino Products, that the Security team was prepared for and comfortable mitigating any risk with the [anti-money laundering] systems in place at the time. I am not familiar with the process that the BCLC Security team went through to assess the money laundering risk associated with the increase in betting limits in 2014. I am not aware if the BCLC Security team reduced its analysis of the increase in betting limits to writing.

I do not doubt the evidence of Mr. Lightbody or Mr. Graydon that BCLC considered the impact of this decision on the risk of money laundering in the province’s casinos. It is difficult to understand, however, given the rate at which acceptance of suspicious cash in Lower Mainland casinos was accelerating at the time, how the decision to make permanent a doubling of high-limit bet limits and to further increase aggregate table limits, in the absence of significant new measures to ensure the legitimacy of the funds used to play at these elevated levels, could have been viewed as prudent.

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146 Exhibit 505, Lightbody #1, exhibit 20.

147 Exhibit 544, BCLC letter from Michael Graydon to John Mazure, re High Limit Table Changes (December 19, 2013).

148 Ibid.

149 Exhibit 505, Lightbody #1, para 54.

In my view, this decision reflects a lack of appreciation on the part of BCLC of the risks associated with the growing volume of suspicious cash that was by then readily apparent in the gaming industry and a concerning willingness to exacerbate that risk in the name of revenue generation.

### Case Study: Qi Li

Qi Li is a former employee of the now-closed Edgewater Casino in downtown Vancouver. She left her employment in April 2015 at the conclusion of the events that I discuss below. I discuss the events involving Ms. Li as they provide insight into both the culture of gambling at the River Rock Casino in the mid-2010s and the mechanics of money lending on the ground.

Ms. Li, whose first language is Mandarin and who testified before the Commission through an interpreter, started working at the Edgewater Casino in 2007. She worked as a dealer on blackjack and baccarat tables. She had never worked in a casino before Edgewater.<sup>150</sup> She acknowledged receiving anti-money laundering (AML) training in the course of her employment.<sup>151</sup>

When she started working at the casino, Ms. Li was not a big gambler. She says she would gamble about 10 times per year, wagering a few hundred dollars each visit. Starting around 2011, her gambling habit grew, and she found herself wagering several thousands of dollars instead of hundreds. By 2014, she said, she was “crazy with gambling.”<sup>152</sup> She would win or lose tens of thousands of dollars at one sitting, and paid for her gambling by drawing on her savings, her credit cards, and even her child’s registered education savings plan. She testified that she could recall only one occasion when she bought-in to play at the casino with a bank draft – the rest of the time it was with cash.<sup>153</sup>

Ms. Li pointed to what she perceived to be a lack of controls over the use of cash, and the connection between lack of cash controls and gambling addiction and its consequences:<sup>154</sup>

There are so many people at the time [who] came to visit the casino I was working at as well as when I went gambling ... at River Rock Casino. Most of the customers or visitors, there

<sup>150</sup> Evidence of Q. Li, Transcript, March 3, 2021, pp 3–4.

<sup>151</sup> Ibid, p 82.

<sup>152</sup> Ibid, pp 5–6.

<sup>153</sup> Ibid, pp 6, 10–11.

<sup>154</sup> Ibid, pp 6–7.

were so many of them, most of them brought cash with them. Rarely there were people with bank draft. Including myself. I had changed several tens of thousands of dollars. The only requirement was to fill out a form. I also recall very clearly even though my profession was a dealer, but on the form I wrote down “housewife.” But as the government ... no one supervised it and no one manage[d] and control[led] that. Therefore, it caused so many people ... like myself, we lost all of our life savings ... I lost my dignity, I lost my self-worth, and I had to repay my debt for the rest of my life. That was the darkest time in my life.

So, what I want to say is if the government interfere[d] or had a supervision measure taken and did not increase the maximum amount for each table, and also if some measures and supervision measures and control laid on the customers, many customers, including myself, bringing cash to casinos, then it would not cause a situation like it is today. At that time no supervision whatsoever. Everyone brought cash with them, and they ... exchanged their money.

Ms. Li also offered her perspective on BCLC’s decision to increase table limits:<sup>155</sup>

Here I ... eagerly want to express or give statement to BCLC to express my dissatisfaction with them. Casino is an entertainment place. From ... when I started to visit casinos, there are only several thousands – \$4,500 maximum. However, from 2012, 2013, up to now, [at] each casino here in town, the maximum amount has been increased higher and higher for the tables. Till later for the random tables, each table \$50,000, \$75,000, even \$100,000. This is not entertainment anymore. These were the attractions to crazy gamblers.

Qi Li gambled at the River Rock Casino, where she played baccarat with high rollers in the VIP rooms. She testified that she and other women would sit with high rollers, sometimes getting tips or gifts from them during play, sometimes borrowing chips from them for her own play.<sup>156</sup>

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155 Ibid, p 6.

156 Ibid, pp 12–17.

Two of the VIPs Ms. Li became friendly with are high rollers whom I will refer to as “Patron A” and “Patron B.”<sup>157</sup> There were others. Ms. Li had a friendship with two other gamblers, Patron X and Patron Y, who would visit Vancouver from China to gamble for a few days at a time. Ms. Li would pick them up at the airport, assist them with travel and hotel arrangements, and run errands for them while they were in town.<sup>158</sup>

One errand that Ms. Li assisted Patron X and Patron Y with was going to a currency exchange to pick up cash for gambling. Her understanding was that Patron X, in particular, would have made arrangements in China to send money to the currency exchange. She would accompany him and Mr. W to the business, located on No. 3 Road in Richmond, in a taxi.<sup>159</sup> At the exchange, the men would get out, go into the business, and later return with “a small bag or plastic bag” containing cash. On returning to the River Rock, the cash in the bag would be exchanged for chips at the cashier. This type of transaction would occur daily when the gamblers were in town.<sup>160</sup> Ms. Li said she had no involvement in the transaction beyond taking the gamblers to the currency exchange (she says that she accompanied them to provide translation for the taxi) and was not aware of what their arrangements were with the exchange.<sup>161</sup>

During her examination by counsel for BCLC, Ms. Li said she was not concerned that the source of the cash being picked up was illicit; the cash was coming from what she perceived to be a sizable, licensed currency exchange operating out in the open. “Why would I have concern?” she asked.<sup>162</sup>

It was not unusual for the VIPs Ms. Li gambled with to buy-in with cash. In fact, her evidence was that this was the norm. Most of them, she said, “brought cash with big bags or small bags.”<sup>163</sup> Nor was the process conducted in secret.<sup>164</sup>

157 The names of casino patrons have been anonymized throughout this Report in order to protect their privacy and because I did not conclude that it was necessary to identify them in order to fulfill my Terms of Reference. Unique identifiers (e.g., “Patron A” and “Patron B”) are used in the place of patron names in order to identify where anonymized references to patrons in different parts of this Report refer to the same patron.

158 Ibid, pp 17–20.

159 Ms. Li recalled that the name of currency exchange contained the word “International,” but not the full name: Evidence of Q. Li, Transcript, March 3, 2021, pp 23, 84.

160 Ibid, pp 22–24.

161 Ibid.

162 Ibid, pp 83–84.

163 Ibid, p 26.

164 Ibid, p 26.

The cashier was right in the middle of the lobby. It was a public area. There are two doors. No matter which door a customer came in, people gambling in the lobby would be able to see them. Some customers, they brought lots of cash with them, and even there has to be a cash machine to count the cash for 10 minutes or even longer.

Ms. Li described how Patron A would approach other gamblers at a table and ask them to place bets for him while waiting for his cash to be counted. She and others happily complied, because, as she testified, Patron A was well known, including among staff at the River Rock, for his generous tips.<sup>165</sup>

For other high rollers playing in the River Rock VIP room, Ms. Li would do small favours and run errands. Often, those errands involved picking up packages. Although she testified that she did not ask questions about the contents of these packages, it is clear that she was receiving cash from cash facilitators on behalf of the VIP gamblers. On at least one occasion, as witnessed by Ms. Li, the VIP to whom she delivered a package took the package immediately to the casino cashier and exchanged the contents for chips.<sup>166</sup>

The sums of cash that Ms. Li delivered to the high rollers she gambled with were large. She recollected that some deliveries were of “big amounts” – defined by her as \$200,000, \$300,000, or even more.<sup>167</sup> Ms. Li described how one of these cash deliveries would occur:<sup>168</sup>

Usually when I'd play cards with [Patron B] and usually – when he lost money, usually at that point he would go to washroom, make phone calls. He would leave the table. I don't recall the specific circumstance. Usually, he would come back and continue to play and then soon after he would say Coco,<sup>169</sup> go down and help me to pick up something. And then I would ask ... where to pick up, and he would tell me the address. And I would ask what I would I pick up, and he said a bag, just a bag, and then I would go.

Usually just walking out the lobby of River Rock close to the bus stop of the River Rock station, usually I would – just waiting there, someone would come to me. Usually ... this person would ask me, are you Coco; I said ... yes. I would be asked, did [Patron B] ask you to come. And I said yes, and then

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165 Ibid, pp 26–27.

166 Ibid, pp 31–32.

167 Ibid, p 32.

168 Ibid, pp 32–33

169 Ms. Li acknowledged that she used the name “Coco” at this time: *ibid*, p 59.

he would just say – give me the package and he would usually or – he or she would give [Patron B] a phone call and then I got the package, I took it back to casino and I left.

Q Did you know the people that you were receiving the package from?

A No, I don't. Usually, they were not the same person.

The people delivering the packages would change. They didn't introduce themselves and didn't wear any clothing or name tags that would identify them as working for a particular business. They usually drove expensive cars – BMWs, Mercedes-Benzes, even Bentleys. Most of the meetings would occur just outside the River Rock.<sup>170</sup> In return for running such errands for people like Patron B, Ms. Li would receive tips or gifts, or the high roller would place bets on her behalf.<sup>171</sup>

Deliveries of cash were not invariably made at the casino. Ms. Li told me of accompanying Patron X and Patron Y to a coffee shop to pick up cash.<sup>172</sup> A BCLC incident report documented Ms. Li arriving by taxi on one occasion with \$300,000 in cash for Patron B.<sup>173</sup> On another occasion, she recalled travelling with another gambler in his vehicle and making a stop outside a business in Richmond to wait for a cash delivery.<sup>174</sup>

Ms. Li insisted that she was not aware of who was providing the VIPs with the cash she delivered. She was aware, from her work at Edgewater, that loan sharks would hang around the casino. She also observed “quite a number” of loan sharks at the River Rock. These people would hang around the casino for a few months, then disappear. They would not really play themselves but would become friendly with gamblers. If they observed someone losing, they would approach that person to see if they wanted a loan. Ms. Li did not take any loans herself, but not for want of trying – she was rejected by the loan sharks, she said, because she did not own any real property to offer as security.<sup>175</sup>

Ms. Li denied introducing any gamblers to loan sharks, but said that she may, on occasion, have discussed with gamblers she played with that a loan shark might be able to get them money.<sup>176</sup>

170 Ibid, pp 33–36.

171 Ibid, p 85.

172 Ibid, p 22.

173 Exhibit 673, Incident Report #IN20150017386 – April 2, 2015 [IR: April 2015], p 3.

174 Evidence of Q. Li, Transcript, March 3, 2021, p 46.

175 Ibid, pp 49–51.

176 Ibid, p 56.

One document was put before Ms. Li that suggested she had a more direct role in connecting gamblers with loan sharks. In May 2015, Paul King Jin, who is discussed later in this chapter, filed a notice of civil claim in BC Supreme Court seeking repayment of a loan of \$250,000 said to have been made to the defendant, a Mr. Xu, in February 2015. In the notice of claim, it is asserted that Mr. Xu was introduced to Mr. Jin by a “Coco Li.”<sup>177</sup>

Ms. Li denied, strongly, having made such an introduction, and also denied knowing Mr. Jin.<sup>178</sup> However, I have difficulty reconciling this denial with the fact of her name appearing in the pleading and with certain other facts that she acknowledged, including her familiarity with the defendant, Mr. Xu (she acknowledged gambling with him); that she had on occasion received cash deliveries for the defendant named by Mr. Jin in the notice of civil claim;<sup>179</sup> that she had suggested to others she gambled with that they might be able to borrow from a loan shark;<sup>180</sup> and her acknowledgement that she used the name “Coco” at the relevant time.<sup>181</sup>

In April 2015, BCLC assembled a list of suspicious incidents in which Ms. Li’s involvement had been recorded.<sup>182</sup> Those transactions spanned a year and involved seven high-level players. BCLC made a decision to interview Ms. Li and contacted her for this purpose. However, a day later, on April 14, 2015, Ms. Li resigned from her employment at Edgewater. She was never interviewed by BCLC about those transactions.<sup>183</sup>

In April 2015, BCLC imposed a five-year, province-wide ban on Ms. Li. She left Canada for a time and returned to new employment in Alberta. Remarkably, one of the positions she took up on her return was as a card dealer at a casino in Calgary, a position for which she says she was licensed.<sup>184</sup>

Ms. Li’s story is not a happy one. While not entirely blameless herself, she was clearly the victim of a gambling addiction, one that was exacerbated and amplified by playing with the kinds of high-rolling gamblers who frequented the VIP rooms at the River Rock.

177 Exhibit 674, Notice of Civil Claim – VLC–S–S–154010 – May 15, 2015, p 2.

178 Evidence of Q. Li, Transcript, March 3, 2021, pp 55–56, 60.

179 Ibid, pp 47–48; Exhibit 675, BCLC Banned Patron Subject Detailed Sheet, printed July 30, 2020; Exhibit 673, IR: April 2015.

180 Evidence of Q. Li, Transcript, March 3, 2021, p 56.

181 Ibid, p 9.

182 Exhibit 673, IR: April 2015; See also Exhibit 560, Affidavit #1 of Terrance Doyle, made on February 1, 2021 [Doyle #1], para 31.

183 Ibid, pp 4–5.

184 Evidence of Q. Li, Transcript, March 3, 2021, pp 54– 55; Exhibit 560, Doyle #1, para 31.

However, what is striking about Ms. Li's story is not her gambling, but that she, and others around her, appeared to deal with cash facilitators and gamble with large amounts of unsourced cash so easily and openly. Ms. Li was, according to BCLC records, the subject of 60 large cash transaction reports between February 2014 and April 2015 and 20 "unusual financial transaction" reports submitted to BCLC by Great Canadian when she resigned her position and was banned.<sup>185</sup> Ms. Li did not conduct her cash-running errands covertly. She described receiving packages of cash passed from car windows in front of the casino and delivering them to VIP gamblers right in the lobby. She did not describe any efforts to hide what she was doing, nor did she appear to face any scrutiny or intervention by casino staff, BCLC, or the regulator until April 2015.

## **2008–2013: Reactions and Response to Growth in Large and Suspicious Transactions**

The remainder of this chapter will focus on the reactions and responses of GPEB, BCLC, service providers, government, and law enforcement to the growth in large and suspicious cash transactions in British Columbia's casinos. This discussion is divided into two parts, initially focusing on the reactions and responses observed between 2008 and 2013, and then considering the responses of these actors during 2014 and early 2015. The latter part of 2015 and later years are addressed in subsequent chapters.

The rise in large and suspicious cash transactions was identified early in its evolution by members of the investigative staff of both GPEB and BCLC. Employees of both organizations viewed this activity with concern, believing the funds used in these transactions to be the proceeds of crime and likely connected to money laundering. Both sought to communicate these concerns to others in the years that followed. The GPEB investigation division, in particular, made significant efforts to raise the alarm about the growth of suspicious transactions internally within GPEB as well as externally to BCLC, law enforcement, and government.

Between 2009 and 2013, each of the recipients of these warnings reacted in some way to the growing rate at which cash was being accepted in the province's casinos, though not always in direct response to these warnings. These reactions included efforts to develop policy responses and strategies to address the risks associated with these transactions; implementing alternative means of conducting casino transactions to enable the industry to transition away from cash; an intelligence probe carried out by

<sup>185</sup> Exhibit 560, Doyle #1, para 31.

law enforcement to examine the sources of cash used in casino transactions; and efforts on the part of BCLC investigators to intervene directly in suspicious transactions. For a range of reasons, these efforts (which, as I discuss in Chapter 14, were not proportionate to the magnitude of the problem) failed to stem the flow of cash into the province's casinos, and the number and value of large and suspicious cash transactions in British Columbia's casinos continued to increase throughout this time period. The discussion that follows examines these efforts and their outcomes.

## **Initial Concerns of the GPEB Investigation Division, March 2009 Memorandum, and PGF Account Pilot Project**

Based on the record before me, it appears that the first to recognize the nature and severity of the money laundering risk inherent in the rising large cash transactions that emerged in the province's casinos around 2008 were the members of the GPEB investigation division. Both Mr. Vander Graaf and Mr. Schalk told me that these transactions became a concern for the division in or around 2007 or 2008.<sup>186</sup> It is abundantly clear from the evidence before me that, from this point forward, until the terminations of Mr. Vander Graaf and Mr. Schalk in December 2014, the division rarely missed an opportunity to voice their concerns about these transactions and the risk they carried.

One of the early instances of this occurred at a 2008 GPEB meeting and was described by Mr. Vander Graaf:<sup>187</sup>

In 2008, investigator Ed Rampone became concerned that there was a money laundering problem after seeing a \$200,000 buy-in with cash that smelled like marijuana. At a GPEB Branch meeting in Victoria that year, Mr. Rampone stood up and said “ladies and gentlemen, we now have a money laundering problem in BC casinos.” Deputy Minister Corinne McDonald and Mr. [Derek] Sturko [then assistant deputy minister and general manager of GPEB] were present at that meeting.

In his evidence, Mr. Schalk gave an account of this meeting generally consistent with Mr. Vander Graaf's<sup>188</sup> and identified Mr. Rampone as a former member of the RCMP IPOC unit.<sup>189</sup>

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186 Exhibit 181, Vander Graaf #1, para 35, exhibit G; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 51–52, 165–66; Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 39.

187 Exhibit 181, Vander Graaf #1, para 37; see also Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 54.

188 Evidence of J. Schalk, Transcript, January 22, 2021, pp 141, 150.

189 Ibid, p 182.

## 2009 GPEB Audit, Registration and Investigation Memorandum

By 2009, the division's efforts to draw attention to this issue, which, according to Mr. Vander Graaf, included his persistent expressions of concerns to Mr. Sturko at GPEB management meetings,<sup>190</sup> appear to have inspired the first serious attempt to generate a policy response to this issue. Specifically, Mr. Sturko asked GPEB's audit, registration, and investigation divisions to identify options to address the risk of money laundering in the province's casinos.<sup>191</sup> In accordance with this request, the three divisions produced a memorandum dated March 16, 2009, which described the task assigned to them, and their conclusions:<sup>192</sup>

The Audit, Registration, and Investigations Divisions have been requested to review and make recommendations for requirements, enforcement instruments, and enforcement methods in relation to the potential risk of money laundering in commercial gaming facilities. This has been done in conjunction with a review of the request by the British Columbia Lottery Corporation (BCLC) to allow Patron Gaming Fund (PGF) accounts in commercial gaming facilities.

In order to mitigate and/or substantially reduce the potential risk in relation to this area, it is our recommendation and position that prior to even considering authorizing PGF accounts it is absolutely necessary for the Branch to define in a regulation and/or a term and condition of registration specific anti-money laundering requirements. These regulations would then become a legal requirement thus allowing regulatory enforcement, if necessary. Without these enforceable legal requirements, it is our position that the present risk in the British Columbia gaming environment is extremely high.

The Patron Gaming Fund accounts referred to in the memorandum are accounts available to casino patrons implemented on a pilot basis in 2009 as part of an effort to transition the industry away from cash. They are discussed in more detail below.

The memorandum produced by the GPEB audit, registration, and investigation divisions proposed, among other things, that the phrase "suspicious activity" be defined in a regulation and/or term and condition of registration and that service providers be required to refuse any transaction deemed suspicious according to this definition.<sup>193</sup> The proposed definition of "suspicious activity" included, but was not limited to, cash transactions exceeding \$3,000 comprised only of \$20 bills.<sup>194</sup> Among others, additional recommendations made in the memorandum included that the GPEB investigation division be given the authority to bar patrons from gaming facilities and that BCLC be designated a "service

190 Exhibit 181, Vander Graaf #1, para 38; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54.

191 Exhibit 181, Vander Graaf #1, para 62; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54.

192 Exhibit 181, Vander Graaf #1, exhibit R.

193 Ibid.

194 Ibid.

provider” and therefore required to be registered under the *Gaming Control Act* to ensure that GPEB inspectors would have the legal authority to inspect BCLC facilities.<sup>195</sup>

During his testimony, Mr. Sturko’s recollection of the events that followed his receipt of this memorandum were limited.<sup>196</sup> He testified that the involvement of BCLC or government officials would have been necessary to implement many of the recommendations contained in the memorandum.<sup>197</sup> Mr. Sturko could not recall whether he had elevated the memorandum or any of its recommendations to his superiors in government<sup>198</sup> but said that he did not discuss the memorandum with service providers.<sup>199</sup> He testified that he did provide the memorandum to BCLC and that BCLC “had different views on some of” its contents, but he could not recall specifically with which portions of the memorandum BCLC disagreed.<sup>200</sup>

Some insight into BCLC’s responses to these proposals can be found, however, in an email and attachment prepared by Bill McCrea, then GPEB’s executive director of internal compliance and risk management.<sup>201</sup> The email refers to a conference call involving Mr. McCrea and Mr. Sturko, as well as a number of BCLC representatives, including Mr. Graydon and Mr. Towns, then BCLC’s vice-president of corporate security and compliance.<sup>202</sup> The attachment to this email includes BCLC’s commentary in response to GPEB proposals. The attachment reveals resistance on the part of BCLC to the suggestion that suspicious transactions be refused, rather than just reported. For example, the comments attributed to BCLC in response to a recommendation that transactions meeting the definition of suspicious activity be refused are as follows:<sup>203</sup>

The FINTRAC requirement is to report, not refuse suspicious transactions. The only transactions that are currently refused are those where the information requirements are not met (ie no ID is provided)

Most of the [Gaming Policy and Enforcement Branch] indicators are the same or similar to that specified by FINTRAC. However FINTRAC is clear that it’s suggested list of indicators should be seen as suggestions for patterns of behaviour rather than specific signs of money laundering. The impact of refusing all transactions is uncertain and could lead to missing opportunities to detect money laundering, as well as probable loss of business and over-reporting to FINTRAC.

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195 Ibid.

196 Evidence of D. Sturko, Transcript, January 28, 2021, pp 122–28.

197 Ibid, p 126.

198 Ibid, pp 122–27.

199 Ibid, p 129.

200 Ibid, pp 127–28.

201 Exhibit 511, Emails from Bill McCrea, re BCLC Money Management Material (July 8, 2009), with attachment.

202 Exhibit 517, Towns Affidavit, para 63.

203 Exhibit 511, Emails from Bill McCrea, re BCLC Money Management Material (July 8, 2009), with attachment, p 1.

Later in the same document, the following similar commentary is attributed to BCLC:<sup>204</sup>

BCLC and our casino partners operate to FINTRAC requirements and do not refuse transactions except in very limited circumstances mainly related to lack of appropriate ID or the issuing of winners cheques.

Reports of all suspicious transactions are made to FINTRAC, [GPEB], RCMP/IPOC and other relevant agencies.

While this document suggests resistance on the part of BCLC to refusing suspicious transactions, the record as to precisely why the recommendations set out in this report were not implemented is murky. What is clear is that BCLC did not accept GPEB's proposal that suspicious cash be refused, and GPEB did not pursue the proposal to the point of implementation. The March 16, 2009, memorandum and evidence regarding BCLC's response are significant. They demonstrate that, from early in the rise of suspicious transactions in the province's casinos, some within GPEB advocated a need to refuse suspicious transactions, while BCLC was hesitant to do so. As will become clear in the discussion that follows in this and subsequent chapters, this reflects a dynamic between the two organizations (or components of the organizations) that persisted for several years.

## 2009 PGF Account Pilot Project

Even though the March 16, 2009, GPEB memorandum identified its recommendations as necessary preconditions to “even considering authorizing PGF accounts”<sup>205</sup> and these recommendations were largely not implemented, PGF accounts were introduced as a pilot project in three casinos, the River Rock, Edgewater and Starlight, in late 2009.<sup>206</sup> Based on similar accounts in use in Ontario and Quebec, these accounts were intended for patrons gambling at elevated levels and permitted patrons to deposit funds into an account, withdraw them as needed for gaming, and re-deposit withdrawn funds for later play.<sup>207</sup>

The benefits of these accounts, according to Mr. Towns, included “reduc[ing] the levels of cash used in the casinos, enhanc[ing] player safety, reduc[ing] opportunities for cash facilitators, and reduc[ing] cash handling and reporting by Service Provider staff.”<sup>208</sup> Mr. Sturko's evidence, while not inconsistent with that of Mr. Towns, placed greater emphasis on the role these accounts were intended to play in addressing money laundering risks:<sup>209</sup>

<sup>204</sup> Ibid, p 6.

<sup>205</sup> Exhibit 181, Vander Graaf #1, exhibit R.

<sup>206</sup> Exhibit 517, Towns Affidavit, para 93 and exhibit 25.

<sup>207</sup> Ibid, paras 91–92 and exhibits 22, 26.

<sup>208</sup> Ibid, para 92.

<sup>209</sup> Exhibit 507, Sturko #1, para 104.

The development of PGF accounts was motivated partly by concerns about proceeds of crime and money laundering. There were also safety concerns related to customers walking into and out of casinos with large amounts of cash.

These accounts, which were voluntary, regardless of a patron's level of play,<sup>210</sup> were not popular in their original form. In the first seven weeks that they were available, only nine accounts were opened, all at the River Rock Casino.<sup>211</sup> Mr. Towns offered the following perspective on why these accounts initially attracted little interest:<sup>212</sup>

To my recollection, because the 2010 Olympics were approaching, the PGF program was initially implemented on a trial basis only so as to limit impacts on Service Providers. The PGF pilot program accounts were very restrictive and the use of the accounts had limited initial success, in my view due to those restrictions. For example, the accounts could be funded only with wire transfers, bank drafts or certified cheques. It is also my recollection that opening a PGF account under the pilot program required an initial deposit of at least \$10,000.<sup>213</sup>

Despite this limited initial uptake, the PGF account pilot, with some changes, was extended for an additional six months following the six months initially planned and was expanded to include the Grand Villa and Boulevard casinos.<sup>214</sup> PGF accounts, with additional modifications, eventually became a permanent part of British Columbia's gaming industry and one of the primary instruments relied on by BCLC in the coming years in its largely unsuccessful attempts to respond to the rise of suspicious cash in casinos.

## **Warnings from BCLC Investigator Michael Hiller**

Just as Mr. Vander Graaf and his investigation division were warning GPEB's leadership about the risk of money laundering associated with rising large and suspicious cash transactions, similar warnings to BCLC's leadership had begun to emanate from that organization's investigative staff.

Mr. Hiller joined BCLC as an investigator in February 2009, following more than 28 years as a member of the RCMP, much of that time focused on drug crime and Asian organized crime.<sup>215</sup> After joining BCLC, Mr. Hiller was initially stationed at the River Rock. He was subsequently transferred to the Starlight Casino in 2011 before returning

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210 Evidence of M. Graydon, Transcript, February 11, 2021, p 30; Evidence of T. Towns, Transcript, January 29, 2021, pp 174–75.

211 Exhibit 517, Towns Affidavit, exhibit 27, p 2.

212 Ibid, para 94.

213 Mr. Towns's evidence in this regard appears to describe PGF accounts as they existed following the extension of the initial six-month pilot project. PGF accounts could not be funded through bank drafts or certified cheques until after the pilot was extended: Exhibit 517, Towns Affidavit, exhibits 25, 29, 30.

214 Exhibit 517, Towns Affidavit, exhibit 29; Exhibit 507, Sturko #1, para 103.

215 Evidence of M. Hiller, Transcript, November 9, 2020, pp 2–3; Exhibit 166, Hiller #1, paras 3–6.

to the River Rock in 2014.<sup>216</sup> Mr. Hiller was transferred to Vancouver Island later in 2014, where he was responsible for several smaller facilities until his retirement in 2019.<sup>217</sup>

In his evidence, Mr. Hiller discussed his observations, from the beginning of his first assignment to the River Rock, of large cash transactions ranging from \$80,000 up to several hundred thousand dollars in individual transactions.<sup>218</sup> He described the features of these transactions that caused him to identify them as suspicious:<sup>219</sup>

First off, the large quantity of \$20 bills which were frequently involved in these large cash transactions ... It could be \$50 bills and \$100 bills, but certainly the large quantity of \$20 bills, they were consistently bundled in a similar manner with elastic bands. There were other indicators such as deliveries of such cash to the casino and/or passing of such cash to the casino.

There are indicators such as a VIP player already playing with chips, losing all the chips, making a cell phone call and then another delivery of money occurred. There were some times when I knew from my video review that the VIP player was out of chips at the table, had lost everything, met up with somebody in a nearby washroom on the floor, reappeared at the table and now had cash or chips to buy in again.

Circumstances where a VIP player would leave the casino for a very short amount of time, get into a vehicle, drive a very short distance – and I should say prior to getting into the vehicle that player was without cash or chips, had lost maybe in the casino, but after driving a short distance, maybe around the block or just up the street, returned to the casino and now had a bag of cash to buy in. Those are some of the circumstances in which I would have reported.

Like Mr. Vander Graaf, and based in part on his law enforcement experience, Mr. Hiller almost immediately came to view these transactions with suspicion.<sup>220</sup> Moreover, Mr. Hiller quickly formed a belief as to how this activity could be connected to money laundering, even though the patrons engaged in these transactions were putting their funds at risk and often losing them.<sup>221</sup> Specifically, he believed that the patrons engaged in these transactions were obtaining the substantial quantities of cash they were using to buy-in at casinos from criminal organizations and were repaying those funds in China.<sup>222</sup> Mr. Hiller testified that he was familiar with this kind of money laundering typology from his experience as a police officer and so was quickly able to recognize its operation in the gaming environment.<sup>223</sup>

216 Exhibit 166, Hiller #1, para 6.

217 Ibid.

218 Evidence of M. Hiller, Transcript, November 9, 2020, p 10.

219 Ibid, pp 8–9; see also Exhibit 166, Hiller #1, para 15.

220 Evidence of M. Hiller, Transcript, November 9, 2020, pp 22–23.

221 Ibid, p 22.

222 Ibid, pp 22–23.

223 Ibid, p 23.

Mr. Hiller was not shy about sharing these suspicions with his supervisors. He testified that he persistently raised his concerns about the large amounts of suspicious cash being accepted by British Columbia casinos at monthly meetings of BCLC's investigative staff and that he believed his views were well understood by his managers.<sup>224</sup> In this regard, Mr. Hiller's evidence is corroborated by that of his fellow investigators, several of whom identified him as particularly vocal in expressing these concerns.<sup>225</sup> I am persuaded that Mr. Hiller was raising these concerns with his superiors from early on in his tenure and doing so persistently. According to Mr. Hiller, his efforts in this regard did not receive a warm response. His evidence was that he did not believe that his superiors liked hearing of his concerns, as they did not share his views.<sup>226</sup> While they would listen, Mr. Hiller's recollection was that they would say little in response or would advise him that his role as an investigator was to report suspicious activity and that BCLC could not turn patrons away based on suspicion alone.<sup>227</sup>

While Mr. Hiller testified that the frequency of his efforts to warn his superiors of the risks of suspicious transactions in the province's casinos waned after his first two years with BCLC,<sup>228</sup> it is clear that he continued to persistently raise his concerns to his superiors on some level through much of his tenure with BCLC. Mr. Hiller told me that he voiced these concerns with the superiors he reported to later in his tenure, including Brad Desmarais, who succeeded Mr. Towns as BCLC's vice-president of corporate security and compliance, and Robert Kroeker, who succeeded Mr. Desmarais.<sup>229</sup> Mr. Hiller offered the following example of an exchange he had with Mr. Towns following a speech by Mr. Graydon in December 2012, nearly four years after Mr. Hiller joined BCLC:<sup>230</sup>

The day after Mr. Graydon's speech the conference continued, and I recall I spoke to Mr. Towns, BCLC's Vice President of Corporate Security and Compliance, in private before the presentations started. I expressed to Mr. Towns my dissatisfaction with Mr. Graydon's speech failing to address the reports of bags of cash coming into casinos. Mr. Towns asked me how could VIP players be considered to be money launderers when they put all their money at risk and usually lose it when gaming. I took from his comment that his view was that VIP patrons were legitimately engaging in gaming and had provided legitimate business occupations, so they could not be laundering money. I expressed to Mr. Towns my belief that VIP players were legitimate gamblers who have legitimate business occupations, but that I also believed the suspected cash facilitators who were supplying the VIP

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224 Exhibit 166, Hiller #1, para 37; Evidence of M. Hiller, Transcript, November 9, 2020, pp 23–26.

225 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 44–45, 76; Evidence of S. Lee, Transcript, October 27, 2020, pp 35–36; Exhibit 78, Beeksma #1, para 54; Evidence of R. Alderson, Transcript, September 9, 2021, pp 14, 33.

226 Exhibit 166, Hiller #1, para 37.

227 Ibid, paras 39–41; Evidence of M. Hiller, Transcript, November 9, 2020, pp 26–33.

228 Exhibit 166, Hiller #1, para 37; Evidence of M. Hiller, Transcript, November 9, 2020, pp 24–25.

229 Evidence of M. Hiller, Transcript, November 9, 2020, pp 30–33.

230 Exhibit 166, Hiller #1, para 84.

players and there were people behind the suspected cash facilitators who were associated with organized crime, and that those people were involved in money laundering. Mr. Towns disagreed, saying that BCLC did not have proof of that and did not have the authority to investigate what occurred outside of casinos. I understood his point, and we ended our conversation by agreeing to disagree. I recall that Mr. Towns and I had previously had a similar conversation but I cannot remember precisely when.

By 2014, as the rates of suspicious cash in the province’s casinos approached their peak, Mr. Hiller received some indication that his theory as to how these suspicious transactions were connected to money laundering was correct. A confidential source that he considered reliable advised him that “major loan sharks were operating in BC casinos” and that “the vast majority of VIPs” in the province’s casinos obtained the cash they used to gamble from “loan sharks” and repaid the funds in China.<sup>231</sup> Using this new information, Mr. Hiller renewed his efforts to persuade his superiors to take action. He prepared an incident report detailing this information in the iTrak system and encouraged his superiors, including Mr. Friesen, Mr. Karlovcec, Ross Alderson (former BCLC director of anti-money laundering and investigations), Kevin Sweeney (director of security, privacy, and compliance for BCLC’s legal, compliance, and security division), Mr. Desmarais, and Mr. Kroeker to read it.<sup>232</sup> While Mr. Desmarais confirmed to Mr. Hiller that he had read the report,<sup>233</sup> none of these individuals ever commented on it in the iTrak system as he would have expected given the significance of the report.<sup>234</sup>

It is clear to me that Mr. Hiller began raising concerns within BCLC about the source of the suspicious cash increasingly present in the province’s casinos from the beginning of his tenure with BCLC in 2009 and continued to do so in the years that followed. It is also clear that he identified and communicated to his superiors how this suspicious cash could be connected to money laundering even if the gamblers were putting their funds at risk and often losing. Mr. Hiller was not alone in his worries about these transactions. Mr. Vander Graaf and the members of the GPEB investigation division were persistently raising similar concerns within GPEB. As I discuss below, by 2010, the investigation division would begin to turn some of the focus of these efforts towards BCLC directly, adding their voice to Mr. Hiller’s attempts to prompt his employer to take action to address these suspicious transactions.

## **2010–2011 GPEB Investigation Division Reports of Findings and Correspondence with BCLC**

By 2010, the GPEB investigation division had begun documenting its concerns about large and suspicious cash transactions and other suspicious activity in reports of

<sup>231</sup> Ibid, para 74.

<sup>232</sup> Ibid, paras 74–75; Evidence of M. Hiller, Transcript, November 9, 2020, pp 51–52.

<sup>233</sup> Evidence of M. Hiller, Transcript, November 9, 2020, p 52.

<sup>234</sup> Ibid, p 51; Exhibit 166, Hiller #1, para 75.

findings.<sup>235</sup> These reports, prepared by GPEB investigators or investigation division managers,<sup>236</sup> detailed incidents and activity that were of concern to the division with focuses ranging from individual transactions to broad patterns of conduct spanning several years. The reports were routinely forwarded to the general manager of GPEB, often with the addition of commentary from Mr. Vander Graaf and/or Mr. Schalk.<sup>237</sup>

While the evidence before me is inconsistent as to whether the reports of findings themselves were forwarded to BCLC and, if so, to whom,<sup>238</sup> it is clear that the substance of some of these reports of findings were brought to the attention of BCLC through correspondence from the GPEB investigation division.

The contents of several of these reports of findings, and the correspondence they inspired, are discussed below. In addition to providing a record of the information forwarded to the general managers of GPEB, and in some instances BCLC, during this time period, these documents offer insight into the events taking place in the province's casinos at this relatively early stage of the growth of suspicious transactions in the gaming industry.

### **March 15, 2010, Report of Findings**

A report of findings prepared on March 15, 2010, by Mr. Dickson, then the GPEB investigation division director of casino investigations for the Lower Mainland, detailed the activities of four patrons identified in the report as having “extensive histories of suspicious activities within Lower Mainland casinos.”<sup>239</sup> The report described repeated instances of these patrons engaging in chip passing; receiving chips and cash from cash facilitators, including cash dropped off by vehicles following phone calls made by the patrons; and making large cash buy-ins – in some cases leaving the casino with chips immediately after buying-in, without play. In one instance described in the report, one of these patrons lost \$300,000 playing baccarat before leaving the casino and making a phone call. A short time later, an individual arrived in a vehicle previously associated with cash facilitation and provided the patron with two plastic bags containing \$299,670 in cash, which the patron used to buy-in.<sup>240</sup>

In the report, Mr. Dickson expressed concern that both service providers and BCLC seemed tolerant of this behaviour:<sup>241</sup>

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235 Exhibit 181, Vander Graaf #1, paras 41–52, exhibits G–Q.

236 Ibid, para 41.

237 Ibid, para 41, exhibits G–Q.

238 Evidence of G. Friesen, Transcript, October 28, 2020, p 126; Evidence of J. Karlovcec, Transcript, October 29, 2020, p 92; Evidence of L. Vander Graaf, November 12, 2020, pp 77, 82–83; Evidence of J. Schalk, Transcript, January 22, 2021, p 147; Evidence of D. Sturko, Transcript, January 28, 2021, p 136.

239 Exhibit 181, Vander Graaf #1, exhibit H, p 1.

240 Ibid, exhibit H, p 2.

241 Ibid, exhibit H, p 5.

It is evident that the service providers consider [the four patrons] important customers and are willing to accept the on-going issues with chip passing, inappropriate cash transactions and interacting with known loan sharks. However, what is troubling is BCLC's acceptance of these blatant violations of their own policies and the open use of loan sharks by these LCT patrons. In some instances these patrons are suspected of actually engaging in loan sharking activity, with no meaningful attempts by BCLC to sanction these individuals.

Mr. Dickson also expressed concerns that patrons believed to be engaged in cash facilitation, including one of the subjects of this report, were permitted to open PGF accounts.<sup>242</sup>

Mr. Dickson concluded the report with the following five recommendations:<sup>243</sup>

1. Any patron observed to engage in any activities consistent with loan sharking activities should be immediately removed from the venue and be subject to a Provincial barring by BCLC.
2. Any patron observed associating with a known loan shark or using the services of a known loan shark is to be immediately removed from the venue and be subject to a Provincial barring by BCLC.
3. BCLC should be required to conduct a thorough background check on all [PGF account] applicants, and have final approval of all applicants.
4. Any applicant for a [PGF account] that has a history of chip passing, suspicious cash transactions or loan sharking activities should be denied by BCLC.
5. BCLC needs to establish a determined number of warnings for patrons engaging in chip passing and cash transactions that BCLC determine not to be suspicious. When a patron exceeds this number, meaningful sanctions should be considered. [Emphasis in original.]

While Mr. Sturko, at the time of his testimony, did not recall seeing this report when it was written,<sup>244</sup> it is apparent from the report itself that Mr. Vander Graaf forwarded the report to Mr. Sturko with his own comments added on April 12, 2010, generally expressing agreement with what Mr. Dickson had written.<sup>245</sup> There is no evidence that this report or the recommendations made by Mr. Dickson were forwarded to anyone in government who was senior to Mr. Sturko.

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242 Ibid, exhibit H, pp 6–7.

243 Ibid, exhibit H, p 9.

244 Evidence of D. Sturko, Transcript, January 28, 2021, pp 135–36.

245 Exhibit 181, Vander Graaf #1, exhibit H, pp 11–12.

## **GPEB Letter of April 14, 2010, and BCLC Response**

Two days after Mr. Vander Graaf forwarded the March 15 report of findings to Mr. Sturko, Mr. Dickson, acting on Mr. Vander Graaf's instructions, sent a letter reflecting the report's contents to Doug Morrison, then BCLC manager of casino investigations, and copying, among others, Mr. Towns.<sup>246</sup> In the letter, Mr. Dickson identified "loan sharking and money laundering issues" as two of the "main priorities" of the investigation division and summarized the activity of the four patrons discussed in the report of findings. In his letter, Mr. Dickson did not include all the recommendations made in the report, but emphasized his view that cash facilitators, as well as patrons that associate with cash facilitators, should be barred from the province's casinos. Mr. Dickson also recommended that BCLC "impose meaningful sanctions on ... chronic violators" of chip passing restrictions.

Though Mr. Dickson's letter was addressed to Mr. Morrison, Mr. Friesen (then BCLC's manager of corporate security and surveillance) responded on behalf of BCLC in a letter dated May 4, 2010.<sup>247</sup> In his letter, Mr. Friesen acknowledged that cash facilitation was a threat to the integrity of gaming and that BCLC would "take any and all action possible against those observed participating in this activity." Mr. Friesen went on to indicate that, of the patrons referred to in Mr. Dickson's letter, one was under investigation by the RCMP IPOC unit and was "on the 'Watch' category in ITrak," two had been provincially barred from casinos by BCLC, and the fourth was the subject of an investigation with the potential to lead to a provincial barring. He also outlined in detail a number of measures that had been put in place by BCLC to respond to the risks of cash facilitation and chip passing.

Despite his apparent agreement with Mr. Dickson as to the severity of the risks posed by cash facilitation, Mr. Friesen confirmed in his evidence before the Commission that BCLC did not adopt the suggestion of taking action against patrons that received funds from cash facilitators.<sup>248</sup> Mr. Friesen suggested that this approach was not viable, as the patron may have believed that they were receiving legitimate funds. Mr. Friesen asserted that that some level of investigation would be required before a patron could be sanctioned.<sup>249</sup> Asked if a patron who was observed receiving \$200,000 in \$20 bills in a grocery bag in the parking lot of a casino would be a sufficient basis for sanctioning that patron, Mr. Friesen responded that it would not:<sup>250</sup>

Well, again, that requires some investigation. Again, we're talking about the origin of funds and being able to prove that in fact they are funds derived from crime – I'm sure that's where you're going – and we don't have sufficient information, and I don't have the authority to determine whether or not it's proceeds of crime.

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246 Exhibit 108, Letter from Derek Dickson, re Loan Sharking/Suspicious Currency & Chip Passing (April 14, 2010).

247 Exhibit 109, Letter from Gordon Friesen, re Loan Sharking/Suspicious Currency and Chip Passing (May 4, 2010).

248 Evidence of G. Friesen, Transcript, October 28, 2020, p 106.

249 Ibid.

250 Ibid, pp 106–7.

Mr. Friesen vigorously resisted the notion that the features of large, suspicious cash buy-ins were sufficient to allow conclusions to be drawn about the legitimacy of the source of the cash used in those transactions. The following exchange is illustrative:<sup>251</sup>

Q You said you couldn't accuse anybody without proof. Now, this Commission has before it evidence of really quite substantial cash buy-ins in the nature of 6- and \$800,000 dollars predominantly in \$20 bills ... and buy-ins in the \$200,000 range with quite a degree of frequency, predominantly in \$20 bills. Do you accept that that was happening during your tenure as manager?

A Yes.

Q Can you conceive of any legitimate source for that quantity of \$20 bills?

A Well, in the first place I think you have to consider the fact that it was definitely only wealthy people who were gaming in our casinos that had access to that type of cash. The other thing is that if they are wealthy, they may have legitimate sources for that type of cash. It is incumbent upon us to determine whether or not that suspicion is real.

Q Sir, but I wasn't asking you about the wealth of the players; I was asking you about the source of the \$20 bills. Can you conceive of any legitimate source, any scenario where somebody legitimately obtaining funds would do so in the manner of \$800,000 in \$20 bills?

A Maybe they sold a house and it's revenue from that. Maybe they sold art or collectibles or maybe they got it from a legitimate banking source. I don't know. I have no idea.

Q As manager did you conceive there was any possibility that these \$20 bills that were being used to buy in came from the sale of a house or from a banking institution, a legitimate financial institution?

A I could get it.

Q I suppose you could, sir, but would you? If you needed \$800,000 or \$600,000 to conduct a financial [transaction], would you go to the bank and ask them to give it to you in 20s?

A I don't know. It depends on circumstances. I have in the past. I got \$20 bills. Undercover operations.

Q For drug dealing?

A Yes.

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<sup>251</sup> Ibid, pp 91–93.

As will become apparent in the discussion later in this chapter, Mr. Friesen's evidence in this regard is representative of the views of BCLC during this period. In their respective evidence, Mr. Friesen, Mr. Karlovcec, and Mr. Towns repeatedly expressed the view that BCLC could not take action to limit the receipt of highly suspicious cash in the absence of some determination by law enforcement that the cash was the proceeds of crime.<sup>252</sup>

## **October 1, 2010, Report of Findings**

The activities of another high-limit patron raised concerns within the investigation division in the fall of 2010. On October 1, 2010, GPEB investigator Dave Willis authored a report of findings focused on transactions involving a patron I will refer to as "Patron C" at the Starlight Casino over the course of a month beginning on August 31, 2010.<sup>253</sup> Over the course of this month, Patron C bought-in for a total of over \$3.1 million, including more than \$2.6 million in \$20 bills in at least 16 separate gaming sessions. Nearly all of these buy-ins were for \$100,000 or more and several were for \$200,000 or more. On September 3 alone, Patron C bought-in for more than \$400,000, including over \$375,000 in \$20 bills. Mr. Willis's report indicated that Patron C had bought-in for an additional \$808,000 in July and August 2010. Based on Patron C's activity, Mr. Willis concluded that it was highly likely that Patron C was laundering money and that he likely received this cash "from an individual involved in a criminal enterprise." Mr. Willis suggested "[a] policy change where any patron is not allowed to buy-in over \$5,000 in \$5, \$10 and \$20 bills in a 24-hour period."

In comments added to that report, both Mr. Schalk and Mr. Vander Graaf expressed general agreement with Mr. Willis's views as to the nature of Patron C's activities. While acknowledging that Patron C's activities were "at the high end," Mr. Schalk noted that transactions of the sort reflected in the report had "been [commonplace] for a number of years" and seemed to be growing with increased betting limits and greater popularity of high-limit rooms and tables. In his comments, Mr. Vander Graaf expressed concern that "high level players" were "given significant latitude" in casinos and opined that the funds used by Patron C were likely obtained from "loan sharks and organized crime figures." Mr. Vander Graaf connected this activity to money laundering in the following terms:

Just because [Patron C] is losing at the Casino does not in any way mean that organized crime is not benefiting by loaning [Patron C] large amounts of \$20 dollar bills through loan sharks. [Patron C] must still re-pay the loan sharks and money [launderers] the funds that he has borrowed and the organized crime groups would prefer cheques, wire transfer, value chips, real estate or at a minimum \$100 dollar bills as re-payment. Organized

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<sup>252</sup> Exhibit 517, Towns Affidavit, para 59; Evidence of T. Towns, Transcript, January 29, 2021, pp 145–47, 165–68; Evidence of G. Friesen, Transcript, October 28, 2020, pp 57–58, 89–91, 145–46, 166–67; Evidence of G. Friesen, Transcript, October 29, 2020, p 11; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 106–9, 126–27, 131–32; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 177–78.

<sup>253</sup> Exhibit 507, Sturko #1, exhibit E.

criminal groups would gladly pay a 5%–10% [fee] to [Patron C] for him to utilize the \$20 dollar bills in the Casino environment. [Patron C] would repay the loan sharks and money [launderers] at a later time via any unknown means. Thus the laundering process is complete.

Like Mr. Willis, Mr. Vander Graaf also suggested action on the part of both BCLC and GPEB to respond to activity of the sort exhibited by Patron C:

BCLC is responsible for Conduct and Managing Casino gaming in British Columbia through standard operating procedures and I believe, at a minimum, as a good corporate citizen they should re-assess their corporate responsibility in allowing these large amounts of \$20 dollar bills to enter the casino environment. I am also of the opinion that the Gaming Policy and Enforcement Branch and specifically the General Manager, as being responsible for the overall integrity of gaming may have to introduce legislation with sanctioning powers to deter and prevent this type of suspected money laundering activity. A simple change of regulation with sanctioning authority regulating that Service Providers ... not allow more than 5k in \$20 dollar bills from a person in one day for betting in the casino could eliminate this particular high risk.

While Mr. Sturko had no recollection of receiving this report, the report itself indicates that it was forwarded to him on November 4, 2010.<sup>254</sup> There is no evidence before me indicating any reaction or response on his part.

### **GPEB Letter of November 24, 2010, and BCLC Response**

As with the March 15, 2010, report of findings, Mr. Vander Graaf directed Mr. Dickson to write to BCLC regarding the matters detailed in the October 1 report.<sup>255</sup> On November 24, 2010, Mr. Dickson wrote to Mr. Friesen advising that the GPEB investigation division had “begun to see a dramatic increase in the amounts of small denomination Canadian currency used for large buy-ins by [large cash transaction] patrons within Lower Mainland Casinos” and detailing Patron C’s activities during the month beginning on August 31, 2010.<sup>256</sup> Mr. Dickson shared with Mr. Friesen that Mr. Schalk had recently met with the officer-in-charge of the RCMP IPOC unit, and that the unit was “seriously concerned that the casinos are being used as a method to launder large sums of money for organized crime groups” and were “of the opinion that this is, without doubt, large scale money laundering.” Mr. Dickson recommended that BCLC restrict buy-ins in \$20 bills to a maximum of \$10,000.

In his evidence, Mr. Dickson acknowledged that he understood that Mr. Friesen did not have the authority to implement this recommendation. He explained that he sent

<sup>254</sup> Exhibit 507, Sturko #1, para 82 and exhibit E.

<sup>255</sup> Exhibit 507, Sturko #1, exhibit E.

<sup>256</sup> Exhibit 110, Letter from Derek Dickson, re Money Laundering in Casinos (November 24, 2010).

the letter, which was copied to others, including Mr. Towns and Mr. Sturko, in the hope that it would prompt GPEB and BCLC to work together to address the issues it raised.<sup>257</sup>

Mr. Friesen testified that, after receiving Mr. Dickson's letter, he brought it to Mr. Towns and that Mr. Towns directed "[t]hat we had to look into this matter and respond accordingly."<sup>258</sup> Mr. Friesen could not recall if BCLC began to monitor Patron C's play following receipt of this letter and did not know if Patron C continued to engage in activity consistent with that described in the letter.<sup>259</sup> BCLC did not, according to Mr. Friesen, pursue Mr. Dickson's recommendation that limits be imposed on the use of \$20 bills.<sup>260</sup> Mr. Friesen indicated in his evidence that it was not within his authority to impose such a restriction, but also suggested that he did not believe that the measure proposed by Mr. Dickson would be effective because it would have no impact on the use of other denominations. Mr. Friesen also indicated that BCLC did not consider a more general limitation on cash buy-ins affecting all denominations at that time.<sup>261</sup>

Mr. Karlovcec wrote to Mr. Dickson on December 24, 2010, responding on behalf of BCLC to Mr. Dickson's letter to Mr. Friesen.<sup>262</sup> Mr. Karlovcec's letter indicated that BCLC corporate security was very sensitive to the risk of money laundering in gaming establishments and had instituted a rigorous anti-money laundering strategy, including "enhanced BCLC Policy and Procedures, comprehensive anti-money laundering training for service provider employees, and strict adherence to FINTRAC reporting guidelines." With respect to Patron C's activity, Mr. Karlovcec explained that BCLC had conducted a thorough review of Patron C's play between August 31 and September 29, 2010, identifying a total of \$3,681,320 in buy-ins and \$3,338,740 in total losses by Patron C during this period. Mr. Karlovcec also indicated that Patron C received one cheque for verified wins of \$270,000 on September 7, 2010, which he used to buy-in on the following day. BCLC found no records of Patron C playing in any British Columbia gaming facility in August 2010 (prior to August 31) and had no record of the \$808,000 in \$20 bills that Mr. Dickson identified that Patron C had used to buy-in during August.<sup>263</sup>

Based on this and other information about Patron C known to BCLC, Mr. Karlovcec disputed the suggestion that Patron C could be engaged in money laundering:

It is our opinion that based on [Patron C]'s history of play; his betting strategy; the fact he has requested only one verified win cheque during

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257 Evidence of D. Dickson, Transcript, January 22, 2021, pp 34–35, 42–43.

258 Evidence of G. Friesen, Transcript, October 28, 2020, p 121.

259 Ibid.

260 Ibid, p 123.

261 Ibid, pp 123–24.

262 Exhibit 111, Letter from John Karlovcec, re Money Laundering in BC Casinos (December 24, 2010).

263 While Mr. Willis's report of findings indicated that these additional buy-ins took place in July and August, Mr. Dickson's letter (and consequently Mr. Karlovcec's response) suggested that they took place only in August.

the dates in question; his win/loss ratio, and the fact his occupation states he owns a coal mine and commercial real estate firm, he does not meet the criteria that would indicate he is actively laundering money in British Columbia casinos.

Mr. Karlovcec also responded to Mr. Dickson's suggestion that the value of \$20 bills that could be used to buy in by a patron be restricted to \$10,000, rejecting it as "unrealistic" "[d]ue to the fact that gaming in the province is cash based."

Mr. Karlovcec's evidence was consistent with the views expressed in this letter. While he agreed that, at the time, several patrons were known to bring large volumes of cash into the province's casinos, he did not agree that this activity was "without doubt, large scale money laundering" as suggested in Mr. Dickson's letter.<sup>264</sup> In his testimony, as in his letter, Mr. Karlovcec relied on the patron's loss of almost all of the money used to buy-in to ground his skepticism that the patron could be laundering money.<sup>265</sup> Mr. Karlovcec did acknowledge, however, that he suspected that some of the large volumes of cash being accepted in the province's casinos were the proceeds of crime, but that he did not understand that any investigation had proved these transactions to be connected to money laundering.<sup>266</sup> Mr. Karlovcec identified the possibility that the funds used in large and suspicious transactions could be proceeds of crime as the basis for reporting them to FINTRAC and GPEB. He did not view this possibility as a basis to refuse or limit buy-ins from individual patrons.<sup>267</sup>

Mr. Towns was also asked about this letter during his testimony. Like Mr. Karlovcec, his views of Patron C's activity were consistent with those expressed in the December 24, 2010, response to Mr. Dickson's letter. Mr. Towns relied on the fact that Patron C lost most of the funds he used to buy in, his use of the single verified win cheque issued to him to buy in the day after it was issued, and his occupation as indicators that he was not engaged in money laundering.<sup>268</sup> In Mr. Town's words, "[I]f he was laundering money, he wasn't very good at it."<sup>269</sup> Asked whether he was aware of the possibility that Patron C could have borrowed these funds on the condition they be repaid in another form, possibly in another jurisdiction, Mr. Towns denied that such activity would amount to money laundering.<sup>270</sup> Like Mr. Karlovcec, Mr. Towns allowed that the cash could have been the proceeds of crime, but denied that BCLC had sufficient evidence that this was the case to justify barring the patron or declining his transactions.<sup>271</sup>

264 Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 104–5.

265 Ibid, pp 105–6.

266 Ibid, pp 99, 106–7.

267 Ibid, pp 99, 121.

268 Evidence of T. Towns, Transcript, January 29, 2021, p 162–66

269 Ibid, p 166.

270 Ibid, p 167.

271 Ibid, pp 166–68.

## **GPEB Letter of February 28, 2011**

On February 28, 2011, at Mr. Vander Graaf's direction, Mr. Schalk wrote to Mr. Friesen in response to Mr. Karlovcec's letter of December 24, 2010.<sup>272</sup> In this letter, Mr. Schalk reiterated the concerns expressed in Mr. Dickson's letter and identified that, in the previous 10 months, "reported incidents of Suspicious Currency Transactions and Money Laundering [had] more than tripled over the previous year." Mr. Schalk also again advised that "[e]xperts in money laundering matters in the [p]olice community" were of the view that this activity represented money laundering.

Mr. Schalk explained in this letter how, in his view, large and suspicious cash transactions could be connected to money laundering, even though patrons like Patron C lost most of the funds they used to gamble. The money laundering typology suggested by Mr. Schalk closely mirrored the theory espoused by Mr. Hiller, discussed earlier in this chapter:

Large quantities of \$20.00 bill denominations will continue to be and are at present properly reported to the various authorities as "Suspicious Currency", both by the service provider and BCLC. Patrons using these large quantities of \$20.00 currency buy-ins may not in some, certainly not all cases, be directly involved with or themselves be criminals. Regardless of whether they win or lose all of the money they buy in with, we believe, in many cases, patrons are at very least FACILITATING the transfer of and/or the laundering of proceeds of crime. Those proceeds may have started out 2 or 3 persons or groups removed from the patron using these instruments to play in the casino. Regardless, money is being laundered. The end user, the patron, MUST STILL pay back all of the monies he/she receives in order to facilitate his buy-in with \$20.00 bills and for the person on the initial start of the facilitation process, the money is being laundered for him/her, through the use of the gaming venue. [Emphasis in original.]

Mr. Schalk concluded his letter with a prescient warning about the potential impact of these transactions and a further plea for action on the part of BCLC.

If the flow of large quantities of small denomination cash is not stopped at the casino cash cage with those monies being refused, the integrity of gaming will continue to be jeopardized. This threat will increase into the future if something is not done. The dramatic increase in the reports as noted and the most recent media reports on these issues, underline the significance of this concern. Again, we ask that BCLC work to explore available options to find a solution to this significant threat that is constant and increasing in rapidity and volume.

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<sup>272</sup> Exhibit 112, Letter from Joe Schalk, re Money Laundering in BC Casinos (February 28, 2011); Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 115.

BCLC did not respond to Mr. Schalk's letter.<sup>273</sup> Asked whether he had communicated with "experts in law enforcement in money laundering," Mr. Karlovcec testified that BCLC was in contact with members of the RCMP IPOC unit at this time, but that he did not recall being told that the transactions of concern to Mr. Schalk amounted to money laundering.<sup>274</sup> Asked about Mr. Schalk's theory as to how these transactions were connected to money laundering, Mr. Karlovcec agreed that these transactions were suspicious, but that there was no proof that the typology proposed by Mr. Schalk was reflective of reality:<sup>275</sup>

Q Sir, you were aware that Mr. Schalk held the view at this time that the player would have to pay back all the moneys he receives to buy in with 20s and that is how the money was being laundered; correct?

A Well, this is Mr. Schalk's opinion. I don't discount what he's saying, but as I mentioned earlier, what evidence or proof do we have that that is actually taking place in these transactions? Again, it's suspicious. Hence the reporting to the regulators as well as the police for any action they felt appropriate.

Q You had no reason to disagree with that suggestion in 2011, did you?

A Well, what I'm saying is that if that's what Mr. Schalk believes, then what action is being taken by the authorities to actually prove that and make, if need be, an arrest or a seizure. I mean, it's a statement from him. I mean ... in theory it sounds appropriate, but again, the proof.

Mr. Friesen, who was Mr. Karlovcec's direct superior at the time of this letter, expressed similar skepticism of Mr. Schalk's theory in his own evidence:<sup>276</sup>

I can only speak for me personally, and this paragraph is highly speculative, it is his opinion and may not be my opinion. We were doing everything we possibly could in coordination with GPEB to find alternatives to cash and to strengthen our anti-money laundering program.

In my view, when viewed in the context of the exchange between Mr. Dickson and Mr. Friesen earlier the same year, and the responses to Mr. Hiller's concerns and the recommendations made in the memorandum forwarded to BCLC by Mr. Sturko in 2009, this exchange of correspondence between Mr. Dickson and Mr. Karlovcec reflects the emergence of a critical divide in the views of the GPEB investigation division and BCLC with respect to suspicious transactions during this period.

Despite their disagreement as to the actions required in response, there seems to be some level of consensus with respect to what was occurring in the province's casinos

<sup>273</sup> Evidence of G. Friesen, Transcript, October 28, 2020, pp 137–38.

<sup>274</sup> Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 123–24.

<sup>275</sup> Ibid, p 126.

<sup>276</sup> Evidence of G. Friesen, Transcript, October 28, 2020, p 137.

at the time. Both organizations were aware of extremely large cash transactions in the province's casinos, both agreed that these transactions were suspicious, and both agreed that there was, at least, a risk that they were the proceeds of crime.

Where it appears that the perspectives of the two organizations differed, however, was in their views of the significance of these facts. The GPEB investigation division clearly believed that these circumstances revealed that BC casinos were being used to facilitate money laundering and required immediate action in response. Conversely, BCLC seemed to draw a distinction between the acceptance of proceeds of crime and money laundering. Based on the evidence of Mr. Towns, Mr. Friesen, and Mr. Karlovcec, it appears that BCLC understood its anti-money laundering responsibilities to be limited to preventing money laundering only if it took place entirely within a casino. Outside of these circumstances, BCLC seems to have understood that it was not necessary, or not permitted, for BCLC to take steps to mitigate the risk that casinos were accepting proceeds of crime and facilitating money laundering, in the absence of some kind of direction or confirmation from law enforcement. As I discuss below and in subsequent chapters, this attitude guided the actions, and inaction, of BCLC in the years that followed.

## **2010 Meeting Between Mr. Coleman, Mr. Vander Graaf, and Lori Wanamaker, and Robert Kroeker's Review**

By the end of 2010, as the investigation division's efforts to move GPEB's general manager and BCLC to take action in response to large and suspicious cash transactions in the province's casinos seemed to generate little traction, Mr. Vander Graaf had an opportunity to raise his concerns directly to Mr. Coleman, the minister responsible for gaming. Mr. Vander Graaf met with Mr. Coleman, and his deputy minister, Lori Wanamaker, at the GPEB Burnaby offices in December 2010.<sup>277</sup> The accounts of this meeting offered by its three participants are not entirely consistent. Ms. Wanamaker's recollection of the encounter was limited,<sup>278</sup> and Mr. Coleman<sup>279</sup> and Mr. Vander Graaf<sup>280</sup> disagreed as to some of the details of the conversation. This is unsurprising, given that it appears the meeting was quite brief<sup>281</sup> and occurred more than a decade ago. It is clear from the evidence of both Mr. Coleman and Mr. Vander Graaf, however, that the discussion focused on the issue of large and suspicious cash transactions in casinos.<sup>282</sup> I accept that Mr. Vander Graaf communicated his

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277 Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8; Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–14; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 103–7; Exhibit 181, Vander Graaf #1, paras 132–35.

278 Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8.

279 Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–14.

280 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 103–7; Exhibit 181, Vander Graaf #1, paras 132–35.

281 Evidence of L. Wanamaker, Transcript, April 22, 2021, p 6.

282 Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–14; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 103–7; Exhibit 181, Vander Graaf #1, paras 132–35.

reservations about these transactions to Mr. Coleman and Ms. Wanamaker. Given the evidence of the persistence with which Mr. Vander Graaf voiced his concerns during this time period, it is difficult to imagine that he would have met with the sitting minister responsible for the industry without having done so.

Based on Mr. Coleman’s evidence, the information provided to him by Mr. Vander Graaf likely conflicted with advice he received about the state of BCLC’s efforts to combat money laundering around this time. Mr. Coleman described in his evidence, for example, attending a briefing – which appears to have taken place in July 2010<sup>283</sup> – in which he was advised that BCLC had “one of the best [anti–money laundering] regimes ... in the business,” a consistent theme in BCLC’s messaging to government:<sup>284</sup>

Over the years they’ve continued to improve their standards, and I recall a briefing a few years ago where an outside counsel and an inside counsel were complimentary of BCLC having one of the best regimes in the system or in the business. I think BCLC has continuously concentrated on making sure they have a person who is an internal person to do compliance and they have the people in place. They have a team of the board that actually follows these things regularly and looks for opportunities to improve.

Despite these assurances from BCLC, it appears that Mr. Coleman and Ms. Wanamaker took Mr. Vander Graaf’s warnings seriously and quickly acted to assess the state of anti–money laundering measures in the province’s gaming industry. Mr. Coleman described the steps that he and Ms. Wanamaker took after the meeting as follows:<sup>285</sup>

[A]fter that meeting we met again, Ms. Wanamaker and ourselves and ... whoever else we had, and we came to the conclusion that we needed to have another set of eyes look at this, because I hadn’t been on the file for a while, and decided to hire someone to go in and take a look at how we could improve on large cash transactions policies, procedures, all of those things. How we could deal with the large amounts of \$20 bills and how we could move away from cash and that became a report.

Mr. Coleman and Ms. Wanamaker selected Robert Kroeker, then the province’s director of civil forfeiture, who would later go on to hold executive positions with both Great Canadian and BCLC, to conduct an independent review of anti–money laundering strategies in British Columbia’s gaming facilities.<sup>286</sup>

283 Exhibit 934, BCLC Minutes from the Board Meeting (July 23, 2010); Exhibit 935, BCLC Board Meeting July 23, 2010 Presentation regarding AML and FINTRAC; Evidence of R. Coleman, Transcript, April 28, 2021, pp 152–55.

284 Evidence of R. Coleman, Transcript, April 28, 2021, pp 69–70.

285 Ibid, p 114.

286 Ibid; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 80–81; Evidence of L. Wanamaker, Transcript, April 22, 2021, p 11.

## Mr. Kroeker's Summary Review

Mr. Kroeker's review commenced in January 2011 and culminated in a report to government delivered in draft form in February 2011. The final version of the report was published in August 2011.<sup>287</sup> The report articulated the purpose and scope of the review as follows:<sup>288</sup>

The purpose of the review is to advise the Minister on specific issues related to gaming integrity in the province.

The Minister directed that a review be undertaken of the measures employed by BCLC and GPEB aimed at protecting gaming facilities from organized criminal activity. The review was conducted at a high level and was intended to determine what policies, practices and strategies were in place. Opportunities for improvement were to be identified. The scope of the review was not intended to provide an in-depth analysis of the extent to which existing policies and procedures were adhered to by BCLC or GPEB, or the robustness of GPEB's monitoring of BCLC's efforts aimed at preventing criminal activity at gaming facilities.

According to the report, the methods employed by Mr. Kroeker in conducting his review included the following:<sup>289</sup>

- Interviews of employees of BCLC and GPEB, senior law enforcement officers, and an independent consultant with expertise in anti-money laundering compliance and forensic auditing;
- Review of documents produced by GPEB and BCLC;
- Site tour of a large gaming facility, including discussions with two gaming facility operators; and
- Review of literature, media reports, reports on the B.C. lottery system and the proceedings of a Canadian symposium on money laundering

Mr. Vander Graaf was among those interviewed by Mr. Kroeker.<sup>290</sup> Mr. Vander Graaf could not recall all of the details of this discussion,<sup>291</sup> but testified that he recommended to Mr. Kroeker that patrons be required to declare the source of the funds used in transactions in casinos<sup>292</sup> and that BCLC and GPEB should be housed

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287 Exhibit 141 (previously marked as Exhibit B), Summary Review Anti-Money Laundering Measures at BC Gaming Facilities (February 2011) [Summary Review]; Evidence of R. Kroeker, Transcript, January 25, 2021, p 87; Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 164; Exhibit 181, Vander Graaf #1, para 72, exhibit V; Evidence of D. Scott, Transcript, February 8, 2021, pp 7–8.

288 Exhibit 141, Summary Review, p 6.

289 Ibid, p 7.

290 Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 145; Evidence of R. Kroeker, Transcript, January 25, 2021, p 82.

291 Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 146.

292 Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 120–21; Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 145.

within separate ministries.<sup>293</sup> Mr. Kroeker recalled Mr. Vander Graaf recommending that limits be placed on the number of \$20 bills that a patron could use in a single day<sup>294</sup> and that “service providers should have the same obligations as a bank.”<sup>295</sup> Mr. Kroeker acknowledged during his testimony that he did not understand exactly what service providers having the “same obligations as a bank” would have entailed but understood that those obligations would have related to customer due diligence.<sup>296</sup>

Mr. Vander Graaf had the opportunity to provide further feedback to Mr. Kroeker in the form of comments made on a draft of Mr. Kroeker’s report.<sup>297</sup> In his comments, which he provided to Mr. Kroeker after the draft had already been forwarded to the responsible minister, Mr. Vander Graaf expressed his view that “[t]he two main reasons for concern in BC Casinos have been and will continue to be Loan Sharking and Money Laundering.” Mr. Vander Graaf offered a number of suggestions, including the following:<sup>298</sup>

- A Ministerial directive limiting the use of large volumes of \$20 bills to \$10,000–\$20,000 daily;
- Casinos should not pay patrons out by cheque, at least in instances of large cash buy-ins followed by minimal play;
- For large buy-ins, patrons should be strongly encouraged, incentivized or directed to use patron gaming fund accounts, funded through electronic funds transfers from Canadian banks or credit unions;
- GPEB investigations staff should be present on site in casinos, as is the Ontario Provincial Police in Ontario casinos, to make on-site inquiries regarding the origin of cash used in casino transactions and the identities and backgrounds of casino patrons;<sup>299</sup> and
- Selective targeted enforcement action on individuals by law enforcement with the assistance and support of the GPEB Investigations Division.

In his report, Mr. Kroeker concluded that “BCLC, in terms of policies and procedures, has a robust anti–money laundering regime in place” and that “GPEB has the required level of anti–money laundering expertise and is capable of discharging its responsibility to provide oversight as it relates to anti–money laundering and associated criminal activities at gaming facilities.”<sup>300</sup> Despite these generally positive findings, the

293 Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 121.

294 Evidence of R. Kroeker, Transcript, January 25, 2021, p 82.

295 Ibid, pp 83–84.

296 Ibid, pp 83–84.

297 Exhibit 181, Vander Graaf #1, para 76, exhibit V.

298 Ibid, exhibit V.

299 In his oral evidence, Mr. Vander Graaf clarified that he envisioned GPEB investigators performing this function alongside police officers. He testified that he “did not see the regulatory staff [GPEB] doing that at the time themselves”: Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 101.

300 Exhibit 141, Summary Review, p 15.

report identified opportunities for BCLC, GPEB and the Province to enhance the gaming industry's anti-money laundering regime.

The recommendations focused on BCLC were as follows:<sup>301</sup>

1. BCLC, in consultation with GPEB, should revise its buy-in / cash-out policy to allow for cash-outs to be paid by cheque, where cash-out cheques clearly and unequivocally indicate that the funds are not from gaming winnings.
2. BCLC should enhance training and corporate policy to help ensure gaming staff do not draw conclusions about the ultimate origin of funds based solely on the identification of a patron and his or her pattern of play. Training and business practices should result in gaming staff having a clear understanding that the duty to diligently scrutinize all buy-ins for suspicious transactions applies whether or not a patron is considered to be known to BCLC or the facility operator.
3. BCLC holds the view that gaming losses on the part of a patron provide evidence that the patron is not involved in money laundering or other related criminal activity. This interpretation of money laundering is not consistent with that of law enforcement or regulatory authorities. BCLC should better align its corporate view and staff training on what constitutes money laundering with that of enforcement agencies and the provisions of the relevant statutes.
4. Gaming is almost entirely a cash business in B.C. This presents opportunities for organized crime. Transition from cash transactions to electronic funds transfer would strengthen the anti-money laundering regime. BCLC, in consultation with GPEB, should take the steps necessary to develop electronic funds transfer systems that maximize service delivery, create marketing opportunities, and are compliant with anti-money laundering requirements.

The four recommendations focused on GPEB included:<sup>302</sup>

1. Adopting the perspective that registration, audit and enforcement / investigations lie on a compliance continuum and making sure the branch structure, including reporting relationships, supports this integrated approach.
2. Developing an annual unified registration, audit and investigations plan that sets out and co-ordinates compliance objectives and priorities for each year.

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301 Ibid, p 3.

302 Ibid, pp 3-4.

3. Formally involving the police agencies of jurisdiction, including those with specific anti–money laundering and organized crime mandates, in annual enforcement objective and priority planning.
4. Establishing more formal contacts and relationships with governance and enforcement agencies and associations in jurisdictions with large, long-standing gaming industries.

The following final two recommendations made by Mr. Kroeker, were directed at the provincial government:<sup>303</sup>

1. Engaging an independent firm with expertise in establishing electronic funds transfer processes and procedures to assist with the creation of an electronic funds transfer system that delivers a high degree of service to patrons, is marketable, and is fully compliant with anti–money laundering standards found in the financial sector. This firm should also be utilized to assist with ensuring the structure and conduct of future anti–money laundering reviews not only measure conformity with anti–money laundering legislation and regulations, but also help BCLC and GPEB to go beyond regulatory compliance to meet financial sector best practices.
2. Creating a cross agency task force to investigate and gather intelligence on suspicious activities and transactions at B.C. gaming facilities. The task force would report out on the types and magnitude of any criminal activity it found occurring in relation to gaming facilities in B.C. This information would help guide any additional actions that may be required.

While some of Mr. Kroeker’s recommendations were aimed at reducing the gaming industry’s reliance on cash, he did not recommend, as suggested by Mr. Vander Graaf, that restrictions be placed on the use of \$20 bills. In his evidence, Mr. Kroeker explained that the focus of his recommendations was cash reduction generally.<sup>304</sup> He offered the following rationale for not focusing on \$20 bills specifically:<sup>305</sup>

Well, from my experience and what I knew at the time, I felt that if you simply banned one denomination, you were inviting people with bad intent to simply switch to other denominations, 50s, 100s or smaller denominations. I didn’t see it being a problem solely around \$20 bills. It was a problem of a massive amount of cash coming in and only being allowed to use cash.

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303 Ibid, p 4.

304 Evidence of R. Kroeker, Transcript, January 25, 2021, p 82.

305 Ibid, pp 82–83.

By the time that Mr. Kroeker’s report was delivered to government, Shirley Bond, then newly appointed as solicitor general and minister of public safety, had replaced Mr. Coleman as minister responsible for gaming.<sup>306</sup> Decision-making as to whether and how to implement Mr. Kroeker’s recommendations fell within Ms. Bond’s portfolio.<sup>307</sup> Ms. Bond’s evidence was that she “agreed to all of the recommendations.”<sup>308</sup> In this regard, Ms. Bond’s reaction was similar to that of then-Premier Christy Clark, who testified that she also reviewed Mr. Kroeker’s report and that her initial reaction was that all of Mr. Kroeker’s recommendations should be implemented.<sup>309</sup>

Ms. Bond went on to testify, however, that the advice she received from the public service was that while the first nine of Mr. Kroeker’s recommendations could be implemented quickly, implementation of the tenth – creation of a cross-agency task force to investigate and gather intelligence on suspicious activities and transactions at British Columbia gaming facilities – would be more costly and complex.<sup>310</sup> Ms. Bond was advised that, while the first nine recommendations should be implemented immediately, the tenth should be delayed until the impact of the first nine were known. She directed that the recommendations be implemented in accordance with this advice.<sup>311</sup> Ms. Bond’s evidence was that, while the cost and complexity of the tenth recommendation were factors in this decision, her “primary consideration” was an interest in taking steps that could have an immediate impact.<sup>312</sup>

## **IPOC Engagement and 2011 Intelligence Probe**

Mr. Kroeker’s recommendation to establish a cross-agency task force to investigate and gather intelligence on suspicious activities and transactions at BC gaming facilities was not the first recognition of the need for greater law enforcement engagement in the gaming industry. As discussed in Chapter 9 in the few years prior to Mr. Kroeker’s review, this need had been recognized in proposals to reform the Integrated Illegal Gaming Enforcement Team (IIGET), in an IIGET threat assessment and in an internal RCMP intelligence report. The need was also recognized in Mr. Clapham’s proposals to establish a casino unit in the Richmond RCMP and discussions between GPEB, the RCMP, and the province’s Police Services Division in and around 2010, resulting in a draft decision note suggesting the creation of a 40-officer task force within the Combined Forces Special Enforcement Unit (CFSEU) dedicated to money laundering and cash facilitation at legal gaming venues.<sup>313</sup>

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306 Evidence of C. Clark, Transcript, April 20, 2021, pp 14–15; Evidence of S. Bond, Transcript, April 22, 2021, pp 53–54.

307 Evidence of S. Bond, Transcript, April 22, 2021, p 64.

308 Ibid, p 65.

309 Evidence of C. Clark, Transcript, April 20, 2021, p 98.

310 Evidence of S. Bond, Transcript, April 22, 2021, pp 73–76; Exhibit 888, Advice to Minister, Confidential Issues Note, Anti-Money Laundering Review (August 24, 2011).

311 Evidence of L. Wanamaker, Transcript, April 22, 2021, p 15; Exhibit 888, Advice to Minister, Confidential Issues Note, Anti-Money Laundering Review (August 24, 2011).

312 Evidence of S. Bond, Transcript, April 22, 2021, pp 74–75.

313 Evidence of K. Begg, Transcript, April 21, 2021, pp 51–57; Exhibit 181, Vander Graaf #1, paras 130–31 and exhibit NN; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 13–17.

At almost the same time that Mr. Kroeker began his review, however, an existing law enforcement unit was taking an interest in the growing suspicious activity in the province’s casinos. As discussed in detail in Chapter 39, the RCMP IPOC unit commenced an intelligence probe into suspicious transactions in British Columbia casinos in January 2011. The background and details of this intelligence probe are described below.

## **IPOC Engagement in Gaming Industry Prior to 2010**

While the IPOC unit does not appear to have had significant engagement in the province’s gaming industry prior to the 2011 intelligence probe, this lack of engagement was not for want of information. BCLC began forwarding reports of suspicious transactions to IPOC in or around 2004,<sup>314</sup> and as early as 2008 the GPEB investigation division began consulting with the RCMP IPOC unit about its concerns regarding large cash transactions in the gaming industry.<sup>315</sup>

Based on the evidence of Mr. Hiller, it appears that this information sparked some level of interest in the industry on the part of IPOC in 2009. In or around February of that year, Mr. Hiller was one of two BCLC investigators tasked with liaising with law enforcement on behalf of BCLC,<sup>316</sup> which involved providing police with information about suspicious activity occurring in the province’s casinos.<sup>317</sup> Mr. Hiller gave evidence that, as part of these duties, he regularly responded to requests for information from IPOC about casino patrons.<sup>318</sup> Mr. Hiller would also sometimes receive information from IPOC about patrons.<sup>319</sup>

These efforts, perhaps in conjunction with their interactions with GPEB, seem to have inspired some interest on the part of IPOC in investigating this activity. Mr. Hiller explained as follows:<sup>320</sup>

I had a meeting at River Rock with members of the Integrated Proceeds of Crime Unit (“IPOC”) in 2009. During this meeting, I took RCMP Staff Sergeant Rudy Zanetti and his team into the surveillance room at River Rock, showed them STRs and surveillance video footage, and then also showed them River Rock’s VIP room. The Director of Surveillance for Great Canadian Gaming Corporation (“GCGC”), Pat Ennis, was also present.

Following this meeting, IPOC expressed interest in receiving information from BCLC casino investigators so that it could investigate

314 Evidence of T. Towns, Transcript, January 29, 2021, pp 140–41.

315 Evidence of J. Schalk, Transcript, January 22, 2021, pp 181–82.

316 Exhibit 166, Hiller #1, para 21.

317 Ibid, para 22.

318 Ibid, paras 49–50 and exhibits C, D; Evidence of M. Hiller, Transcript, November 9, 2020, pp 34–35.

319 Evidence of M. Hiller, Transcript, November 9, 2020, p 36.

320 Exhibit 166, Hiller #1, paras 23–24.

suspicious activity that we observed. I told them that I would work additional hours in order to assist them in this effort. However, I observed little follow through from IPOC following its expression of interest and the idea of having police surveillance conducted at River Rock seemed to simply fade away over time. My understanding is that IPOC did not have enough members to undertake this new effort.

## **Renewed IPOC Interest in Suspicious Activity in Casinos in 2010**

While Mr. Hiller’s engagement with IPOC in 2009 did not seem to lead to any significant investigation, it appears that the unit’s interests in suspicious transactions in casinos was renewed the following year. Mr. Vander Graaf testified that, in 2010, GPEB increased its engagement with IPOC, including regular meetings between IPOC’s leadership and Mr. Schalk, Mr. Dickson, and sometimes Mr. Vander Graaf himself, in an effort to “generate interest in what was taking place in casinos.”<sup>321</sup> Mr. Dickson testified that GPEB also increased its information-sharing with IPOC in 2010.<sup>322</sup>

We also, starting in 2010, developed a relationship with the RCMP Integrated Proceeds of Crime Unit and met with them, shared information with them in terms of the reports. We also shared our operational reports with them, so they were getting to read the investigators’ reports, and that continued on for several years.

These efforts seem to have coincided with Barry Baxter, then an inspector with the RCMP, joining IPOC and developing his own interest in the activity taking place in the gaming industry. After conducting a file review upon joining the unit, Mr. Baxter became concerned about the quantity of \$20 bills accepted in the province’s casinos.<sup>323</sup> As discussed below, this was reflected in comments made by Mr. Baxter to the media and ultimately led Mr. Baxter to direct IPOC to commence an intelligence probe into suspicious transactions in the gaming industry.

## **Mr. Baxter’s Comments to the Media and Mr. Coleman’s Response**

Mr. Baxter’s views on the large cash transactions becoming increasingly prevalent in the province’s casinos at the time he joined IPOC were made clear in comments published by the media in early 2011. On January 4 of that year, CBC News attributed the following quotations to Mr. Baxter, the accuracy of which Mr. Baxter confirmed in his evidence before the Commission:<sup>324</sup>

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321 Exhibit 181, Vander Graaf #1, paras 101–2.

322 Evidence of D. Dickson, Transcript, January 22, 2021, p 12.

323 Evidence of B. Baxter, Transcript, April 8, 2021, pp 21–22.

324 Evidence of B. Baxter, Transcript, April 8, 2021, pp 50–51; Exhibit 823, Media Excerpts Money Laundering in Casinos – various, 2011.

“Police became aware of the activities after the fact,” said Inspector Barry Baxter, who is with the RCMP’s integrated proceeds of crime section. “We’re suspicious that it’s dirty money,” Baxter told CBC News. “The common person would say this stinks, there’s no doubt about it. The casino industry in general was targeted during that time period for what may well be some very sophisticated money laundering activities by organized crime.”

This article was published shortly before the end of the second of Mr. Coleman’s three separate tenures as minister responsible for gaming and Mr. Coleman was asked to comment on Mr. Baxter’s views in a January 10, 2011, radio interview.<sup>325</sup> Even though, at this point, Mr. Coleman had recently heard similar concerns from Mr. Vander Graaf and had initiated, or was in the process of initiating, Mr. Kroeker’s review, his responses during this radio interview indicated clear disagreement with Mr. Baxter:<sup>326</sup>

Q Well, just in closing ... we’ve been told by the RCMP, a Barry Baxter, that they’re suspicious it’s dirty money. Given that, will you give the enforcement branch some new tools, instructions to tighten up because of those concerns?

A Well, first of all, let’s deal with Mr. Baxter, because he’s offside with some of the messaging I got from the RCMP last week when I asked them the question, and they’re having a look at the comments that he made within the policing because they don’t feel that it ... was basically reported ... the quote ... or the comment was reported at a level that made ... that actually was correct with regards to his comment about money laundering.

Q He said that we’re suspicious it’s dirty money, the common person would say this stinks, there’s no doubt about it.

A Yeah, I know what he said. I don’t agree with him and neither do all the superiors of his in the RCMP. And that’s why I said to them, okay, guys, we’re going to look at this. These comments came from you, I want them backed up ... but I also want them ... as we back them up let’s find out how we can do things better.

In his evidence before the Commission, Mr. Coleman clarified that he did not personally speak with anyone in the RCMP regarding Mr. Baxter’s comments, but that his staff would have and that he would have been briefed on what they had learned.<sup>327</sup> It is clear from the affidavit of former RCMP Assistant Commissioner Craig Callens, in evidence before me, that then-Director of Police Services Kevin Beggs did indeed contact

325 Evidence of R. Coleman, Session 2 Transcript, May 14, 2021, pp 14–16; Exhibit 1024, CBC Interview with Rich Coleman (January 10, 2011).

326 Evidence of R. Coleman, Session 2 Transcript, May 14, 2021, pp 15–16; Exhibit 1024, CBC Interview with Rich Coleman (January 10, 2011), pp 6–7.

327 Evidence of R. Coleman, Session 2 Transcript, May 14, 2021, pp 17–29.

the RCMP about Mr. Baxter's comments and that Mr. Callens had advised Mr. Begg that the manner in which Mr. Baxter's comments were made was inconsistent with past practice and existing protocols.<sup>328</sup>

It is also clear from Mr. Callens's affidavit, however, that he did not comment on the contents of Mr. Baxter's statements in this conversation with Mr. Begg.<sup>329</sup> As such, it does not appear that Mr. Coleman's disagreement with Mr. Baxter was based on information provided by the RCMP in response to Mr. Baxter's comments. This is consistent with Mr. Coleman's evidence, who acknowledged that this disagreement was based on his "feeling" about what the views of Mr. Baxter's superiors would be, rather than actual knowledge of those views.<sup>330</sup>

Q Okay. I want to just follow up on that because you're saying here: "I don't agree with him and neither do all the superiors of his –"

A As I said, I probably got too broad in that statement in that interview saying that.

Q Was there one or any superior or member of the RCMP who disagreed with them that you knew of?

A It was a general comment because my relationship with the RCMP in briefings was that they were – it was just my feeling that his superiors wouldn't agree with what he said or how he [said] it. I mean, he may have permission to do the interview, and I don't doubt – I don't question that. However, it was some pretty broad comments that captured everything as being one thing and that is that all of this – any large cash transaction was stinky in BC casinos and ... my briefing level was different than that. So, I would have thought that anybody informed wouldn't agree with that broad of a statement as well.

Q You used the word "felt" and "feeling" two times there. You said it was your feeling that people would have seen it that way. But ... looking back at this now, do you agree that's a guess? You didn't have any information to support that?

A That was my opinion at the time.

Q Okay. I know you characterize it as an opinion but you're saying as if – do you agree with me you're putting it at line 17 as a statement of fact: "I don't agree with him and neither do all the superiors of his in the RCMP."

A Yeah.

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328 Exhibit 1022, Affidavit #1 of Craig Callens, sworn on May 12, 2021, para 5.

329 Ibid, para 8.

330 Evidence of R. Coleman, Session 2 Transcript, May 14, 2021, pp 58-59.

Q Is he that – let me cut to the chase –

A Yeah, I totally understand and I probably misspoke a little bit too far in an interview where the interview was a bit aggressive and maybe – I don't know. I can't remember going – I can't go back ten-plus years and say what the background was of the statement I made in an interview that lasted for seven minutes. Basically, that was my feeling at the time and my opinion at the time, and I based it on historical relations that I had with the RCMP when I made that comment.

Q You think it was unfair to Mr. Baxter to say what you said there?

A Yeah, it may have been unfair to Mr. Baxter.

I agree with Mr. Coleman's assessment that his comments were unfair to Mr. Baxter. Moreover, they posed a real risk of misleading the public into believing that there was no basis for concern about suspicious transactions in the province's casinos at a time when Mr. Coleman had good reason to believe that there was cause to be worried about the origin of the funds used in those transactions, and he had just initiated an independent review focused on money laundering in the province's casinos.

## 2011 IPOC Intelligence Probe

The concerns underlying the comments made by Mr. Baxter to CBC News also motivated him to direct the officers under his command, with the assistance of GPEB,<sup>331</sup> to commence an intelligence probe into suspicious transactions in casinos.<sup>332</sup> Based on their observations in the course of this intelligence probe, the officers involved developed a belief that the funds being accepted as part of large cash transactions in casinos were the proceeds of crime<sup>333</sup> and in January 2012, prepared an operational plan proposing further investigation and other action by IPOC.<sup>334</sup> The IPOC unit was soon disbanded, however, and the operational plan was never executed. Despite the continued acceleration of large and suspicious cash transactions in the province's casinos, and repeated communications about these transactions from GPEB and BCLC to law enforcement, the gaming industry would not see significant law enforcement engagement on this issue again until 2015.

The intelligence probe and the observations of the officers involved, as well as the proposed operational plan and ultimate disbanding of IPOC are addressed in detail in Chapter 39 of this report.

331 Exhibit 145, Barber #1, paras 51–57; Evidence of R. Barber, Transcript, November 3, 2020, pp 17, 40–43.

332 Evidence of B. Baxter, Transcript, April 8, 2021, pp 25–30.

333 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–18; Exhibit 760, Casino – Investigational Planning & Report – IPOC (January 30, 2012); Exhibit 759, Casino Summary & Proposal – IPOC – December 2011

334 Exhibit 760, Casino – Investigational Planning & Report – IPOC (January 30, 2012).

## **Appointment of Doug Scott as General Manager of GPEB and Development of an Anti–Money Laundering Strategy**

In June 2011, as the IPOC intelligence probe was ongoing, Doug Scott was appointed assistant deputy minister and general manager of GPEB, shortly after he retired from a 20 year career with the RCMP.<sup>335</sup> Mr. Scott replaced Sue Birge, who had held the role on an interim basis since Mr. Sturko’s departure in December 2010.<sup>336</sup> During his tenure with GPEB, Mr. Scott was made well aware of the concerns of the GPEB investigation division regarding large cash transactions accepted in the province’s casinos. Mr. Scott testified that he first learned of this concern within days of his arrival and that he periodically received reports of findings prepared by the investigation division while he was in this role.<sup>337</sup> He testified that his views on this issue were generally consistent with those of the investigation division.<sup>338</sup> While he did not think that activity described in the investigation division’s reports of findings “was definitively money laundering,” he believed that casinos were likely accepting proceeds of crime and that “this was a very serious problem that [GPEB] needed to address.”<sup>339</sup> Mr. Scott indicated to me that the “prevention of wrongdoing,” including money laundering, in the gaming industry was identified as GPEB’s top strategic priority early in his tenure as general manager and remained at the top of GPEB’s priorities until he left the Branch in September 2013.<sup>340</sup>

### **Implementation of Mr. Kroeker’s Recommendations**

By the time of Mr. Scott’s appointment, Mr. Kroeker’s report had been completed and delivered to government, but not yet released publicly. Mr. Scott’s evidence was that government had already decided to accept all of the report’s recommendations by the time he joined GPEB and that it was GPEB’s responsibility, along with BCLC, to implement those recommendations.<sup>341</sup>

Though it was not Mr. Scott’s decision to accept them, he indicated to me that he generally agreed with Mr. Kroeker’s recommendations, with one exception.<sup>342</sup> Mr. Scott disagreed with Mr. Kroeker’s recommendation that casinos pay out patrons by cheques that included an indication that the funds represented by the cheque were not from gaming winnings.<sup>343</sup> Mr. Scott rooted his concerns about this recommendation in his recent experience with the RCMP and his understanding of the limits of law enforcement capacity at that time:<sup>344</sup>

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335 Exhibit 557, Affidavit #1 of Douglas Scott, made on February 3, 2021 [Scott #1], paras 5–9.

336 Exhibit 527, Affidavit #1 of Sue Birge, made on February 1, 2021, para 8; Exhibit 507, Sturko #1, para 6.

337 Evidence of D. Scott, Transcript, February 8, 2021, pp 6–7, 17–18; Exhibit 557, Scott #1, para 34.

338 Exhibit 557, Scott #1, para 35.

339 Ibid.

340 Ibid, paras 17–18 and exhibit 1; Evidence of D. Scott, Transcript, February 8, 2021, pp 10–12.

341 Exhibit 557, Scott #1, paras 20–21; Evidence of D. Scott, Transcript, February 8, 2021, pp 7–8.

342 Exhibit 557, Scott #1, paras 22–23.

343 Ibid.

344 Ibid, para 23.

My concerns about the first recommendation arose from my past experience investigating commercial crime as an RCMP officer. I understood this recommendation was made to ensure that there was an audit trail for police to follow, but I knew that the RCMP did not have capacity to follow the trails.

Mr. Scott went on to confirm that, despite his concerns, this recommendation was implemented through the creation of “convenience cheques” issued in limited amounts.<sup>345</sup>

While Mr. Scott generally agreed with Mr. Kroeker’s recommendations and pursued their implementation, he testified that he did not believe, at the time, that they would be sufficient to stem the flow of suspicious cash into the province’s casinos. Mr. Scott’s evidence was that he shared these views with Ms. Wanamaker, then the deputy minister to whom Mr. Scott reported, along with his belief that GPEB needed to develop a strategy to address this issue.<sup>346</sup> According to Mr. Scott, Ms. Wanamaker advised him that he should “go build that strategy.”<sup>347</sup>

### **GPEB Anti–Money Laundering Cross-Divisional Working Group and Development of an Anti–Money Laundering Strategy**

In order to coordinate GPEB’s efforts to respond to money laundering risks in the gaming industry, including through the implementation of Mr. Kroeker’s report, Mr. Scott established an “anti–money laundering cross-divisional working group” within GPEB early in his tenure.<sup>348</sup> The “strategic statement and focus” of this working group was as follows:<sup>349</sup>

The gaming industry will prevent money laundering in gaming by moving from a cash based industry as quickly as possible and scrutinizing the remaining cash for appropriate action. This shift will respect or enhance our responsible gambling practices and the health of the industry.

In his affidavit, Mr. Scott described the function and composition of the working group in the following terms:<sup>350</sup>

Starting in the summer of 2011, I [led] the establishment of GPEB’s Anti–Money Laundering Cross-Divisional Working Group (“X-DWG”), in collaboration with my team. The X-DWG was established to develop AML solutions and assess proposals from BCLC and the industry. It was also the decision-making body responsible for developing and executing

345 Ibid.

346 Ibid, para 30; Evidence of D. Scott, Transcript, February 8, 2021, pp 64, 102–3.

347 Evidence of D. Scott, Transcript, February 8, 2021, pp 64, 102–3.

348 Ibid, pp 12–14, 111; Evidence of L. Wanamaker, Transcript, April 22, 2021, p 15; Exhibit 557, Scott #1, paras 27–29.

349 Exhibit 181, Vander Graaf #1, exhibit O, p 1.

350 Exhibit 557, Scott #1, paras 27–28.

GPEB's AML strategy. The X-DWG was chaired by the Executive Director of Internal Compliance and Risk Management, Bill McCrea.

I wanted the whole of GPEB to work creatively to address the issue of cash in casinos and in order to accomplish this, all relevant divisions within GPEB were included in X-DWG, namely the Assistant Deputy Minister's Office (my office), Audit and Compliance, Registration and Certification, Investigations, Policy/Responsible Gambling, and Internal Compliance and Risk Management ("ICRM").

The cross-divisional working group became the point of contact for communications on anti-money laundering issues between GPEB and BCLC.<sup>351</sup> Following the creation of the working group, the investigation division ceased corresponding directly with BCLC, as it had in 2010 and earlier in 2011 because, according to Mr. Vander Graaf, the division was encouraged to be "team players" and wanted to be seen as such.<sup>352</sup> Instead, the division focused on providing the working group with materials related to the reduction of cash through the implementation of cash alternatives<sup>353</sup> though Mr. Vander Graaf made clear in his evidence that he did not believe that this approach would be effective in reducing the volume of cash entering casinos.<sup>354</sup>

### ***Anti-Money Laundering Strategy***

Over the course of the latter part of 2011 and the beginning of 2012, and in keeping with Ms. Wanamaker's response to Mr. Scott's concerns about the limits of Mr. Kroeker's recommendations, the cross-divisional working group developed a three-phase anti-money laundering strategy. The three phases of this strategy and the initial timeline for implementation, as set out in Mr. Scott's evidence, are described below.<sup>355</sup>

#### **Phase 1 Cash Alternatives (Service Provider Intervention) – Commencing April 2012**

This phase included BCLC working with service providers to promote cash alternatives, especially to high-volume players, and contemplated incentives for player use of cash alternatives. BCLC was also to work with service providers to develop enhancements to the cash alternatives program and market them to patrons, while GPEB continued to gather more information on the nature of cash entering casinos and analyze these funds.

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351 Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 166.

352 Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 118.

353 Ibid.

354 Ibid, pp 118-19.

355 Exhibit 557, Scott #1, para 40.

## Phase 2 Operator Intervention – Commencing May 2013

This phase involved BCLC and service providers becoming more actively engaged in the promotion of cash alternatives with high-volume patrons, using a customer relationship management approach. This phase also contemplated introducing enhanced customer due diligence and analysis capacity to better inform AML activity in the industry.

## Phase 3 Regulator Intervention (GPEB) – Commencing December 2013

This phase contemplated that if the issue of large amounts of suspicious cash persisted, GPEB would undertake direct regulatory action as part of the regulatory process in preventing money laundering and included GPEB conducting interviews of patrons who continued to bring suspicious cash into casinos.

Mr. Scott clarified that phases one and two were intended to continue in perpetuity and would not cease when the subsequent phase began. He also confirmed that casino patrons' use of the cash alternatives referred to in the descriptions of these phases was intended to be voluntary.<sup>356</sup> Mr. Scott acknowledged that he did not expect that these voluntary programs would significantly impact the amount of suspicious cash entering the province's casinos.<sup>357</sup>

[M]y view of this was the cash alternatives were an important baseline because we had an industry that was a hundred percent cash by mandate of government and we had \$6 billion coming in, as I had mentioned. That was a key issue that we were dealing with. And it's very challenging, in my view. My view at the time [was] it would be very challenging to identify or discriminate between AML or – or pardon me, not AML, but suspicious cash or proceeds of crime coming in and the vast majority of cash that was coming in was legitimate.

So, in my view it was a key foundational piece to give legitimate players the option to go to what I viewed would be much more convenient ways to buy in. In order to clear your cash out and make less – the more suspicious cash sort of rise to the fore, if you will. So ... cash alternatives were never intended to – or never expected, I should say, not “intended.” It was never expected that they would be used by the money launderer.

So, it didn't surprise me at all that it didn't change the amount of suspicious cash coming in. Rather it was intended to set the baseline for moving legitimate players into a more convenient to get the cash level down because the high level of our risk, as I mentioned before, was just the volume of cash coming in.

<sup>356</sup> Evidence of D. Scott, Transcript, February 8, 2021, pp 28–30.

<sup>357</sup> Ibid, pp 31–32; see also Exhibit 557, Scott #1, para 42.

Mr. Scott explained as well that he did not expect the actions described in this strategy to be the entirety of the industry’s anti-money laundering response.<sup>358</sup> He gave evidence that “GPEB expected and encouraged BCLC intervention with high-risk players throughout implementation of the strategy.”<sup>359</sup> There is some evidence that, prior to the scheduled implementation of phase three, Mr. Scott did, in fact, encourage BCLC to intervene with high-risk players by interviewing patrons about the source of the cash they used to gamble in the province’s casinos.<sup>360</sup> According to Mr. Scott, BCLC did not act on this encouragement during his tenure.<sup>361</sup> In contrast, Mr. Graydon, BCLC’s CEO at the time, had no recollection of Mr. Scott encouraging BCLC to interview patrons about the source of their funds<sup>362</sup> and in fact suggested that he believed this to be GPEB’s responsibility.<sup>363</sup> I find, however, that Mr. Scott’s evidence is credible in this regard, in part because of its consistency with that of Mr. Vander Graaf, who gave evidence of delivering a similar message alongside Mr. Scott during Mr. Scott’s tenure.<sup>364</sup>

Mr. Scott also made clear in his evidence that phase three of the strategy was intended to proceed only if necessitated by the failure of phases one and two to sufficiently address the issue of suspicious transactions in casinos.<sup>365</sup> He explained the rationale for delaying phase three as follows:<sup>366</sup>

[P]hase three ... is the portion where GPEB intervenes directly, and phase 3 is intended to drive that – a couple of key things in the context. One being that BCLC had control over the operational response to money laundering, and so the overall strategy itself asserts GPEB. It’s the mechanism by which I intended to assert GPEB’s influence over the money laundering response at the strategic level. And so, it was understood at this time that BCLC still had responsibility and would aggressively address the suspicious cash that was coming in at the time while GPEB was working on this overall strategic response. And so, by so doing we were able to sort of engage ourselves and influence [anti-money laundering], where before we were absent other than to express concerns.

What phase three contemplates is engaging directly, virtually taking over the operational response that BCLC up to that point had been responsible for. So, if it was unnecessary, if the [suspicious transactions reports] had been driven down to levels that ... we could consider reasonable, then in my view we wouldn’t need to go to phase three because

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358 Exhibit 557, Scott #1, para 42.

359 Ibid, paras 41–42.

360 Ibid, paras 73–74; Evidence of D. Scott, Transcript, February 8, 2021, pp 54–56.

361 Exhibit 557, Scott #1, paras 73–74; Evidence of D. Scott, Transcript, February 8, 2021, pp 54–56.

362 Evidence of M. Graydon, Transcript, February 11, 2021, pp 51, 86–87.

363 Ibid, pp 50–51.

364 Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 82–86; Exhibit 181, Vander Graaf #1, para 116.

365 Evidence of D. Scott, Transcript, February 8, 2021, pp 28–30; Exhibit 557, Scott #1, para 42.

366 Evidence of D. Scott, Transcript, February 8, 2021, pp 29–30.

phase three was a significant cultural shift and involved reconsideration of responsibilities as had been traditionally outlined over the 10 years of the Gaming Control Act.

With respect to the content of phase three, it is clear that the action anticipated during this phase included, but was not necessarily limited to, interviews by GPEB investigators of casino patrons engaged in suspicious transactions. Patron interviews are mentioned explicitly in the description of phase three above and were identified by Mr. Scott as part of this phase multiple times in his evidence.<sup>367</sup>

During his testimony, Mr. Scott was asked to explain why the strategy contemplated delaying this measure until phase three of the strategy.<sup>368</sup> Specifically, Mr. Scott was questioned as to why GPEB investigators would not have begun interviewing patrons immediately as part of phase one, which was to include efforts “to gather more information on the nature of cash entering casinos and analyze these funds.”<sup>369</sup> In response, Mr. Scott testified that both BCLC and the GPEB investigation division were resistant to the idea of GPEB investigators interviewing patrons about suspicious transactions.<sup>370</sup>

According to Mr. Scott, BCLC took the position that it was the Lottery Corporation that had primary responsibility for “dealing with” suspicious transactions.<sup>371</sup> Mr. Scott testified that Mr. Graydon was opposed to GPEB investigators interviewing patrons, as Mr. Graydon viewed interviews of patrons as properly within the purview of BCLC.<sup>372</sup> Mr. Graydon did not recall taking this position with Mr. Scott.<sup>373</sup>

Mr. Scott testified that Mr. Vander Graaf was opposed to the investigators under his direction interviewing casino patrons because GPEB investigators lacked both the authority and the resources to interview patrons.<sup>374</sup> This is consistent with Mr. Vander Graaf’s evidence that he did not see it as the role of GPEB investigators to interview patrons<sup>375</sup> and that there were safety concerns associated with their doing so.<sup>376</sup> Mr. Scott’s evidence was that he was not entirely convinced of Mr. Vander Graaf’s view that GPEB investigators lacked the authority to interview casino patrons and that he intended to seek a legal opinion regarding the scope of their authority, but did not do so before departing from his role with GPEB in September 2013.<sup>377</sup>

367 Evidence of D. Scott, Transcript, February 8, 2021, pp 33, 36, 116; Exhibit 557, Scott #1, para 40.

368 Evidence of D. Scott, Transcript, February 8, 2021, p 33.

369 Ibid, pp 32–34.

370 Ibid, pp 34–35, 39–41, 48, 139–41; Exhibit 557, Scott #1, paras 43–45.

371 Evidence of D. Scott, Transcript, February 8, 2021, pp 39, 139–40; Exhibit 557, Scott #1, paras 43–45.

372 Exhibit 557, Scott #1, para 44.

373 Evidence of M. Graydon, Transcript, February 11, 2021, p 86.

374 Evidence of D. Scott, Transcript, February 8, 2021, pp 121, 140–42.

375 Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 102.

376 Ibid, pp 159–62; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 185–90; Exhibit 181, Vander Graaf #1, exhibit D.

377 Evidence of D. Scott, Transcript, February 8, 2021, pp 34, 121–22, 140–42, 170.

Mr. Scott elaborated upon the actions planned for phase three of the strategy by indicating that while patron interviews would likely have been the initial step during that phase, it was possible that further measures may have been necessary, such as a cap on the size of cash transactions.<sup>378</sup> Mr. Scott acknowledged that measures of this sort were reserved as a last resort in part due to revenue considerations. He described a meeting with Ms. Wanamaker in which he believed that it was implied that such measures may be necessary and could have a negative impact on revenue.<sup>379</sup> According to Mr. Scott, Ms. Wanamaker responded that a loss of revenue could ultimately be acceptable, but that Mr. Scott would need to make the case that it was necessary, which would require that he demonstrate that he had attempted to resolve the issue through other means that would not have the same impact on revenue.<sup>380</sup>

## **Anti-Money Laundering Strategy in Context: 2011 and 2012 Reports of Findings**

While the GPEB investigation division temporarily ceased its correspondence with BCLC following the creation of the GPEB anti-money laundering cross-divisional working group, it continued to produce reports of findings and forward them to Mr. Scott. The division produced two such reports of findings in late 2011 and early 2012, as the anti-money laundering strategy was being developed. It is useful, in my view, to consider the strategy alongside these two reports of findings, as they offer insight into what was actually occurring within the province's casinos at the time and, by extension, the nature of the issue the strategy was intended to address.

### ***November 14, 2011, Report of Findings***

The first of these two reports, dated November 14, 2011, and prepared by Mr. Dickson, detailed the activity of a single patron at the River Rock casino over the span of 10 days in the fall of 2011.<sup>381</sup> During this time period, the patron bought-in 13 times for amounts ranging from \$69,960 to \$200,000. The cumulative value of the patron's buy-ins during this period was \$1,819,880 including \$1,378,500 in \$20 bills. According to the report, the funds used by the patron were "transported in a variety of bags and was all packaged in \$10,000 bricks wrapped in two elastic bands." Mr. Dickson noted that the patron had opened a PGF account approximately a year prior to this activity and that the account remained open at the time of these transactions.

Based on the facts set out in the report, Mr. Dickson reached the following conclusions regarding the pattern of activity exhibited by the patron:

[The patron] is a 26 year old male who reportedly is the Chairman of the Board and CEO of a publicly traded company on the Hong Kong Stock

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378 Ibid, 36–37, 78; Exhibit 557, Scott #1, para 43.

379 Evidence of D. Scott, Transcript, February 8, 2021, pp 78–79.

380 Ibid, p 79.

381 Exhibit 181, Vander Graaf #1, exhibit L.

Exchange. Limited background checks fail to identify [the patron] as having a criminal background. He however is knowingly using loan sharks and is being used by loan sharks and organized crime to at very least, facilitate the laundering of large amounts of small denomination cash through his play at a Lower Mainland casino. The access to the large quantities of cash involved, in small denominations, how the cash is packaged and delivered to the casino are all indicative of the laundering of the proceeds of crime on a very large scale.

This is yet another example of criminals utilizing casinos in British Columbia to launder significant sums of money, utilizing wealthy Asian businessmen. This concern has been raised on numerous occasions in the past by the Investigations Division. To date, any anti-money laundering strategies deployed by BCLC or the service providers have had little or no impact on the number of reported suspicious cash transactions [SCTs]. As a matter of fact, the numbers of [SCTs] reported to GPEB and the amounts of suspicious small denomination cash, particularly 20 dollar bills, entering BC casinos continues to increase.

Both Mr. Schalk and Mr. Vander Graaf added comments to the report that were supportive of Mr. Dickson's conclusions. A notation in the report indicates that it was forwarded to Mr. Scott on November 16, 2011.

### ***February 22, 2012, Report of Findings***

Mr. Dickson prepared a second report of findings on February 22, 2012.<sup>382</sup> Rather than focusing on the activity of a single patron, this report examined suspicious transactions at the River Rock generally during the five-week period between January 13, 2012, and February 17, 2012. This timespan was intended to capture the period before, during, and after the Chinese New Year, which began on January 23, 2012.

The report indicates that GPEB received a total of 85 suspicious currency transaction reports from the River Rock during this time period. The total value of these transactions was \$8,504,060, of which \$6,677,620 was in \$20 bills. Of these 85 total reports, 74 related to transactions conducted by patrons involved in multiple suspicious transactions during this period. One patron was responsible for 19 such transactions, with a total value of \$1,435,480.

In remarks included in the report, Mr. Dickson noted that several of the patrons responsible for these transactions had active PGF accounts during this time period, which were either emptied and not replenished or not used at all. Mr. Dickson also indicated in the report that these transactions included several incidents in which “these patrons lose their bankroll and leave the casino, only to return a short while later (sometime[s] within minutes) with another bag of cash, primarily in \$20 denominations and bundled in \$10,000 bricks held together by two elastic bands.”

<sup>382</sup> Ibid, exhibit M.

Mr. Dickson forwarded this report to Mr. Schalk on February 22, 2012. Remarks added to the report by Mr. Schalk assist in placing the transactions reflected in this report in the broader context of what was occurring in the gaming industry generally at this time:

The River Rock Casino, although the most prominent of 5 major [Lower Mainland] casinos that have by far the most ... Suspicious Currency Transactions [SCT] occurring, would still only account for approximately 40% of all SCT reports and approximately 50% of all SCT monies reported.

...

It should also be noted that the incidents of Suspicious Currency Transactions reported by gaming venues continues to rise dramatically from year to year. In the fiscal year **2009/2010, 117 incidents** of Suspicious Currency Transactions were reported (non-reporting by Service Providers was certainly more of an issue then – our scrutiny on non-reporting issues has tightened up reporting considerably). In the fiscal year **2010/2011, 459 reports** were received. For the fiscal year **2011/2012** up to 15 Feb (**10 ½ months) 653 reports** of Suspicious Currency Transactions have been reported (projected to be at least 750 incidents for the full year). [Emphasis in original.]

Mr. Schalk's remarks make clear that the transactions identified in this report were likely the extent of the suspicious activity occurring in British Columbia casinos at the time, and also that activity of this sort was accelerating rapidly.

While I cannot say with certainty whether Mr. Scott had received the second of these reports before the anti-money laundering strategy was finalized, these two reports assist in providing insight into the conditions in the gaming industry as the strategy was being developed. I understand that the rate at which suspicious cash was entering the province's casinos at this time pales in comparison to what was observed a few years later. However, in my view, these reports, alongside the earlier reports produced in 2010 and the reporting data discussed earlier in this chapter, establish that suspicious cash was already entering the province's casinos at an alarming – and rapidly growing – rate by early 2012. This should have made apparent to anyone with knowledge of this information that there was a very serious problem requiring immediate and decisive action.

In this context, it is striking that the strategy developed to respond to this issue required only the development and promotion of entirely voluntary cash alternatives for nearly two years following its initial implementation. Aside from the vague expectation of BCLC “intervention” with high-risk players – which BCLC seems to have quickly rejected – patrons would remain free to continue to gamble with suspicious cash. Given the timidity of the action contemplated in the initial stages of the strategy, it is unsurprising that the rate of suspicious transactions continued to grow in the years that followed.

## Development and Initial Impact of New Cash Alternatives

I will return to consider the wisdom of the decision to focus on cash alternatives during this time period in Chapter 14. Leaving aside the question of whether this was the optimal approach, or even whether it had any realistic hope of succeeding, it is clear that, in the wake of Mr. Kroeker's report and the development of the strategy, the industry moved quickly to enhance the cash alternatives available to casino patrons. Based on the evidence of Mr. Towns, then BCLC's vice-president of corporate security and compliance, it appears that this was no small undertaking. Mr. Towns described in his affidavit the process for developing and implementing cash alternatives:<sup>383</sup>

Cash alternative programs were not easy to implement. Each step of the program was independent and required consideration, approval and implementation, including input from Service Providers. BCLC had to ensure that the Service Providers could operationalize the proposals, so it was not possible to implement these programs overnight. My recollection is that Service Providers were actively involved in BCLC's efforts to develop cash alternative programs, and were generally supportive of these efforts.

...

In addition to seeking input from Service Providers, GPEB approval was required for each cash alternative program. I recall some delays in the process of working with GPEB in this regard. My primary contact at GPEB at the time was Bill McCrea, Executive Director, Internal Compliance and Risk Management. Mr. McCrea was generally receptive to BCLC's proposals, but had to consult with others within GPEB including investigators, auditors and policy analysts prior to approval of a proposed program. Mr. McCrea would generally relay questions from within GPEB to BCLC, and there would often be back and forth discussion on each proposal.

In April 2012, in addition to enhancements to and expansion of PGF accounts, BCLC began to implement a number of new options by which patrons could buy-in. These included including "hold cheques" (known players were permitted to play against the value of a cheque presented at a casino without the cheque being cashed); certified cheque buy-ins; and debit machines at the cash cage.<sup>384</sup> BCLC also introduced new mechanisms for paying money out to patrons, including convenience cheques, which are used to return non-verified winnings and/or buy-in funds to a patron and were initially limited to \$5,000 per patron per week (later increased to \$10,000) and "return of funds" cheques, which are used to return funds to patrons from PGF accounts.<sup>385</sup>

383 Exhibit 517, Towns Affidavit, paras 118, 120.

384 Exhibit 517, Towns Affidavit, para 124; Exhibit 505, Lightbody #1, para 25; Evidence of C. Cuglietta, Transcript, January 21, 2021, p 43.

385 Exhibit 517, Towns Affidavit, para 124; Exhibit 505, Lightbody #1, para 25; Exhibit 148, Tottenham #1, paras 13–15.

According to Mr. Lightbody, these efforts led to some initial success, as he was advised by Mr. Towns in or around July 2012 that the combination of PGF accounts and availability of debit machines at casino cash cages had resulted in the removal of \$17 million of cash from British Columbia's gaming system.<sup>386</sup> Mr. Towns gave evidence that he believed that the cash alternatives introduced at this time were effective and that, by October 2012, \$42.7 million in cash had been eliminated from the province's casinos.<sup>387</sup> Mr. Towns seems to have arrived at this figure by adding the value of all debit transactions during this period (\$667,450) with the value of all funds withdrawn from PGF accounts (\$42,098,380).<sup>388</sup> Accordingly, the evidence of Mr. Towns should not be understood to indicate that the total value of cash accepted by the province's casinos was \$42.7 million *lower* following the introduction of these alternatives relative to what it had been prior to their introduction. Rather, the conclusion that these funds were "removed" from the gaming industry seems based on the assumption that any transactions conducted using cash alternatives would have been completed in cash were it not for the presence of these alternatives. As discussed previously in this chapter, the evidence before me, including large and suspicious cash reporting data and the evidence of witnesses working in the industry during this time period, reveals that, contrary to the suggestion that cash was being "removed" from the gaming industry, the rate of suspicious cash buy-ins continued to rise at a rapid rate despite the introduction of voluntary cash alternatives.

## **Service Provider and BCLC Response to BCLC Investigator Intervention in Suspicious Transactions**

At approximately the same time that BCLC was implementing these new cash alternatives, it was also issuing directions to its investigators to limit their efforts to respond to suspicious activity in the province's casinos. As discussed earlier in this chapter, one BCLC investigator, Mr. Hiller, developed concerns about the sources of cash used in casino transactions shortly after joining BCLC in February 2009. In the years that followed, additional investigators with law enforcement experience joined BCLC's investigative staff and developed concerns similar to Mr. Hiller's. As suspicious transactions grew in prevalence, these investigators attempted to take action in response within the sphere of their authority, occasionally encountering resistance from service provider staff. In 2012, following one investigator's attempts to intervene directly in suspicious transactions at the River Rock, three investigators were instructed by Mr. Towns to cease these efforts. Below, I discuss this incident and other interventions that impeded the efforts of BCLC investigators to respond to suspicious activity in casinos.

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386 Exhibit 505, Lightbody #1, para 26.

387 Evidence of T. Towns, Transcript, February 1, 2021, pp 13–14.

388 Ibid, pp 13–14; Exhibit 517, Towns Affidavit, exhibit 49.

## Growth of BCLC Investigator Concerns About Large Cash Transactions

As indicated above, Mr. Hiller developed concerns about large and suspicious cash transactions early in his tenure with BCLC, when the rate of such transactions began to accelerate. While Mr. Hiller may have been among the first to develop these concerns – and was clearly very vocal in expressing them<sup>389</sup> – he was soon joined by other investigators who shared his perspective. Mr. Beeksma, for example, who joined BCLC as an investigator in late 2008,<sup>390</sup> described developing the following concerns after being transferred to the River Rock in May 2012, where he was partnered with Mr. Hiller:<sup>391</sup>

I viewed the large cash buy-ins that involved significant numbers of \$20 bills and that resulted in STRs being filed as suspicious. It seemed likely to me that these funds were from questionable sources, because I could think of few legitimate explanations for why someone would have so many \$20 bills – that’s why BCLC investigators were filing [suspicious transaction reports] and banning players. I shared my views regarding the suspicious nature of these transactions during our monthly BCLC casino investigator meetings, as well as during our regular police working group meetings.

Similar concerns about the source of cash used in suspicious transactions were expressed by Mr. Tottenham, who joined BCLC as an investigator in 2011.<sup>392</sup> Like Mr. Hiller, Mr. Tottenham was an experienced police officer and his concerns about the significant volumes of cash being accepted in the province’s casinos were grounded in his law enforcement experience:<sup>393</sup>

As a former police officer, I viewed the volume of cash coming into BCLC casinos at that time as suspicious. The volume of cash entering BCLC casinos, who was involved in bringing cash into BCLC casinos and what the investigators could do about it, were often topics of conversation at our monthly meetings. I suspected, based on my policing experience and discussions with other investigators and our managers at monthly meetings, that some patrons could be obtaining the cash through underground banking networks. I was concerned about the potential use by patrons of underground banking networks to fund gaming because we were unable to detect and confirm the source of the cash obtained from underground banking, which could possibly include the proceeds of crime.

The same year that Mr. Tottenham was hired by BCLC, another former law enforcement officer, Ross Alderson, joined the BCLC casino investigations staff.

389 Exhibit 166, Hiller #1, para 37; Evidence of M. Hiller, Transcript, November 9, 2020, pp 23–26; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 44–45; Evidence of S. Lee, Transcript, October 27, 2020, pp 35–36; Exhibit 78, Beeksma #1, para 54; Evidence of R. Alderson, Transcript, September 9, 2021, pp 14.

390 Exhibit 78, Beeksma #1, para 37.

391 Ibid, para 52.

392 Exhibit 148, Tottenham #1, para 6.

393 Ibid, para 23; see also Evidence of D. Tottenham, Transcript, November 4, 2020, pp 8–10.

Mr. Alderson, who was stationed primarily at the River Rock, gave detailed evidence of the large and suspicious cash transactions he observed at that casino and explained that he was “surprised and quite taken aback” by these transactions and that his view at the time was that the cash used in these transactions was likely the proceeds of crime.<sup>394</sup>

## **Actions Taken by BCLC Investigators and Response of Service Providers and BCLC**

It is clear from the evidence before me that these investigators acted upon these concerns. In addition to investigating suspicious transactions identified by service providers and reporting them, where appropriate, to FINTRAC, investigators sought to intervene, in limited ways, to prevent suspicious transactions from taking place. Their primary avenue for doing so was through requests that patrons be barred from casinos across the province. This led, in some instances, to conflict with Great Canadian staff.

Mr. Hiller, for example, gave evidence of repeated disagreements with Mr. Duff, former general manager of the River Rock Casino, over patrons being barred from casinos by BCLC. In July 2009, for example, Mr. Hiller recalled that Mr. Duff was upset about BCLC barring two players who had engaged in large cash transactions and who were known to Mr. Hiller from his experience as a member of the RCMP.<sup>395</sup> Mr. Hiller’s contemporaneous notes indicate that Mr. Duff advised that he would discuss the matter further with Mr. Hiller’s superior, Mr. Morrison.<sup>396</sup> According to Mr. Hiller, Mr. Duff also threatened to “instruct surveillance to do things differently” if “this is how BCLC investigators are going to do business.”<sup>397</sup> A few days later, after Mr. Morrison and Mr. Friesen met with Mr. Duff, the barrings that were of concern to Mr. Duff were rescinded by Mr. Morrison,<sup>398</sup> though the two patrons were eventually barred again at a later date.<sup>399</sup> Mr. Hiller testified that this was the only instance he could recall where a barring he had proposed had been rescinded following intervention by a service provider, but that BCLC patron barrings remained a point of contention between Mr. Duff and himself for some time.<sup>400</sup>

Similarly, Mr. Lee gave evidence of disagreements with Mr. Duff over patron barrings after Mr. Lee was assigned to the River Rock in 2012.<sup>401</sup>

I recall Great Canadian’s general manager of River Rock, Rick Duff, frequently complaining to me and other BCLC employees about BCLC’s loan sharking and other bans because he thought these bans were bad for business.

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394 Evidence of R. Alderson, Transcript, September 9, 2021, pp 10–14.

395 Evidence of M. Hiller, Transcript, November 9, 2020, pp 73–74, 79.

396 Ibid, p 73.

397 Ibid.

398 Ibid, pp 73–74.

399 Ibid, p 79.

400 Ibid, pp 74–75.

401 Exhibit 87, S. Lee #1, para 35.

### ***Mr. Alderson's Intervention in Large Cash Transactions***

This tension between Mr. Duff and BCLC investigators stationed at the River Rock seems to have taken a new turn in March and April 2012 following the actions of Mr. Alderson in connection to two incidents at the casino.

The first incident involved Mr. Alderson interviewing two female patrons connected to cash drop-offs. Mr. Duff, who was present for this interview, directed that the interview cease while it was in progress, before eventually permitting it to continue after a discussion with Mr. Alderson.<sup>402</sup>

The second incident involved two suspicious transactions by a different patron that took place on consecutive days. On the first day, the patron bought-in for \$100,000 in small bills, played minimally, then cashed out for \$100 bills. As Mr. Alderson reviewed this incident the following day, the patron returned, bought-in for another \$100,000 in small bills and again engaged in play that seemed intended to avoid putting the bulk of his funds at risk. Upon learning that the patron had returned and was engaging in the same activity, Mr. Alderson telephoned the River Rock surveillance department and directed that the patron be repaid in \$20 bills.<sup>403</sup> According to Mr. Alderson, Mr. Duff arrived at the BCLC investigators' office at the River Rock within minutes of Mr. Alderson's phone call and yelled at Mr. Alderson that he had no authority to direct Mr. Duff's staff.<sup>404</sup> Following further discussion, Mr. Duff and Mr. Alderson agreed that the patron's play would be suspended and that Mr. Alderson would speak with the player in the following days.<sup>405</sup> Mr. Alderson interviewed the patron within approximately a week of the incident and recalled the patron advising him that he received the cash used in these buy-ins in the parking lot of a mall in Richmond and that he had arranged the drop-offs via the WeChat messaging and social media application.<sup>406</sup>

In understanding the events that followed these two incidents, it is important to recognize the extent to which they deviated from the commonly understood role of BCLC investigators at the time. This was made clear in the affidavit of Mr. Beeksma, who was stationed at the River Rock alongside Mr. Alderson when these incidents occurred:<sup>407</sup>

While there was no specific direction from BCLC not to interview players, this was not something I had ever seen a BCLC casino investigator do before. As players became increasingly valuable clientele, I could see that River Rock staff really catered to them in order to ensure they had a positive experience. The thought of a BCLC investigator approaching a VIP player on the floor was therefore unthinkable and was not something I had ever even considered at that point in time.

<sup>402</sup> Exhibit 78, Beeksma #1, para 62, exhibit G.

<sup>403</sup> Evidence of R. Alderson, Transcript, September 9, 2021, pp 17–19; Exhibit 87, S. Lee #1, para 35, exhibits A, B, C.

<sup>404</sup> Evidence of R. Alderson, Transcript, September 9, 2021, p 19.

<sup>405</sup> Ibid, pp 19–20.

<sup>406</sup> Ibid, p 17.

<sup>407</sup> Exhibit 78, Beeksma #1, para 63.

### ***Service Provider Response and Mr. Towns’s Meeting with Mr. Alderson, Mr. Beeksma, and Mr. Lee***

Following these incidents, Mr. Lightbody received a phone call from a Great Canadian executive. According to Mr. Lightbody’s evidence, the executive complained about BCLC investigators speaking to patrons at Great Canadian-operated facilities.<sup>408</sup> Mr. Lightbody explained that he did not offer to have BCLC investigators cease speaking with patrons, but he did advise Mr. Towns of the complaint.<sup>409</sup>

At the next regularly scheduled BCLC investigators meeting on April 18, 2012, Mr. Friesen escorted Mr. Alderson, Mr. Beeksma, and Mr. Lee to Mr. Towns’s office. Bryon Hodgkin, BCLC’s director of operational compliance, was also present.<sup>410</sup>

In their evidence, Mr. Lee and Mr. Beeksma offered consistent versions of the message delivered to the three investigators by Mr. Towns. Mr. Lee described the meeting in his affidavit:<sup>411</sup>

I recall Mr. Towns stating that he wanted to “get everyone on the same page” and that two high limit players passing chips is not commercial and therefore not suspicious. He also told myself, Mr. Alderson, and Mr. Beeksma that we were not police officers and to stop speaking to patrons. We were instructed that it was Great Canadian staff who should speak with patrons.

Mr. Towns never instructed us that it was not our job to investigate money laundering.

Mr. Beeksma offered the following similar account of the meeting in his own affidavit:<sup>412</sup>

During the next regularly scheduled monthly investigator meeting, Gordon Friesen escorted Mr. Alderson, Mr. Lee, and myself to Terry Towns’ office. Mr. Towns was there with [Bryon] Hodgkin. Mr. Towns first told Mr. Friesen, Mr. Alderson, Mr. Lee, and myself, with Mr. Hodgkin present, that we were being too aggressive about chip passing investigations and said that two friends giving each other chips was not a big deal. Near the end of our meeting, Mr. Towns also told us that we needed to stop speaking to players – he told us that we were not law enforcement and that it was not our job to speak to players. I specifically remember Mr. Towns telling us to “cut that shit out.” He never told us that it was not our job to investigate money laundering.

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408 Exhibit 505, Lightbody #1, para 30.

409 Ibid, paras 30–31.

410 Exhibit 78, Beeksma #1, para 66; Evidence of S. Beeksma, Transcript, October 26, 2020, p 54; Exhibit 87, S. Lee #1, para 39; Evidence of S. Lee, Transcript, October 27, 2020, p 26; Exhibit 148, Tottenham #1, para 29; Evidence of D. Tottenham, Transcript, November 4, 2020, p 20; Evidence of R. Alderson, Transcript, September 9, 2021, p 20.

411 Exhibit 87, S. Lee #1, paras 40–41.

412 Exhibit 78, Beeksma #1, para 66.

Both Mr. Lee and Mr. Beeksma also described this meeting in their oral evidence in a manner consistent with their affidavits.<sup>413</sup>

Mr. Alderson’s version of events was similar to those of Mr. Lee and Mr. Beeksma, but differed in that Mr. Alderson testified that Mr. Towns *did* advise the three investigators that it was not their job to investigate money laundering.<sup>414</sup>

Neither Mr. Towns nor Mr. Friesen could recall the meeting during their testimony before the Commission.<sup>415</sup> Mr. Towns did give evidence that investigators were not prohibited from speaking with patrons at the time and that, in fact, they “were speaking to casino patrons on a regular basis ... on all kinds of matters in the casino.”<sup>416</sup> When asked if investigators were permitted to speak with patrons about the source of the funds they were using to buy-in, however, Mr. Towns responded, “No ... we didn’t employ that method at that time.”<sup>417</sup> Mr. Friesen’s evidence was that he directed investigators that if they were to speak with patrons, they should do so in the company of service provider security staff.<sup>418</sup> Mr. Friesen further testified that he would have found it “astounding” for Mr. Towns to have directed investigators to “ease up on the enforcement of chip passing regulations.”<sup>419</sup>

Both Mr. Lee and Mr. Alderson testified that the three investigators met with Mr. Friesen following their meeting with Mr. Towns.<sup>420</sup> Mr. Lee’s evidence was that, in this second meeting, Mr. Friesen indicated that he “agreed with” the actions being taken by the investigators, but that “this is political.”<sup>421</sup> Contemporaneous notes made by Mr. Lee following the meeting indicate that “[Mr. Friesen] stated that he agrees with what we’re doing but this is political and what you gonna do?”<sup>422</sup>

Mr. Alderson testified that Mr. Friesen made comments to the effect that the directions issued by Mr. Towns were connected to “financial pressure” and that it was “about the revenue.”<sup>423</sup> Like Mr. Lee, Mr. Alderson also took contemporaneous notes of this meeting with Mr. Friesen. These notes indicate, among other things, that Mr. Friesen advised the investigators that “he had argued on [their] behalf and that his hands were tied. It’s all about the revenue.”<sup>424</sup>

413 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 53–57; Evidence of S. Lee, Transcript, October 27, 2020, pp 25–29.

414 Evidence of R. Alderson, Transcript, September 9, 2021, pp 20–21.

415 Exhibit 517, Towns Affidavit, paras 144–45; Evidence of T. Towns, Transcript, January 29, 2021, pp 177–78; Evidence of G. Friesen, Transcript, October 28, 2020, pp 95–96.

416 Evidence of T. Towns, Transcript, January 29, 2021, p 177; Exhibit 517, Towns Affidavit, para 144.

417 Evidence of T. Towns, Transcript, January 29, 2021, pp 177–78.

418 Evidence of G. Friesen, Transcript, October 28, 2020, p 94.

419 Ibid, p 96.

420 Exhibit 87, S. Lee #1, para 42; Evidence of R. Alderson, Transcript, September 9, 2021, p 22.

421 Exhibit 87, S. Lee #1, para 42.

422 Ibid, exhibit D.

423 Evidence of R. Alderson, Transcript, September 9, 2021, p 22.

424 Exhibit 1035, Ross Alderson Notes – January 2011–January 2013, p 8.

Based on all of the evidence, I am satisfied that the meeting with Mr. Towns described by Mr. Beeksma, Mr. Alderson, and Mr. Lee did occur. The three investigators gave largely consistent accounts of the meeting, which were also consistent with Mr. Lee's and Mr. Alderson's contemporaneous notes.<sup>425</sup> While neither Mr. Towns nor Mr. Friesen could recall the meeting, neither denied outright that it took place. As to the contents of the meeting, I accept that Mr. Towns indicated something to the effect that the investigators should be less aggressive in their responses to chip passing and that they were not to speak to casino patrons. I am unable to conclude, however, that Mr. Towns directed the three investigators that it was not their job to investigate money laundering. Mr. Alderson's evidence to this effect is directly contradicted by that of Mr. Lee and Mr. Beeksma. While it is possible that Mr. Alderson may have inferred this to have been the effective message conveyed by the directions issued by Mr. Towns, I am satisfied that Mr. Towns did not actually tell the three investigators during this meeting that it was not their job to investigate money laundering.

I am not persuaded by the evidence of Mr. Towns or Mr. Friesen that it was common for investigators to speak with patrons at the time, at least in the manner of Mr. Alderson's interviews of River Rock patrons discussed above. It is clear from the evidence of multiple witnesses employed as BCLC investigators at the time, including Mr. Beeksma,<sup>426</sup> Mr. Lee,<sup>427</sup> Mr. Hiller,<sup>428</sup> and Mr. Tottenham,<sup>429</sup> that this was contrary to their understanding of their role as investigators.

I am convinced that Mr. Beeksma, Mr. Alderson, and Mr. Lee had a separate meeting with Mr. Friesen following the meeting with Mr. Towns. I accept that, at this meeting, Mr. Friesen indicated some level of agreement with the actions taken by the investigators that prompted the meeting and, as indicated by Mr. Lee, that Mr. Friesen made some reference to the reasoning behind Mr. Towns's directions being "political." Mr. Lee's evidence is corroborated in this regard by his contemporaneous notes.<sup>430</sup> Further, I accept Mr. Alderson's evidence that Mr. Friesen indicated that these directions were connected to revenue considerations. While not corroborated by Mr. Lee's evidence or his notes, a comment to this effect is reflected in Mr. Alderson's contemporaneous notes of this meeting.<sup>431</sup>

### ***Impact of Mr. Towns's Directions***

Mr. Alderson's efforts to interview casino patrons regarding suspicious activity was a significant diversion from the normal practice of BCLC investigators at that time. The meeting with Mr. Towns reinforced the expectation that investigators were not to

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425 Ibid; Exhibit 87, S. Lee #1, exhibit D.

426 Exhibit 78, Beeksma #1, para 63.

427 Evidence of S. Lee, Transcript, October 27, 2020, pp 27–30.

428 Evidence of M. Hiller, Transcript, November 9, 2020, pp 17–18; Exhibit 166, Hiller #1, paras 25–27.

429 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 19–20.

430 Exhibit 87, S. Lee #1, exhibit D.

431 Exhibit 1035, Ross Alderson Notes – January 2011–January 2013, p 8.

speak to patrons,<sup>432</sup> instructions which, based on the evidence of Mr. Beeksma<sup>433</sup> and Mr. Lee,<sup>434</sup> remained in place until 2015, representing an important lost opportunity to gather additional information about the sources of funds used in these transactions.<sup>435</sup>

### **2012 FINTRAC Source of Funds Inquiry Recommendation**

Within just a few months of Mr. Towns’s direction to Mr. Alderson, Mr. Beeksma, and Mr. Lee, BCLC received advice from FINTRAC suggesting that BCLC make exactly the sort of inquiries made by Mr. Alderson in instances of suspicious activity. On December 14, 2012, Mr. Hodgkin sent an email to Mr. Graydon regarding a “debrief” he had attended with representatives of FINTRAC, following an audit of BCLC conducted by FINTRAC.<sup>436</sup>

In the email, Mr. Hodgkin advised Mr. Graydon that the meeting had generally been positive, but that the FINTRAC representatives had made a recommendation, which he articulated as the “need to have the service providers ask where the money comes from if someone attends with an inordinate amount of cash.”<sup>437</sup>

In the email, Mr. Hodgkin indicated that BCLC would “move forward on this.” Mr. Graydon testified that he had no recollection as to whether BCLC had implemented this recommendation, but because, in his view, BCLC “always worked to ensure that the recommendations from our regulators were applied,” he made “the assumption” that BCLC did implement this recommendation.<sup>438</sup> Mr. Graydon’s assumption was clearly mistaken. In fact, BCLC did not indicate to service providers that they should make such inquiries until late 2014<sup>439</sup> and did not begin to regularly interview patrons about the source of funds used in large cash transactions until 2015. BCLC did not implement a general policy requiring such inquiries by service providers of all patrons buying-in for amounts over an identified threshold until 2018.

### **Mr. Graydon’s Communications with BCLC Senior Executives**

Mr. Graydon’s lack of awareness that BCLC had not acted on this recommendation indicates the limits of his focus on BCLC’s anti-money laundering efforts. Emails sent by Mr. Graydon in late 2011 and early 2012 to senior BCLC staff suggest a much

432 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 20–23; Evidence of S. Beeksma, Transcript, October 26, 2020, p 57; Evidence of R. Alderson, Transcript, September 9, 2021, pp 22–23.

433 Evidence of S. Beeksma, Transcript, October 26, 2020, p 57.

434 Evidence of S. Lee, Transcript, October 27, 2020, p 28.

435 Ibid, pp 28–29.

436 Evidence of M. Graydon, Transcript, February 11, 2021, pp 75–76; Exhibit 578, Email from Bryon Hodgkin to Michael Graydon, re Fintrac audit (December 14, 2012).

437 Evidence of M. Graydon, Transcript, February 11, 2021, pp 75–77; Exhibit 578, Email from Bryon Hodgkin to Michael Graydon, re Fintrac audit (December 14, 2012).

438 Evidence of M. Graydon, Transcript, February 11, 2021, pp 76–77.

439 Exhibit 1045, Affidavit #3 of Cathy Cuglietta, made on August 31, 2021; Exhibit 530, Ennis #1, exhibit A

greater level of concern for, and direct engagement with, ensuring that BCLC met its budgetary targets.<sup>440</sup>

On December 1, 2011, Mr. Graydon sent the following email, with the subject line “Current Year Forecast” to a group of senior BCLC employees, including Mr. Towns and Mr. Lightbody:<sup>441</sup>

I know you have all been providing input to Finance regarding the current year budget and your forecast for year end. I want to stress to the group that it is absolutely critical that we come in on budget from a net income perspective this year and I expect every one of you to make an all-out effort to achieve that. If we do not, I also want to be very clear there will be no opportunity to pay out incentive this year. The tone in government is not good these days and to not achieve budget then payout incentive will not fly. So remember the consequences you will unleash if you do not participate with some energy through this process. We will be looking at the numbers Friday and if we are not to a point where we are comfortable you will be challenged and if that does not yield the results we need I will be forced to make the decisions on your budget. These are very different times and we have to be responsive to our shareholder and I am committed to do that.

Mr. Graydon followed this email with a similar message sent less than two weeks later on December 13, 2011, to a nearly identical list of recipients:<sup>442</sup>

Tom has now provided you all your specific departmental targets for the remainder of this year. I want to ensure everyone understands this is not a process of negotiation but rather targets I have signed off on with the full expectation of you hitting these numbers. It is imperative that your division comes in with these numbers or better. As I have said before Victoria is not keen to pay incentive if budgets are not met and I do not want the company to be put in that position so let's please work together to ensure success. We will discuss further at Wednesdays Exec meeting.

Finally, on March 23, 2012, Mr. Graydon emphasized the importance of revenue generation in an email to a similar list of recipients.<sup>443</sup>

As you all know our shareholder has a real keen desire to increase revenue. The real focus is the 2013–14 year and the target I have been challenge[d] to think about is an incremental \$40 million in [n]et income. Given we have a year to plan I would like you to come to the Exec on Tuesday with your

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440 Exhibit 518, Email from Michael Graydon, re Current Year Forecast Budget (December 1, 2011); Exhibit 519, Email from Michael Graydon, re Year End Forecast (December 13, 2011); Exhibit 577, Email from Michael Graydon, re Revenue (March 23, 2012).

441 Exhibit 518, Email from Michael Graydon, re Current Year Forecast Budget (December 1, 2011).

442 Exhibit 519, Email from Michael Graydon, re Year End Forecast (December 13, 2011).

443 Exhibit 577, Email from Michael Graydon, re Revenue (March 23, 2012).

thoughts. This can include any new initiative or expansion of our current business. “Buck Up”, further White Label of internet [etc.] Be creative in utilizing the monopoly we have in our hands.

Mr. Graydon testified that these emails were illustrative of communications he sent periodically to his leadership team. He disputed the suggestion that focusing on only one part of BCLC’s mandate – revenue generation – might lead the recipients to view that BCLC prioritized revenue over social responsibility.<sup>444</sup> Mr. Graydon explained that any ideas generated to maximize revenue would have been discussed at the executive committee meeting and no sacrifices on other priorities, like responsible gambling or anti-money laundering, would have entered into those discussions.<sup>445</sup> Mr. Towns, BCLC’s vice-president of corporate security and compliance at the time he received these emails, testified that he did not consider “at all” whether compliance actions that restricted the manner or type of buy-ins might impact on revenue.<sup>446</sup> I accept that evidence. Nevertheless, these emails and, in particular, the connection they draw between revenue and individual compensation had the potential to motivate the recipients to prioritize revenue over other considerations and could easily give rise to a perception that executives might be influenced to make compliance concerns secondary to revenue generation.

## **November 19, 2012, Report of Findings and GPEB Letter of December 27, 2012**

Insight into the state of large and suspicious cash transactions in British Columbia’s casinos at the end of 2012, just prior to the date of the suggestion from FINTRAC, is found in GPEB’s report of findings dated November 19, 2012, referred to earlier in this chapter. As indicated in Table 10.2 included above, this report,<sup>447</sup> authored by Mr. Dickson, provided an overview of the number of suspicious currency transactions reported to GPEB pursuant to section 86 of the *Gaming Control Act* in each year since 2007.

As this report was prepared prior to the end of 2012, it did not include complete data for that year. Mr. Dickson indicated in the report, however, that in the first nine months of the year alone, GPEB received 794 such reports, eclipsing the total for the entirety of the previous year by more than 100. The report estimated that, if the pace of these transactions remained constant, GPEB would receive 1,060 such reports by the end of the year. The report went on to provide additional data regarding the suspicious transactions observed during this time period. It indicated that the total value of the 794 suspicious currency transactions reported to GPEB was \$63,971,727, including \$44,168,660 in \$20 bills. According to the report, 79 separate patrons had bought-in for \$100,000 or more in cash on at least one occasion and 17 patrons had

<sup>444</sup> Evidence of M. Graydon, Transcript, February 11, 2021, p 64.

<sup>445</sup> Ibid, pp 64–65.

<sup>446</sup> Evidence of T. Towns, Transcript, January 29, 2021, pp 181–82.

<sup>447</sup> Exhibit 181, Vander Graaf #1, exhibit G.

cash buy-ins totaling over \$1 million, all in cash. In contrast with the views of Mr. Towns and Mr. Lightbody discussed above, Mr. Dickson concluded this report with a note of skepticism regarding the impact of the enhanced cash alternatives introduced earlier that year:

BCLC initiated several enhancements to the Player Gaming Fund Account in April, 2012, to lessen amounts of cash entering casinos however, the results of this review indicate that it has not slowed the flow of suspicious cash into Lower Mainland casinos.

I accept that the cash alternatives introduced beginning in April 2012 did receive some use from casino patrons and that this use resulted in transactions that would otherwise have involved cash being conducted by other means. I also appreciate that the data reported by Mr. Dickson included several months prior to April 2012, when the new cash alternatives were not yet available. However, it is clear from these data – and from that for subsequent years – that these efforts did little to slow, let alone reverse, the rapid acceleration of suspicious cash transactions in the province’s casinos. This is not surprising, given that the cash alternatives were entirely voluntary.

## **GPEB Letter of December 27, 2012**

The analysis contained in this report of findings appears to have inspired the investigation division to resume its correspondence with BCLC,<sup>448</sup> which it had ceased around the time that the anti-money laundering cross-divisional working group was formed. On December 27, 2012, Mr. Schalk wrote to Mr. Hodgkin.<sup>449</sup> While Mr. Schalk’s letter indicated that it was further to the correspondence commenced with Mr. Friesen in November 2010, neither Mr. Friesen nor Mr. Karlovcec were copied on the letter and neither recalled seeing the letter at the time that it was sent.<sup>450</sup>

In the letter, Mr. Schalk relayed the data set out above regarding suspicious currency transactions during the first nine months of 2012, along with similar data for the one-year time period between September 1, 2010, and August 31, 2011. At the conclusion of his letter, Mr. Schalk echoed Mr. Dickson’s view that the recent enhancements to cash alternatives had “not slowed the flow of Suspicious Currency into Lower Mainland casinos” and expressed, on behalf of the GPEB investigation division, the view that “[t]he continued significant increase of Suspicious Currency being brought into and accepted” in Lower Mainland casinos was “significantly impacting the overall integrity of gaming in British Columbia.”

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448 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 126–29.

449 Exhibit 488 (previously marked as Exhibit A), Letter from Joe Schalk, re Suspicious Currency Transactions – Money Laundering Review Report (December 27, 2012).

450 Evidence of G. Friesen, Transcript, October 28, 2020, p 138; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 128–29.

## **2013 BCLC Internal and External Communications Regarding Suspicious Transactions and Money Laundering in BC Casinos**

Unlike similar letters written to BCLC by the GPEB investigation division in 2010 and early 2011, the response to Mr. Schalk’s letter did not come from BCLC’s corporate security and compliance department. Instead, for reasons that are not clear from the record before me, this letter was elevated to BCLC CEO Mr. Graydon. Mr. Graydon’s response, which was both critical of Mr. Schalk and highly skeptical of his concerns about large and suspicious cash transactions, is representative of a series of communications directed to GPEB and BCLC’s own employees from BCLC’s senior ranks at the end of 2012 and throughout 2013. Mr. Graydon’s response to Mr. Schalk’s letter and the pattern of related communications are discussed below.

### **Mr. Graydon’s Reaction and Response to Mr. Schalk’s Letter of December 27, 2012**

Mr. Graydon testified that he was concerned by the tone and some of the contents of Mr. Schalk’s letter of December 27, 2012.<sup>451</sup> It is clear to me from his evidence and from an email he sent to Mr. Scott on January 7, 2013,<sup>452</sup> that Mr. Graydon was at the time – and remained as of the date of his evidence – skeptical of the notion that the suspicious transactions referred to in Mr. Schalk’s letter consisted of the proceeds of crime or were connected to money laundering. Asked whether it concerned him that, as indicated in Mr. Schalk’s letter, a single patron bought-in for nearly \$6 million in cash in a single year, Mr. Graydon responded that “[t]o those outside the gaming industry, it seems like a lot of money, but there was some very significant high net value players that did gamble with that magnitude of velocity” within the province’s casinos.<sup>453</sup> During his oral examination, Mr. Graydon was pressed as to where, their wealth notwithstanding, a patron could get \$6 million in cash, predominantly in \$20 bills. He responded that BCLC “was working on trying to identify that” and while he conceded that it could have been the proceeds of crime, he also referred to “a philosophy out there” that this cash could have been sourced from underground banking.<sup>454</sup>

Mr. Graydon went on in his evidence to indicate that BCLC confirmed that Mr. Schalk’s assertion that the province’s casinos accepted \$63 million in suspicious transactions, including \$44 million in \$20 bills, in the first nine months of 2012 was correct.<sup>455</sup> Despite these figures, he questioned the extent to which they reflected actual suspicious activity, suggesting that they may have been attributable to increased

<sup>451</sup> Evidence of M. Graydon, Transcript, February 11, 2021, p 45.

<sup>452</sup> Exhibit 576, Affidavit #1 of Michael Graydon, made on February 8, 2021, exhibit D.

<sup>453</sup> Evidence of M. Graydon, Transcript, February 11, 2021, p 46.

<sup>454</sup> Ibid, p 47.

<sup>455</sup> Ibid, p 48.

reporting protocols or improved training.<sup>456</sup> It seems obvious that, if Mr. Graydon's theory as to the cause of the increased reporting was true, this would suggest that suspicious transactions had been significantly *underreported* in previous years. In my view, this should have been cause for even greater concern about the volume of suspicious cash entering the province's casinos.

Mr. Graydon similarly rejected the notion that these figures were indicative that the cash alternatives introduced that year were not having their intended effect, suggesting that "it took time for them to materialize into value" and that they "took almost a billion dollars out of the cash transactions that existed in our facilities."<sup>457</sup> Mr. Graydon repeated this figure several times during his evidence, but did not explain how he arrived at it.<sup>458</sup> It is clear from the available data that both the number of suspicious transactions and their value increased significantly during Mr. Graydon's tenure, including after the April 2012 enhancements to cash alternatives.

Mr. Graydon's response to Mr. Schalk's warnings was not to direct further enhancements to BCLC's anti-money laundering regime, but rather to complain to Mr. Scott about the fact that the letter was sent at all. In an email dated January 7, 2013, Mr. Graydon indicated that he was "very surprised and disappointed" to receive Mr. Schalk's letter and criticized the contents of the letter.<sup>459</sup> As with Mr. Graydon's evidence before the Commission, it is clear from this email that Mr. Graydon was dismissive of the basic premise of Mr. Schalk's letter that there was reason for serious concern regarding the level of suspicious activity occurring in the province's casinos. Mr. Graydon wrote, in part:

Mr. Schalk has made a number of statistical comparisons and drawn conclusions from them that, in my opinion, are not only without foundation and simply erroneous, but could be perceived as inflammatory and offensive. He has also inferred that all [suspicious transaction reports] are money laundering files, which of course is not correct.

In the first paragraph on page 2, it seems obvious that certain provocative statements are personal opinion and are not supported by fact or proper analysis. To the contrary, BCLC has worked closely with numerous enforcement departments and units to ensure organized crime is not associated to BC casinos and such statements [undermine] both BCLC and GPEB's efforts.

Mr. Graydon carried on to highlight the actions BCLC was taking in response to these transactions, including reporting to FINTRAC, barring members of criminal organizations from casinos, and "working closely with GPEB to reduce the flow of cash

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456 Ibid, p 48.

457 Ibid, p 49.

458 Ibid, pp 25-26, 49, 97.

459 Exhibit 576, Affidavit #1 of Michael Graydon, made on February 8, 2021, exhibit D.

to gaming facilities.” As in his evidence, Mr. Graydon suggested that these efforts had resulted “in total non-street cash used in casinos since April 1, 2012, in the amount of \$911,555,058.” Again, it is unclear precisely how Mr. Graydon arrived at this figure, but it seems clear that he is relying on metrics for measuring the success of the new cash alternatives that differed from those relied on by Mr. Towns and Mr. Lightbody.<sup>460</sup> Only three months prior to Mr. Graydon’s email, Mr. Towns had concluded that the introduction of these cash alternatives had resulted in the removal of \$42.7 million in cash from casinos by October 2012.<sup>461</sup>

Mr. Scott responded to Mr. Graydon on January 18, 2013, expressing regret for Mr. Schalk’s letter and assuring Mr. Graydon that BCLC would receive no further letters of this sort:<sup>462</sup>

By way of this email, I want you to know that I regret this communication from our office. As I discussed with [Mr. Vander Graaf], my greatest concern is that our correspondence on this and indeed all matters should be constructive and move issues forward. I recognize that this letter may have given your office the impression that it was accusatory in nature, and I want to assure you that GPEB recognizes that the AML issue is a joint responsibility that we must work on together to resolve. Further, I also note that BCLC has undertaken everything that we have asked and agreed to as part of the comprehensive AML strategy.

...

During our discussion, Larry emphasized that correspondence such as the letter in question have gone back and forth between GPEB Investigations and BCLC Security for years. I do believe Larry did not think this letter was outside past practice, and thereby misunderstood the potential implications - including on important relationships between our organizations. No malice was intended to be sure. That said, communications of this type will stop going forward, and I look forward to expanding constructive formal and informal discussions to tackle this critical issue.

Mr. Scott testified that the indication in this letter that “BCLC [had] undertaken everything that we have asked and agreed to” was a reference to phase one of the anti-money laundering strategy. He did not intend to convey that there was nothing further that BCLC could do to address the continued acceptance of large cash transactions in British Columbia casinos.<sup>463</sup>

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<sup>460</sup> Exhibit 505, Lightbody #1, para 26; Evidence of T. Towns, Transcript, February 1, 2021, pp 13–14; Exhibit 517, Towns Affidavit, exhibit 49.

<sup>461</sup> Evidence of T. Towns, Transcript, February 1, 2021, pp 13–14; Exhibit 517, Towns Affidavit, exhibit 49.

<sup>462</sup> Exhibit 576, Affidavit #1 of Michael Graydon, made on February 8, 2021, exhibit D.

<sup>463</sup> Evidence of D. Scott, Transcript, February 8, 2021, pp 181–182.

In addition to responding to Mr. Graydon, Mr. Scott also sent an email to and spoke with Mr. Vander Graaf regarding Mr. Schalk's letter.<sup>464</sup> Mr. Scott's email to Mr. Vander Graaf is consistent with the response to Mr. Graydon, clearly indicating Mr. Scott's frustration with Mr. Schalk's letter. Among other concerns, Mr. Scott questioned the purpose of the letter, given the absence of recommendations for action, and why it was not sent through Mr. Scott's office, as he indicates he had directed the previous fall.

It is hard to conceive how Mr. Graydon could have received the information in Mr. Schalk's letter about suspicious cash transactions and not been alarmed. If true, this information was a clear indication that BCLC's approach was not working and that vast and increasing sums of suspicious cash (likely proceeds of crime) were being accepted by Lower Mainland casinos. If Mr. Graydon doubted any of what Mr. Schalk was alleging, Mr. Graydon had at his disposal the information to confirm Mr. Schalk's assertions. Mr. Graydon's outrage at the tone of Mr. Schalk's letter, as opposed to concern about its contents, was misplaced. I can only conclude that Mr. Graydon's attitude to the mounting suspicious cash entering British Columbia casinos and his failure to even entertain the possibility that these casinos were being used to facilitate money laundering in the face of clear and convincing evidence, must have gone some way to guiding the culture and direction of BCLC during his tenure. BCLC in this period needed a leader who would prioritize safeguarding the integrity of gaming and direct clear and decisive action to investigate and combat the clear and obvious money laundering threat facing the industry. Mr. Graydon did not provide this.

I accept that Mr. Scott, in his response to Mr. Graydon, was attempting to foster a positive relationship between the two organizations. He may have been justified in his displeasure that the investigation division did not route the communication through his office or at least provide it to him for review prior to delivery. I find it unfortunate, however, that, in what I accept were Mr. Scott's genuine attempts to mend fences and maintain relationships, the gravity of the suspicious cash and money laundering problem facing British Columbia casinos appears to have been lost.

Mr. Vander Graaf testified that, following these exchanges with Mr. Scott, the investigation division's communication of its analysis and opinions to BCLC was "shut down."<sup>465</sup> Mr. Scott's evidence was that his direction was intended to be more limited, requiring only that he be given an opportunity to review any correspondence for tone before it was sent, to ensure that GPEB and BCLC were building a collaborative relationship.<sup>466</sup> I accept that it is possible that Mr. Scott did not intend his direction to be a complete "shutdown" of all communication; however, it is clear that the effect of this direction was that the investigation division ceased communicating with BCLC in this way. Given the gravity of the information communicated in Mr. Schalk's letter, Mr. Graydon's outrage at the

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464 Exhibit 576, Affidavit #1 of Michael Graydon, made on February 8, 2021, exhibit D; Exhibit 181, Vander Graaf #1, paras 111-15 and exhibit JJ; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 123-38.

465 Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 136.

466 Evidence of D. Scott, Transcript, February 8, 2021, pp 96-97.

letter, Mr. Scott's apparent support for Mr. Graydon's position, and the reprimanding of the investigation division by Mr. Scott for sending pointed correspondence when that is precisely what the situation so clearly called for, it is not difficult to see why Mr. Scott's admonishment of the investigation division had a chilling effect on any further communications to BCLC.

### **GPEB Anti–Money Laundering in BC Gaming: Measuring Performance Progress Draft Report and BCLC Response**

Despite Mr. Scott's reaction to Mr. Schalk's letter, it appears that the conclusions reached by the investigation division as to the effectiveness of cash alternatives in reducing large and suspicious cash transactions were not inconsistent with those of GPEB generally. This is reflected in a report produced by GPEB titled "Anti–Money Laundering in BC Gaming: Measuring Performance Progress." A draft of this report was shared with BCLC in March 2013. BCLC's response to this draft was consistent with the views expressed by Mr. Graydon in response to Mr. Schalk's letter and reveals ongoing division between the two organizations regarding the large cash transactions that continued to grow in the province's casinos at this time.

#### ***Anti–Money Laundering in BC Gaming: Measuring Performance Progress – Draft Report***

The draft report provided to BCLC in March 2013 described efforts made in furtherance of the anti–money laundering strategy that emerged following the completion of Mr. Kroeker's report in 2011.<sup>467</sup> It described the various cash alternatives introduced as part of the strategy, including enhancements to PGF accounts, the availability of debit at casino cash cages, cheque holds, and convenience cheques. The report also detailed the extent to which these cash alternatives had been used since their introduction. It indicated that 67 new PGF accounts had been opened since changes were made to the accounts in April 2012, that over \$89 million had been deposited and over \$88 million withdrawn from PGF accounts in the first three quarters of the 2012–13 fiscal year, that buy-ins of over \$2 million had been made using debit, and that more than \$200,000 had been paid out to patrons using convenience cheques.

The report described the monitoring and reporting of transactions to both FINTRAC and GPEB, noting the significant increase in both the number and value of suspicious currency transactions reported to GPEB in the years leading up to the date of the report. It acknowledged that positive results had been achieved through the measures already implemented, but expressed concern about the continued increase in suspicious currency transactions.<sup>468</sup>

The new initiatives of acquiring funds inside gaming facilities have grown well in the first nine months. Based on the performance measure,

<sup>467</sup> Exhibit 524C, Anti–Money Laundering in BC Gaming: Measuring Performance Progress – draft – with comments.

<sup>468</sup> Ibid, p 12.

established for the Ministry Service Plan, the goal has been met for the current fiscal year.

While the progress is encouraging it is challenging to the AML initiative when we observe increases of Suspicious Currency Transaction cash being brought into casinos. The volume of gaming money acquired inside the facilities is considerable, with over 70% of gaming funds being acquired inside the venues. And, the trend is positive. As new initiatives are used more and more we are seeing momentum toward achieving the goal of the program. However, the increase in [suspicious currency transaction] cash is a trend that must be turned around. While more gaming money is being obtained inside facilities more Suspicious Currency Transactions are being reported and, it is believed that, more suspicious street cash is also being brought into casinos.

The report concludes by identifying further enhancements planned for the upcoming fiscal year, including lowering the initial deposit required to open a PGF account, allowing PGF accounts to be funded through internet banking transfers and from United States bank accounts, and permitting cheques drawn on United States accounts to be used in the cheque hold program. The report also indicated that it was considering permitting patrons to access funds from foreign branches of Canadian financial institutions and that BCLC was developing a marketing plan to promote the use of cash alternatives. The report noted that additional reporting was contemplated for the end of the 2013–14 fiscal year, prior to the commencement of phase three of the anti–money laundering strategy.

### ***BCLC Reaction to Draft Report***

Evidence of BCLC’s reaction to this draft report is reflected in an exchange of emails between Brad Desmarais, who had recently joined BCLC as its vice-president of corporate security and compliance after more than 30 years in law enforcement,<sup>469</sup> and Mr. Lightbody, and in comments added to the draft report itself by both of these individuals. These emails and comments reveal skepticism on the part of both Mr. Desmarais and Mr. Lightbody that the cash used in large cash transactions was the proceeds of crime or that these transactions were connected to money laundering.

Mr. Desmarais’s views are evident from an email he sent to Mr. Lightbody on March 14, 2013, to which he attached a version of the draft report that included his comments. Mr. Desmarais wrote, in part:<sup>470</sup>

It seems to me that GPEB is rushing down a path that ought to be trod much more cautiously. I’ve marked the report up quite a bit. You may not want to read the whole thing, but the recommendations at the end will have an effect on us and the service providers. It appears that GPEB will tie AML

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469 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 45, 53.

470 Exhibit 524A, Email from Brad Desmarais to Jim Lightbody, re Measurement Report to Ministry (March 14, 2013).

performance indicators to the reduction in cash which is misguided, in my opinion. They fail to consider the legitimate patron who simply prefers to use cash for any number of legitimate reasons.

This message is consistent with a number of comments applied by Mr. Desmarais to the draft report itself. In these comments, Mr. Desmarais asserted that it had not been proven that casinos were used for money laundering, argued that spending the proceeds of crime should not be viewed to be the same as money laundering, and suggested that increases in reports of suspicious transactions are the result of shifting reporting standards.<sup>471</sup> Mr. Desmarais also suggested that the use of \$20 bills and the bundling of currency with elastics are not reliable indicators that funds are derived from cash facilitators and that focusing on cash may result in discrimination against “a group of legitimate, high-end patrons simply on the basis of their preference of payment method.”<sup>472</sup> In one comment towards the conclusion of the report, Mr. Desmarais suggested that there are likely multiple factors driving the increase in suspicious cash transaction in the British Columbia casinos, and that, in his view, “money laundering / proceeds of crime is likely the least” of these:<sup>473</sup>

We are really looking at 5 Casinos, in the Lower Mainland which attract the vast majority of large cash transactions, with the River Rock way out in front. I believe there are a multitude of drivers behind the use of large currency amounts at Casinos in the Vancouver area. Money Laundering / Proceeds of Crime is likely the least. Looking across the province I can't help but compare the Lower Mainland with Kelowna which has a higher crime rate than Vancouver, increasing drug offences, a relatively new Hell's Angels Chapter, a “puppet club”, and an Organized Crime problem which apparently is so compelling that the Combined Forces Special Enforcement Unit (CFSEU) recently opened a branch office there. If Casinos were so attractive as a laundering tool, we should see a proportionate but dramatic increase in suspicious transactions there, and yet we haven't. In fact, there have only been 14 reported in 5 years. Similar figures apply to Prince George and Nanaimo, each of which have their own crime challenges.

At the time that he wrote this email, Mr. Desmarais had been with BCLC for approximately six weeks.<sup>474</sup> He indicated in his testimony before the Commission that in March 2013 – the month that he wrote this email – he was “still trying to figure out the ... inbound cash landscape.”<sup>475</sup> It is apparent from the comments made by Mr. Desmarais on the draft report that he did not view his inexperience and uncertainty about this issue as reason to show any deference to the perspectives of GPEB.

471 Exhibit 524C, Anti-Money Laundering in BC Gaming: Measuring Performance Progress – draft – with comments, pp 1–2.

472 Ibid, pp 10, 14.

473 Ibid, p 11.

474 Exhibit 522, Affidavit #1 of Brad Desmarais, affirmed on January 28, 2021 [Desmarais #1], para 16 and exhibit 1.

475 Evidence of B. Desmarais, Transcript, February 2, 2021, pp 20–21.

In his response to Mr. Desmarais’s email, Mr. Lightbody indicated agreement with Mr. Desmarais’s views, expressing his own skepticism regarding the validity of concerns about money laundering in the gaming industry:<sup>476</sup>

Thanks for the heads up and I completely agree with all your comments. I made a couple myself (see attached), but just to reiterate that we need to hold our Service Providers [SPs] accountable for certain actions that includes dealing with players. If we jump in the middle of that, we will reduce that responsibility they must own. If, however, they meant we need to increase our policy and procedures for [SPs], that is more feasible.

Overall, I think this report, if read by an outsider, would lead one to believe that money laundering is rampant in [casinos]. So, I would suggest a re-positioning of this document around “prevention” and reducing “misperception” of money laundering.

As indicated in this email, Mr. Lightbody also added his own comments to the report alongside those of Mr. Desmarais. In one of these comments, he states definitively that increases in suspicious transaction reporting were “due to a change in site staff’s approach.”<sup>477</sup> The basis for Mr. Lightbody’s belief in this regard is not apparent from his comments.

While Mr. Graydon did not add his own comments to the report, it is clear from his evidence<sup>478</sup> and his correspondence with Mr. Scott<sup>479</sup> that he shared the views of Mr. Lightbody and Mr. Desmarais. In an email sent to Mr. Scott on March 26, 2013, Mr. Graydon tied his response to this report to his concerns about Mr. Schalk’s letter of December 27, 2012, and made clear that he did not view large and suspicious cash transactions at the time to be cause for concern:<sup>480</sup>

I do think that a good portion of the report, 80% plus, is accurate and reflects all the hard work our two organizations have gone through to move this initiative forward. It is obvious that there is some tension and direction being applied by your investigations group based on the assumptions that the problem is growing. I do not believe this and I think their perspective is based on perception and not fact. I do not think terms like “our belief” [are] well positioned in a document like this. It should be based on fact and there is very little to support their beliefs. I continue to be very pleased with the alignment in principle between you Brad and I but I am concerned regarding the investigations [group’s] perspective. I know we agreed to forget Joe’s letter

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476 Exhibit 524B, Email from Jim Lightbody to Brad Desmarais, re Measurement Report to Ministry (March 15, 2013).

477 Exhibit 524C, Anti-Money Laundering in BC Gaming: Measuring Performance Progress – draft – with comments, p 12.

478 Evidence of M. Graydon, Transcript, February 11, 2021, pp 34-37.

479 Exhibit 557, Scott #1, exhibit 19.

480 Ibid.

but the essence of that remains in this document and I think it impacts our collective ability to make a difference in this important area of our business. As you stated the big issue is public perception and a small group of players so we need to reinforce the measures we are taking to remedy that. Elements of this only fuel the fire and render the majority of the [report's] value insignificant if made public. I do think Bill has done a masterful job on this and given our results to date nothing wrong with a good news document with more initiatives to come. It is and will always be a dynamic process.

Mr. Scott testified that the comments made on the draft report were consistent with other statements made to him by Mr. Desmarais and Mr. Graydon and, in his view, illustrative of the “differing ‘world views’” of GPEB and BCLC “regarding [anti–money laundering] issues.”<sup>481</sup> Mr. Scott agreed in his evidence that he felt that BCLC failed to appreciate the severity of the risk associated with the volume of suspicious cash being accepted in the province’s casinos.<sup>482</sup> He shared his observation of the evolution of BCLC’s perspective on suspicious transactions during his tenure with GPEB and his response to that developing perspective as follows:<sup>483</sup>

BCLC in my tenure went through sort of these two phases. The first phase was it’s not our job; we’re going to report. Our job is to report and it’s the police’s job to investigate. And then it shifted with Mr. Desmarais coming in to more seriously taking – and along, I hope, with the strategy to take action.

But then in that ... taking action phase this shifted from it’s our job to report only to we have to have proof; there has to be proof before ... we act. And that’s why a key element that I introduced – I’m not sure – it would have been probably 2018 [*sic*] is we were getting hung up on this issue. It’s not proof, so if it’s a crime, you can’t prove it. As I mentioned before, I knew that no one could prove it. It wouldn’t be proven for years.

So, I introduced the idea of the perception of money laundering is just as bad as money laundering. And ... the analogy that I would make is ... if you declare you have – we in the public service, we have to say whether we have a conflict of interest or a perceived conflict of interest. So, I was moving to the perception aspect and saying that the perception is still an integrity of gaming issue, just the perception of someone walking in with a duffel bag of cash is. And so, we have to deal with it just the same way as we have to ... if we were able to prove it.

And the reason for that is I had to get rid of that whole discussion because, in my view, it was a distraction. It was not relevant whether we could prove it or not. We had evidence. It was reasonable to suspect that it was coming in, and so we had an obligation to stop it.

481 Ibid, para 51; Evidence of D. Scott, Transcript, February 8, 2021, pp 49–50.

482 Evidence of D. Scott, Transcript, February 8, 2021, pp 49–50.

483 Ibid, pp 50–51.

It is difficult to understand how BCLC executives, with access to substantially the same information available to the GPEB investigation division, could come to such dramatically different conclusions regarding the significance of the suspicious transactions growing in prevalence in the province's casinos at this time. There was an obvious risk that Mr. Graydon, Mr. Lightbody, and Mr. Desmarais simply refused to acknowledge, even in the face of clear and compelling evidence revealing the nature, volume, and growth of suspicious transactions taking place in the gaming industry.

## **BCLC Communication with Staff Regarding Money Laundering and Suspicious Cash Transactions**

As they argued against views expressed by representatives of GPEB regarding the nature and severity of the risk posed by large cash transactions in casinos, BCLC's senior management directed similar messages internally to their own employees. In these communications, BCLC consistently challenged the view that money laundering was a significant issue for the province's gaming industry and the likelihood that the proceeds of crime were being used in large cash transactions.

### ***December 4, 2012, Remarks by Mr. Graydon***

The first instance of such communication came in remarks made by Mr. Graydon at a December 2012 meeting of BCLC's legal, investigation, and compliance staff, referred to earlier in this chapter. Mr. Hiller, who attended this meeting, described Mr. Graydon's remarks and his own reaction to them in his affidavit:<sup>484</sup>

I recall a speech made by Michael Graydon, who was then BCLC's CEO, at an annual meeting of BCLC legal, investigation, and compliance staff on December 4, 2012. In his speech, Mr. Graydon expressed his disagreement with the way the media was portraying the issue of money laundering in casinos. While I agreed with Mr. Graydon that the media's portrayal of the issuance of verified win cheques was inaccurate, I noted that Mr. Graydon did not comment further on the reports of bags of cash coming in to casinos. I had hoped he would address these reports because, without further clarification, my impression was that he was implying that the reporting on the bags of cash was wrong.

As explained previously in this chapter, Mr. Hiller went on in his evidence to describe raising his concerns about Mr. Graydon's speech with Mr. Towns the following day and the unsympathetic response he received from Mr. Towns.<sup>485</sup>

### ***2013 Journalist Presentations***

After Mr. Desmarais succeeded Mr. Towns as BCLC's vice-president of corporate security and compliance, similar messaging from the senior levels of BCLC continued.

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<sup>484</sup> Exhibit 166, Hiller #1, para 83.

<sup>485</sup> Ibid, para 84.

This included two presentations by a journalist, both described in Mr. Hiller's evidence, in February and December 2013.<sup>486</sup>

According to Mr. Hiller, the first presentation, which took place at BCLC's Vancouver office on February 20, 2013, related to the importation of cash by Chinese nationals through the Vancouver airport, which the journalist suggested as a possible source of the large volumes of cash accepted by the province's casinos.<sup>487</sup> Mr. Hiller gave evidence that he was unconvinced that this was the source of the funds observed in casino transactions and that he found it odd that the presentation included figures in Canadian dollars.<sup>488</sup> During a break in the presentation, Mr. Hiller phoned a contact at the Canada Border Services Agency (CBSA) and learned that the majority of the \$12 million seized by CBSA at the Vancouver airport in the previous year was in US dollars, with only approximately \$200,000 in Canadian currency.<sup>489</sup> Mr. Hiller also learned that cash physically imported through the airport tended to be in amounts ranging from \$12,000 to \$15,000, not the larger amounts observed in the large cash transactions of concern to Mr. Hiller.<sup>490</sup> At the conclusion of the presentation, Mr. Hiller informed the journalist who was presenting of what he had learned from his contact at the CBSA and expressed his view that it was unlikely that cash imported through the Vancouver airport was the source of the funds used in large cash transactions in casinos.<sup>491</sup> Mr. Hiller later emailed Mr. Desmarais to relay the information he had learned from his CBSA contact.<sup>492</sup> Mr. Desmarais testified that he did not agree with Mr. Hiller in this regard.<sup>493</sup>

Mr. Hiller testified that, on December 3, 2013, he attended a second presentation by the same journalist, this time held at the River Rock Casino Resort. Mr. Hiller described the second presentation as an extended version of the February presentation.<sup>494</sup> The journalist was introduced by Mr. Desmarais on this occasion.<sup>495</sup>

### **Mr. Desmarais's Yak Articles**

Following the first of these two presentations, and extending into 2014, Mr. Desmarais authored a series of articles on the subject of money laundering that appeared in an internal BCLC newsletter known as the *Yak*. This newsletter is posted on BCLC's internal website and available to all BCLC employees.<sup>496</sup> Like the presentations described above, the intention underlying these articles seemed to be to persuade BCLC employees that money laundering was not a significant issue in the province's casinos and that media reporting on this subject was inaccurate.

486 Ibid, paras 77–81 and exhibits O, P, Q.

487 Ibid, para 77; Evidence of M. Hiller, Transcript, November 9, 2020, p 54.

488 Exhibit 166, Hiller #1, para 78; Evidence of M. Hiller, Transcript, November 9, 2020, pp 55–56, 117–18.

489 Exhibit 166, Hiller #1, para 78; Evidence of M. Hiller, Transcript, November 9, 2020, pp 55–56.

490 Evidence of M. Hiller, Transcript, November 9, 2020, p 119.

491 Exhibit 166, Hiller #1, para 179; Evidence of M. Hiller, Transcript, November 9, 2020, p 56.

492 Evidence of B. Desmarais, Transcript, February 2, 2021, pp 12–14.

493 Ibid.

494 Exhibit 166, Hiller #1, para 81.

495 Ibid.

496 Evidence of M. Hiller, Transcript, November 9, 2020, p 57; Exhibit 522, Desmarais #1, para 62.

The first such article, titled “Money Laundering in Casinos? Not Really” was dated May 21, 2013.<sup>497</sup> In this article, Mr. Desmarais explained, among other things, his view as to why money laundering was unlikely to occur within British Columbia casinos.<sup>498</sup> He identified the notion that money laundering is “rampant” in the province’s casinos as a myth, described what money laundering is, and explained how, in his view, security measures in place in casinos would make them unattractive locations in which to launder money.

In his evidence, Mr. Desmarais testified that this article was intended to address those “who were culpable and chargeable for laundering money” as opposed to those who may unwittingly bring proceeds of crime into casinos.<sup>499</sup> This explanation does not seem consistent with the content of the article, however, which directly addresses the issue of large cash transactions. The fifth paragraph of the article begins by posing the question, “But what about all that cash, you ask?” It acknowledges that the answer to this issue is complex and requires further analysis but suggests that possible explanations may include cash imported through the Vancouver airport, preferences for the use of cash among some cultural groups, and the use of cash generated by legitimate, cash-based businesses.<sup>500</sup>

On September 5, 2013, a second article authored by Mr. Desmarais was published in the *Yak* newsletter, this one titled “Changing the Way We Look at Cash.”<sup>501</sup> While Mr. Desmarais acknowledged in this article that there are risks associated with cash, he cast skepticism on the notion that large amounts of cash are associated with organized crime:

When BCLC first conducted and managed casino gaming in BC, players were encouraged to play with cold hard cash. On the face of it, it seemed like a good idea.

A single payment option. Cash in, cash out. What could be simpler?

As it turns out, it is very complicated and the significant amounts of cash coming through the doors of casinos come with risks that perhaps were not well understood in the beginning.

Among the top risks that BCLC and the casino service providers face is reputation management. For example, the large amounts of cash at casinos [are] often erroneously associated with organized crime.

Mr. Desmarais goes on in this article to identify other detrimental aspects of the use of cash in casinos, including an increased regulatory burden, that patrons may be

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497 Evidence of M. Hiller, Transcript, November 9, 2020, p 57; Exhibit 166, Hiller #1, exhibit S; Exhibit 522, Desmarais #1, para 63 and exhibit 37.

498 Exhibit 522, Desmarais #1, para 63.

499 Evidence of B. Desmarais, Transcript, February 1, 2021, p 76.

500 Exhibit 166, Hiller #1, exhibit S.

501 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 78–79; Exhibit 522, Desmarais #1, para 64, exhibit 38.

criticized for using cash, and the security risk for patrons associated with carrying large amounts of cash. He does not acknowledge the possibility that large amounts of cash may have *accurately* been associated with organized crime.

In November 2014, Mr. Desmarais wrote a further two-part article along a similar vein, titled “Setting the Record Straight on Money Laundering in BC Casinos.”<sup>502</sup> This article will be discussed in detail later in this chapter.

## **Security and Anti–Money Laundering Enhancements by BCLC and Great Canadian**

While these BCLC communications downplayed the risk of money laundering in the gaming industry and resisted the notion that the funds used in large and suspicious transactions were the proceeds of crime, these attitudes did not seem to preclude BCLC from taking some limited action to combat the risk of money laundering in the industry. In 2013, both BCLC and Great Canadian took steps to enhance their efforts to respond to these risks and to improve casino security. BCLC established a new anti–money laundering unit within Mr. Desmarais’s portfolio, while Great Canadian made significant enhancements to security at the River Rock Casino and implemented monitoring of suspicious transactions.

### **Creation of BCLC Anti–Money Laundering Unit**

In or around October 2013, BCLC established a new internal anti–money laundering unit.<sup>503</sup> Mr. Lightbody described the creation of the unit and its function as follows:<sup>504</sup>

In 2013, BCLC under the stewardship of Mr. Desmarais created an Anti–Money Laundering Unit (“AML Unit”) which was responsible for reviewing and monitoring existing AML measures and implementing further AML measures to respond to identified risks. It has the authority to act independently, including barring certain patrons, advising casino service providers not to accept cash from certain patrons, and working closely with regulatory and law enforcement agencies, including weekly meetings to discuss high value customers and transactions. The BCLC AML Unit used open source data points and information received through an information-sharing agreement with the RCMP to check for potential risks.

<sup>502</sup> Exhibit 522, Desmarais #1, para 65, exhibits 39–40.

<sup>503</sup> Exhibit 505, Lightbody #1, para 82; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 75–77; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 1–3, 136; Exhibit 148, Tottenham #1, para 77; Exhibit 522, Desmarais #1, para 25; Evidence of R. Barber, Transcript, November 3, 2020, p 106; Evidence of M. Hiller, Transcript, November 9, 2020, pp 125–26; Exhibit 78, Beeksma #1, para 55; Evidence of S. Beeksma, Transcript, October 26, 2020, p 143; Evidence of G. Friesen, Transcript, October 28, 2020, p 164; Evidence of R. Alderson, Transcript, September 9, 2021, p 126.

<sup>504</sup> Exhibit 505, Lightbody #1, para 82.

In his own evidence, Mr. Desmarais expanded upon this rationale for establishing the dedicated unit.<sup>505</sup> He indicated that, while he was content with the state of BCLC's reporting to FINTRAC, he believed that there was a need for BCLC "to do more."<sup>506</sup> Mr. Desmarais also understood that legislative changes planned for February 2014 would impact BCLC's anti-money laundering obligations.<sup>507</sup>

Mr. Karlovcec, who was hired as the anti-money laundering unit's first manager,<sup>508</sup> identified these legislative changes as the primary rationale underlying the development of the new unit, but agreed that increases in cash transactions played some role in motivating its creation.<sup>509</sup> Mr. Karlovcec expanded upon the nature of the new obligations created by this legislative change, explaining that they required BCLC to engage in ongoing monitoring of activities of patrons with whom it had a "business relationship," including patrons with PGF accounts and those who had engaged in two or more transactions in which BCLC was required to collect the patron's identification.<sup>510</sup>

The anti-money laundering unit was initially established with a staff that included Mr. Karlovcec, who continued to report to Mr. Friesen,<sup>511</sup> Mr. Tottenham, who was hired as an "anti-money laundering specialist,"<sup>512</sup> and two analysts.<sup>513</sup> Mr. Tottenham testified that the unit was well supported by BCLC, receiving both encouragement and significant resources from BCLC's management.<sup>514</sup> Mr. Tottenham's evidence in this regard is consistent with Mr. Lightbody's evidence of the support provided to the anti-money laundering unit during his tenure as president and CEO of BCLC.<sup>515</sup>

Mr. Beeksma, who was working as a BCLC investigator at the time the anti-money laundering unit was established and would go on to join the unit in 2016,<sup>516</sup> gave evidence that the unit initially established a strategy of focusing on patrons' sources of wealth.<sup>517</sup> He explained that, if a patron had access to a legitimate source of wealth that allowed them to gamble at the levels at which they were playing – and did not appear to be engaged in criminal activity – BCLC considered it plausible that the patron's funds were legitimate.<sup>518</sup> Mr. Beeksma explained that he understood that the source of funds a patron used to buy-in were of less concern to BCLC at the time.<sup>519</sup>

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505 Evidence of B. Desmarais, Transcript, February 2, 2021, pp 75–77.

506 Ibid, pp 75–76.

507 Ibid, p 76.

508 Evidence of J. Karlovcec, Transcript, October 30, 2020, p 3.

509 Ibid, pp 2–3.

510 Ibid, pp 5–6.

511 Evidence of G. Friesen, Transcript, October 28, 2020, p 164.

512 Evidence of J. Karlovcec, Transcript, October 30, 2020, p 4; Evidence of D. Tottenham, Transcript, November 4, 2020, p 53; Exhibit 148, Tottenham #1, para 77.

513 Evidence of J. Karlovcec, Transcript, October 30, 2020, p 4; Evidence of D. Tottenham, Transcript, November 4, 2020, p 60.

514 Exhibit 148, Tottenham #1 para 78.

515 Exhibit 505, Lightbody #1, paras 85–86.

516 Exhibit 78, Affidavit #1 of Steve Beeksma, affirmed on October 22, 2020, para 84.

517 Ibid, paras 55–56.

518 Ibid, para 55.

519 Ibid, para 57.

While players' source of wealth was a concern at this time, the source of the players' cash was less of a concern. I felt that the attitude of BCLC's management was that unless we had conclusive information from law enforcement confirming that cash from a specific individual was suspicious, the casinos could accept it. I believe the thought process of BCLC's management was that if reports were going to GPEB and to law enforcement, and if they were not taking any action to address what was contained in the reports, then why should the cash not be accepted?

## **BCLC's Response to the Evolution of a Cash Facilitation Network**

Mr. Tottenham testified that the first project undertaken by the anti-money laundering unit following its formation was the development of an information package concerning the activities of Paul Jin, which could be presented to law enforcement to convince them to take enforcement action.<sup>520</sup>

Mr. Jin first came to the attention of BCLC as a cash facilitator in 2012 (though he was a known casino patron prior to that, with Mr. Lee commenting that he was "constantly in the background" and seemed to know everyone in the casino).<sup>521</sup> Beginning in 2012, Mr. Jin was frequently observed bringing large amounts of cash into BC casinos. BCLC investigators "worked to learn what they could about Mr. Jin" by reviewing video surveillance, acquiring vehicle information, tracking the casino activities of Mr. Jin's associates, speaking to law enforcement, and looking at open-source information such as corporate records.<sup>522</sup> Eventually, they determined that Mr. Jin appeared to be running a cash facilitation operation.<sup>523</sup>

On September 26, 2012, Mr. Jin was issued a Notice of Prohibition barring him from all casinos, community gaming centres, and commercial bingo halls in the Province of British Columbia for a period of one year.<sup>524</sup> During the course of that ban, he continued to make cash drop-offs at or near BC casinos, including one occasion where he attended at the Starlight Casino and handed a patron a bag that was found to contain \$150,000 in \$20, \$50, and \$100 bills.<sup>525</sup>

On November 7, 2012, Mr. Jin was issued another Notice of Prohibition barring him from all casinos, community gaming centres, and commercial bingo halls in the Province of British Columbia for a period of five years.<sup>526</sup> However, investigators

<sup>520</sup> Evidence of D. Tottenham, Transcript, November 4, 2020, pp 60–61.

<sup>521</sup> Exhibit 87, S. Lee #1, para 47.

<sup>522</sup> Ibid; Exhibit 148, Tottenham #1, para 35.

<sup>523</sup> Exhibit 148, Tottenham #1, para 35.

<sup>524</sup> Ibid, exhibit 2.

<sup>525</sup> Evidence of D. Tottenham, Transcript, November 4, 2020, pp 43–44; Exhibit 148, Tottenham #1, exhibit 3.

<sup>526</sup> Exhibit 148, Tottenham #1, exhibit 2.

continued to observe Mr. Jin and his associates delivering cash and chips to patrons at BC casinos.

Over a three-year period between 2012 and 2015, BC casinos received approximately \$376 million in suspicious cash, including \$279 million in \$20 bills.<sup>527</sup> Mr. Tottenham testified that the majority of the cash facilitation activity that BCLC was observing during this period was tied to Mr. Jin or his network.<sup>528</sup> He also testified that in every case where BCLC sought to link a particular patron to cash facilitation activity in or around BC casinos, it was linked to Mr. Jin or his network.<sup>529</sup>

At one point, Mr. Jin and his associates appeared to have “taken up residence” in a hotel room on the 11<sup>th</sup> floor of the River Rock, which was used as a congregation point for their cash facilitation activity:

[W]e were starting to see rooms ... in the hotel being used as congregation points and people going up and down, meeting people that are on ban lists who would go in prior to them and then leave, and then the person would come in and then come back out and go down to the floor.<sup>530</sup>

A review of individual occurrences also lends some insight into the scale of the cash facilitation activity occurring at BC casinos. On September 24–25, 2014, for example, a patron made two \$500,000 cash buy-ins at the River Rock Casino. Mr. Tottenham testified that this patron was known to receive cash deliveries from Mr. Jin, his known associates, or persons driving his vehicles.<sup>531</sup> The patron initially bought-in for \$50,000 in \$100 bills but exhausted those chips. At approximately 11 p.m., he made a telephone call, left the casino, and entered a waiting vehicle. The patron returned a short time later with a black suitcase and a brown bag and used the cash contents of those bags to make a cash buy-in of \$500,040. The cash consisted entirely of \$20 bills, which were bundled and secured with elastic bands inside silver plastic bags.<sup>532</sup> By approximately 1 a.m., the patron had lost all or most of the \$500,000. He made another call, left the casino, and interacted with two males outside a waiting vehicle. The patron subsequently returned with another suitcase filled with approximately \$500,030, which he used to make a further cash buy-in. Almost all the cash was in \$20 bills, bundled and secured with elastic bands in silver plastic bags.<sup>533</sup> Mr. Barber testified that this was a

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527 Exhibit 906, John Mazure and Len Meilleur, Provincial AML Strategy (August 2017), p 3.

528 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 95, 123. While Mr. Tottenham was referring to cash facilitation activity observed by BCLC at or near BC casinos (such as cash drop-offs in casino parking lots), evidence from the E-Pirate investigation indicates that Mr. Jin was heavily involved in cash facilitation activity outside the casino environment. For example, he was frequently observed giving small bags to casino patrons at various locations throughout the Lower Mainland and withdrew almost \$27 million from Silver International over a five-month period between June 1 and October 15, 2015. A full discussion of the E-Pirate investigation can be found in Chapter 3.

529 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 122–23.

530 Ibid, p 96. See also Evidence of P. Ennis, Transcript, February 3, 2021, p 146.

531 Exhibit 148, Tottenham #1, exhibit 6; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 81–82.

532 Exhibit 145, Barber #1, exhibit E, p 10.

533 Ibid, pp 10–11.

“fairly typical transaction in that time period.”<sup>534</sup> He also indicated that there may have been five or six similar events on that same night:

[S]o this was an interesting case. It had many obvious factors indicating money laundering and perhaps other offences, but there might have been on that same night another five or six very similar events.<sup>535</sup>

BCLC’s initial response to the problem was to try to identify the individuals involved in the cash facilitation activity so they could be banned from casinos. However, it “quickly found” that identifying and banning members of Mr. Jin’s network did not help, because they were easily replaced and, in any event, were not coming into the casinos.<sup>536</sup>

BCLC’s next step was to take active steps to bring its concerns to the attention of law enforcement. In 2014, for example, Mr. Tottenham and others met with investigators with CFSEU. The purpose of that meeting was to “engage them to come help us, to come investigate and deal with [the issue] because we were at a loss [as to how] to ... effectively deal with it.”<sup>537</sup> At approximately the same time, BCLC compiled a package of its “Top 10 casino cash facilitator targets,” which was provided to CFSEU in order to assist in conducting surveillance. The information included in that package included “tombstone” information such as names, driver’s licence numbers, occupations, addresses, and vehicle information. It also included photographs of each target.<sup>538</sup>

Over the next few months, Mr. Tottenham repeatedly followed up with CFSEU to urge an investigation into the individuals he identified. He described this as a “rattle-the-chain moment” where he was trying to determine whether they were “actually going to engage and do a project.”<sup>539</sup> Eventually, he was told that CFSEU’s focus was on guns and gangs, not proceeds of crime, and while they might re-engage if they had time, they were tied up with other projects and were therefore unable to assist.<sup>540</sup>

While BCLC’s efforts to get the attention of law enforcement are commendable, it is important to note that it continued to allow the acceptance of cash that was the focus of its suspicions. Moreover, it did not place a single patron on sourced cash conditions until November 2014 (several months after it first approached CFSEU) and did not expand that program beyond two patrons until August 2015.<sup>541</sup>

<sup>534</sup> Evidence of R. Barber, Transcript, November 3, 2020, p 29.

<sup>535</sup> Ibid, p 31. For other, similar incidents occurring during this period, see Exhibit 79, Affidavit #2 of S. Beeksma, affirmed October 22, 2020.

<sup>536</sup> Evidence of D. Tottenham, Transcript, November 4, 2020, pp 62–63.

<sup>537</sup> Ibid, pp 65–66.

<sup>538</sup> Exhibit 148, Tottenham #1, exhibits 27–37. See also Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 21–23.

<sup>539</sup> Evidence of D. Tottenham, Transcript, November 4, 2020, p 67.

<sup>540</sup> Ibid, pp 67–68; Exhibit 148, Tottenham #1, para 118. See also Evidence of J. Karlovcec, Transcript, October 30, 2020, p 25

<sup>541</sup> Evidence of D. Tottenham, Transcript, November 4, 2020, pp 80–82 and Transcript, November 10, 2020, pp 85–86.

Its failure to do so is particularly troubling given that (a) the majority of the high-level cash facilitation activity they were seeing during this period was tied to Mr. Jin or his network, and (b) BCLC was well aware of the patrons who were (often repeatedly) receiving large amounts of suspicious cash from Mr. Jin and his associates. Based on that information, it would not have been difficult for BCLC to impose a sourced cash condition on the patrons known to receive cash from Mr. Jin, as it did in 2015, when it received information concerning Mr. Jin's organized crime connections from the RCMP and began to expand its sourced cash conditions program by imposing source-of-cash conditions on known recipients of Mr. Jin's cash. I return to this issue in Chapters 11 and 14.

## **Great Canadian Gaming Corporation Security Enhancements**

In the same year that BCLC established its anti-money laundering unit, Great Canadian also took steps to enhance security at the River Rock Casino and its monitoring of suspicious cash transactions.

### ***Enhancements to River Rock Surveillance System***

In 2013, Great Canadian undertook an \$8 million upgrade to the River Rock surveillance room and camera system.<sup>542</sup> Mr. Ennis, then Great Canadian's director of surveillance, was responsible for developing the proposal for this upgrade.<sup>543</sup> Mr. Ennis gave evidence that he routinely exceeded the minimum requirements established by BCLC in developing surveillance systems for Great Canadian casinos.<sup>544</sup> With respect to the River Rock in particular, Mr. Ennis offered the following explanation when asked how the casino's surveillance system exceeded BCLC's requirements:<sup>545</sup>

[W]e had more cameras on the gaming floor than were required. There's a minimum level [that] needs to be on top of gaming tables and covering certain areas and we always had more than was necessary. As well as in our parking areas, we went to an extreme to ensure that our customers were safe and that we could monitor activities in the parkades, parking lots. Parkades can be issues with people hanging around and public safety concerns, so there was no expense spared there. Also, the hotel ... had cameras all over the hotel, more than you would find in most hotels, in hallways and elevators and lobby areas. The theatre had cameras in it that we could live monitor activities in there. It was from my experience a much higher level of coverage than you would find in most casino operations.

Mr. Ennis went on to explain that BCLC had no requirements for camera coverage in hotels and that, while BCLC's standards referred to cameras in parking lots, those at the River Rock exceeded those standards.<sup>546</sup> Asked why Great Canadian opted to install

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542 Evidence of P. Ennis, Transcript, February 3, 2021, pp 79–80.

543 Evidence of P. Ennis, Transcript, February 3, 2021, p 80.

544 Exhibit 530, Ennis #1, para 39.

545 Evidence of P. Ennis, Transcript, February 4, 2021, p 9.

546 Ibid, pp 9–10.

better and more expensive camera systems than required by BCLC, Mr. Ennis explained that it was “part of our corporate culture, ensuring public safety and making sure that our customers were safe.”<sup>547</sup>

### ***Suspicious Transaction Monitoring***

In addition to these enhancements to the River Rock’s surveillance system, Great Canadian also increased its monitoring of suspicious transactions in 2013. In December 2012, Mr. Kroeker joined Great Canadian as its vice-president of compliance and legal.<sup>548</sup> Mr. Kroeker described in his affidavit the monitoring he implemented in 2013 and the initial results of that monitoring:<sup>549</sup>

By 2013, I had set up our own monitoring of large cash transactions (“LCTs”) and the individuals involved in those transactions at GCGC. I asked the compliance team at GCGC to start tracking monthly table revenue rates as compared to [suspicious transaction reports] and to track cash buy-ins made predominantly in \$20 bills.

This monitoring showed that [suspicious transaction report] rates for [Great Canadian] properties were trending in parallel to business levels for table games on a month-to-month basis. This trend suggested there was less cause for concern than if [suspicious transaction reports] had been increasing while business was remaining flat or declining. In other words, I believed that if money laundering was on the rise, the increase in cash would not tend to correlate with business levels. This trending was not interpreted to mean that money laundering did not exist, but rather provided further information and a data point on the money laundering risk faced.

I also recall that the number of [large cash transactions] involving mostly \$20 bills was trending down until December 2013, at which time there was an uptick.

I am not persuaded that Mr. Kroeker’s reasoning in this regard was sound. That suspicious cash was increasing at the same time that business was growing does not preclude the possibility that “money laundering was on the rise.” It seems entirely possible to me that both business and money laundering could have grown at the same time or that the growth in business was attributable to an increase in activity connected to money laundering.

Mr. Kroeker explained in his evidence that it was his understanding that the rationale for focusing on \$20 bills was that they were an area of particular concern for GPEB.<sup>550</sup>

<sup>547</sup> Ibid, p 10.

<sup>548</sup> Exhibit 490, Affidavit #1 of Robert Kroeker, made on January 15, 2021 [Kroeker #1], para 32.

<sup>549</sup> Ibid, paras 41–43.

<sup>550</sup> Ibid, para 43; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 96–97.

## Appointments of Michael de Jong and John Mazure

2013 also saw turnover in important positions within government with responsibility for oversight of the gaming industry. Following the May 2013 provincial election, Michael de Jong, already the minister of finance, was appointed minister responsible for gaming.<sup>551</sup> A few months later, Mr. Scott departed his position as general manager of GPEB and was replaced by John Mazure.<sup>552</sup>

### Appointment of Michael de Jong as Minister Responsible for Gaming

The third of Mr. Coleman’s three tenures as minister responsible for gaming ended following British Columbia’s May 2013 general election. He was replaced in this role by Minister of Finance Michael de Jong.<sup>553</sup> In his evidence, Mr. de Jong advised that he had no background or experience with the gaming industry at the time he assumed conduct of this portfolio.<sup>554</sup> Mr. de Jong indicated that, upon assuming this responsibility, he received briefings from BCLC and GPEB.<sup>555</sup> He recalled being advised at that time that “anti–money laundering and anti–money laundering initiatives” were high priorities for both organizations.<sup>556</sup>

In evidence before me is an “estimates note” dated June 14, 2013 – very early in Mr. de Jong’s tenure in this role – which provides some insight into the substance of the advice being provided to Mr. de Jong at this time.<sup>557</sup> Mr. de Jong explained in his evidence that estimates notes are documents prepared by the civil service to assist cabinet ministers in preparing for “estimates debates” that take place in the Legislative Assembly following the introduction of the government’s budget.<sup>558</sup> This estimates note, titled “Anti–Money Laundering and FINTRAC Compliance” and signed by both Mr. Graydon and Mr. Scott, begins with the following four bullet points under the heading “Advice and Recommended Response”:

- The anti–money laundering policies and procedures in place at all B.C. casinos are among the most stringent of any jurisdiction in Canada.
- The Ministry is working with the gaming industry to prevent criminal attempts to legitimize illegal proceeds of crime in gaming facilities in

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551 Evidence of M. de Jong, Transcript, April 23, 2021, pp 2–3.

552 Exhibit 557, Scott #1, para 9; Exhibit 541, Affidavit #1 of John Mazure, sworn on February 4, 2021 [Mazure #1], para 5.

553 Evidence of M. de Jong, Transcript, April 23, 2021, pp 2–3; Evidence of R. Coleman, Transcript, April 28, 2021, pp 11, 86, 124, 190.

554 Ibid, p 7.

555 Ibid, pp 5–6.

556 Evidence of M. de Jong, Transcript, April 23, 2021, pp 7–8.

557 Exhibit 931, Advice to Minister Estimates Note, re Anti Money–Laundering and FINTRAC Compliance (June 14, 2013).

558 Evidence of M. de Jong, Transcript, April 23, 2021, pp 57–58.

the province. We remain committed to managing gaming activities to protect the public interest and ensure public safety.

- BCLC conducts internal reviews of its anti-money laundering program, commissions independent audits and is audited by the Gaming Policy and Enforcement Branch (GPEB) and FINTRAC.
- Last year, facility-based gaming generated \$1.6 billion in gross revenue and it remains primarily a cash-based business in B.C.; however, GPEB and BCLC have taken significant measures to provide more cash-free alternatives.

The advice contained in this document is consistent with that reflected in documents provided to Mr. Coleman approximately one year earlier when Mr. Coleman returned to the portfolio, succeeding Ms. Bond.<sup>559</sup>

Based on these documents and Mr. de Jong's evidence, it is clear to me that while Mr. de Jong may have been advised that anti-money laundering was a high priority for GPEB and BCLC at this time, neither organization was advising either minister, around the time of this transition, that large and suspicious cash transactions were increasing rapidly. Nothing in this note, or the advice given to the new gaming minister at this time, even hinted at the belief held by the GPEB investigation division that British Columbia casinos were being used to facilitate the laundering of vast sums of illicit cash. The nature of the advice given to Mr. de Jong from BCLC and GPEB continued to paint a relatively positive, and in some respects, misleading picture for some time. As I discuss in Chapter 11, the nature of the advice provided to Mr. de Jong by GPEB would change dramatically approximately two years into his tenure in this role.

## **Appointment of John Mazure as General Manager of GPEB**

In September 2013, shortly before BCLC established its anti-money laundering unit, Mr. Scott left GPEB for another position in government and was replaced by John Mazure.<sup>560</sup> Prior to joining GPEB, Mr. Mazure had worked in the Ministry of Environment and had no previous experience with the gaming industry.<sup>561</sup> Mr. Mazure remained with GPEB until June 2018.<sup>562</sup>

Mr. Mazure gave evidence that, upon joining GPEB, he sought to familiarize himself with his new organization and industry by touring gaming facilities and

<sup>559</sup> Evidence of R. Coleman, Transcript, April 28, 2021, pp 67–84; Exhibit 927, Advice to Minister, Issues Note, re Large Cash Transaction Reporting (February 23, 2012); Exhibit 928, Advice to Minister, Confidential Issues Note, re Anti-Money Laundering Strategy Update (February 23, 2012); Exhibit 929, Advice to Minister, Issues Note, re Gaming Review AML Measures at BC Facilities (February 23, 2012); Exhibit 930, Advice to Minister, Issues Note, re BCLC's Anti-Money Laundering Measures (February 23, 2012).

<sup>560</sup> Exhibit 557, Scott #1, para 9; Exhibit 541, Mazure #1, para 5.

<sup>561</sup> Exhibit 541, Mazure #1, paras 3, 9; Evidence of J. Mazure, Transcript, February 5, 2021, pp 3–5.

<sup>562</sup> Exhibit 541, Mazure #1, para 5.

meeting with GPEB staff, BCLC representatives (including Mr. Graydon), and service provider representatives.<sup>563</sup> Through these efforts, Mr. Mazure learned that anti-money laundering had been identified as one of GPEB's two highest priorities at the time, alongside e-gaming, though responsible gaming soon also became a high-priority issue following receipt of a related report from the public health officer.<sup>564</sup>

Mr. Mazure testified that Mr. Vander Graaf raised his concerns about suspicious cash transactions with him shortly after he joined GPEB and that this became a frequent topic of conversation between the two.<sup>565</sup> Mr. Mazure understood that Mr. Vander Graaf's concern was that the cash identified as suspicious that was used in transactions in casinos was the proceeds of crime and that his focus in addressing this issue was placing restrictions on the use of \$20 bills in casinos.<sup>566</sup> Mr. Mazure testified that he understood that there was significant frustration within the investigation division at the time, and in particular on the part of Mr. Vander Graaf and Mr. Schalk. This frustration related to what Mr. Vander Graaf and Mr. Schalk perceived to be the limits of their authority under the *Gaming Control Act* and their failure to achieve meaningful results in responding to what they firmly believed to be elevated levels of criminal proceeds in the province's casinos.<sup>567</sup>

Mr. Mazure explained in his evidence that it took several months for him to develop his own views regarding suspicious cash transactions in the gaming industry.<sup>568</sup> He understood from reports of findings provided to him by Mr. Vander Graaf that suspicious transactions were increasing, but testified that there was significant debate as to why this was occurring.<sup>569</sup> Within GPEB itself, there seemed to be general agreement that cash alternatives alone "were not working," but there was uncertainty as to the magnitude of the problem posed by suspicious transactions and the possible solutions.<sup>570</sup> Mr. Mazure suggested that there was greater diversity of views emanating from outside of GPEB, including from sources within BCLC.<sup>571</sup> These views included that there could be no money laundering in the province's casinos because patrons who brought large quantities of cash into casinos typically lost it; that the use of cash was connected to cultural preferences; that the presence of large quantities of \$20 bills was not abnormal, as it was the most common denomination in Canada; that the cash had been physically imported from China; and that the increase in reports of suspicious transactions was the result of greater service provider diligence in reporting.<sup>572</sup>

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563 Ibid, paras 11–13; Evidence of J. Mazure, Transcript, February 5, 2021, p 5.

564 Evidence of J. Mazure, Transcript, February 5, 2021, pp 6–7.

565 Ibid, pp 8–9; Exhibit 541, Mazure #1, paras 46–48.

566 Ibid, pp 10–11.

567 Exhibit 541, Mazure #1, paras 29–31; Evidence of J. Mazure, Transcript, February 5, 2021, pp 79–80.

568 Evidence of J. Mazure, Transcript, February 5, 2021, pp 14–15, 21–23.

569 Ibid.

570 Ibid, pp 19–20.

571 Evidence of J. Mazure, Transcript, February 5, 2021, pp 20–22; Exhibit 541, Mazure #1, para 52.

572 Evidence of J. Mazure, Transcript, February 5, 2021, pp 21–24; Exhibit 541, Mazure #1, para 52.

As the rate of suspicious transactions continued to increase, Mr. Mazure was eventually persuaded that there was cause for legitimate concern associated with these transactions.<sup>573</sup> Mr. Mazure remained uncertain, however, as to the magnitude of this problem and was unconvinced that every dollar reported as suspicious had originated from illicit activity.<sup>574</sup>

At the time that Mr. Mazure joined GPEB, the three-phase anti–money laundering strategy developed during Mr. Scott’s tenure was already in place.<sup>575</sup> Mr. Mazure testified that he eventually formed the view that the three phases would have ideally all taken place at the same time.<sup>576</sup> By the time of his arrival, however, the first two phases had already been implemented and the cross-divisional working group established during Mr. Scott’s tenure was beginning to shift its focus from cash alternatives to possible regulatory responses, as contemplated in phase three of the strategy.<sup>577</sup> While Mr. Scott clearly anticipated that phase three would involve, at least, GPEB investigators interviewing casino patrons about their source of funds, Mr. Mazure appeared to be unaware of this intention. In his view, the “slate was clean” and “[i]t was up to us to figure it out, and that’s what we were trying to do in the balance of 2014.”<sup>578</sup> As indicated above, the original timeframe for implementation of phase three was December 2013.

### **September 2013 GPEB Investigation Division Meeting**

While Mr. Mazure did not seem to be aware that the anti–money laundering strategy had originally contemplated GPEB investigators interviewing patrons about large and suspicious cash transactions as part of phase three, this possibility had not been lost on Mr. Vander Graaf. Seemingly as part of GPEB’s general efforts to identify potential phase three action, Mr. Vander Graaf initiated a discussion with the members of the investigation division about what, if any, additional steps the division could take in response to these transactions. On September 24, 2013, Mr. Vander Graaf sent an email to the members of his division, summarizing the actions taken by the division in recent years to address this issue, expressing his view that the cash alternatives strategy had failed, and seeking input as to what the division could do as GPEB entered phase three of the strategy:<sup>579</sup>

In the past number of months (or years depending how you look at it) this Division has collected data, prepared Reports of Findings and given observations to the Branch and others on suspected money laundering in Casinos in BC. It should be noted that the “Money Laundering Alarm” was sounded many years earlier by this Division (written solutions were outlined

573 Evidence of J. Mazure, Transcript, February 5, 2021, p 24.

574 Ibid.

575 Ibid, pp 30–31.

576 Ibid, pp 31–34.

577 Ibid, pp 11, 19, 30–31.

578 Ibid, p 34.

579 Exhibit 181, Vander Graaf #1, exhibit D.

in 2008) but were not addressed. As a result of the “Kroeker Report” (2011) and Press coverage on the money Laundering issue the Branch decided to form the AML group to address the horrendous influx of unexplained cash into the Casinos in BC. As you are aware this cash was being brought into and continues to be brought into the Casinos by gamblers in volumes such as, \$200,000 in \$20 dollar bills. It has been written and reported on by this Division on many occasions that the origins of the majority of this cash is from loan sharks. It has also been reported on that the loan sharks receive the cash from various Organized Crime Groups.

The Branch implemented the AML Strategy in 2011 and the objective was, “The Gaming industry will prevent money laundering in gaming by moving from a cash based industry as quickly as possible and scrutinizing the remaining cash for appropriate action. This shift will respect or enhance our responsible gambling practices and the health of the industry.”

The Investigation Division management were open advisors to the AML Group and provided strong written recommendations (not always accepted). We also continued to provide cash volume statistics and analytical data that we prepared from the Section 86 Reports on Suspicious Currency Transactions submitted by Service Providers. A multitude of enhancements have been provided by Branch Policy to attempt to move from a cash based industry, however it is our opinion those initiatives have not reduced the volume of suspicious cash nor the number of Suspicious Currency Transactions. In fact they are increasing.

You are on the ground on this matter and as the Branch enters into the final phase of the AML strategy I would like your input and suggestions, if any, on this issue. I feel this is an important juncture in AML and I am hoping that with even this short notice you can all attend.

The members of the investigation division’s casino unit met the following day.<sup>580</sup> In a lengthy email sent on September 26, the day after this meeting, Mr. Vander Graaf summarized the discussion and outcomes of the meeting.<sup>581</sup> While the email does not indicate any actions the division identified that it *could* take to enhance its response to large and suspicious cash transactions, it makes clear that there was a consensus among the investigators that they could not “investigate” money laundering. According to Mr. Vander Graaf’s email, the investigators believed that they lacked the capacity to undertake such investigations and that any attempt to do so would put investigators in danger. Continuing to describe the meeting, Mr. Vander Graaf indicated that he proposed to investigators the following scenario:

I asked the question whether GPEB investigators could intercept the gambler at the cash cage in the casino (while the cash is being counted)

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580 Exhibit 144, Ackles #3, exhibit F.

581 Ibid.

and by whatever (I did not discuss logistics at this time) means speak with him and ask two questions: “Where did you get the cash” and if answered “what is it costing you”. Should he refuse to answer the subject would not be pushed and we would let the gambler continue on. At no time would we seize the money. Should he provide an answer further probing could be completed. This information alone would certainly not be of use or of value in criminal court nor in administrative court and would be as confidential as possible, although difficult. The admission that the funds came from a loan shark or “money lender” could, from my perspective, be of significant value. I won’t comment further in this email on that value.

Even this limited effort to gather information about the source of funds used in large cash transactions in casinos seems to have been beyond the risk tolerance of GPEB’s investigators. Mr. Vander Graaf explained in his email that “the casino unit and others felt that even interviewing the gambler would/could put our investigators at risk and could be a serious safety hazard.”

The conclusion reached at this meeting is consistent with the evidence of multiple witnesses connected to the GPEB investigation division that GPEB investigators in the Lower Mainland generally did not interview casino patrons about the source of funds the patrons used to buy-in during this time period. While there may have been isolated incidents in which such interviews occurred,<sup>582</sup> Mr. Vander Graaf,<sup>583</sup> Mr. Schalk,<sup>584</sup> Mr. Dickson,<sup>585</sup> Mr. Ackles,<sup>586</sup> and Robert Barber, a former GPEB investigator<sup>587</sup> all gave evidence that this was not part of the role of GPEB investigators in the Lower Mainland at the time.

It appears, however, that this understanding may not have extended beyond the Lower Mainland. Tom Robertson, a former GPEB investigator based in Kelowna from 2008 until 2017, testified that he commonly spoke with casino patrons including, at least in one instance, about the source of cash used in a suspicious buy-in, and was never directed not to do so.<sup>588</sup> In that case, Mr. Robertson advised service provider staff that he did not believe the patron’s explanation as to the source of cash used in the transaction and the service provider decided not to permit the patron to gamble.<sup>589</sup>

I will reserve for later in this Report discussion of whether GPEB’s investigative staff should have more regularly engaged in such interviews with casino patrons. I note, though, that Mr. Robertson’s evidence offers some insight into the possible impact and value of this kind of intervention.

582 Evidence of R. Barber, Transcript, November 3, 2020, pp 116–17; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 102–3.

583 Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 46–48, 102–3, 159–62.

584 Evidence of J. Schalk, Transcript, January 22, 2021, pp 199–201.

585 Evidence of D. Dickson, Transcript, January 22, 2021, pp 45–47, 70, 99–104.

586 Evidence of K. Ackles, Transcript, November 2, 2020, pp 31–34.

587 Evidence of R. Barber, Transcript, November 3, 2020, pp 116–17.

588 Evidence of T. Robertson, Transcript, November 6, 2020, pp 71–72.

589 Ibid, pp 69–73.

### **October 25, 2013, Report of Findings and November 20, 2013, Memorandum**

Some indication of the foundation for the concerns of members of the investigation division about interviewing casino patrons is found in a report of findings dated October 25, 2013, prepared by Mr. Schalk, and in a memorandum dated November 20, 2013, prepared by Mr. Dickson.

The report of findings provided updated data and projections regarding suspicious currency transaction reports received by GPEB.<sup>590</sup> The data set out in the report indicated that the number of such reports received by GPEB had increased every year since 2008–09 and that based on the reports received to that point in 2013, the investigation division was projecting that the number of reports received would increase again that year to 1,120 from 1,062 the previous year. The division also projected that the value of the transactions represented in those reports would increase from \$87,435,297 in the previous year to \$94,928,530. The report went on to indicate that 75 percent of the total of this currency was being accepted at the River Rock Casino and that a group of 20–25 different patrons were responsible for 25–35 percent of all suspicious transaction reports and 60–70 percent of the total amount of suspicious currency being accepted in Lower Mainland casinos.

Mr. Schalk goes on in the report to reiterate a number of the concerns expressed in previous reports of findings and elsewhere by the investigation division over the preceding several years. Mr. Schalk suggested that there was “no question” that the cash used in most large cash transactions was obtained from cash facilitators operating out of locations near casinos. He further indicated that “regular and ongoing intelligence information from police sources” had confirmed that these cash facilitators were obtaining cash from organized crime groups. The report asserted that information received over several recent months had confirmed that a number of these cash facilitators and their associates were themselves affiliated to different organized crime groups, some with “significant and serious criminal backgrounds and associations, including firearms possession.” Mr. Schalk suggests that the presence of these individuals “could present a potential safety hazard to anyone who personally interacts with them.”

Mr. Vander Graaf received and commented on this report, indicating agreement with Mr. Schalk’s conclusions and echoing his concerns about the growing suspicious activity observed in casinos. He emphasized his view that there was a need to scrutinize the source of cash used in large cash transactions, in addition to performing due diligence on the patron. Mr. Vander Graaf concluded by suggesting that it was “critical” to “preserving the integrity and the perception of integrity of gaming” that GPEB develop a “defined regulation and/or term and condition of registration, specific to Anti-Money Laundering which outlines appropriate regulatory ‘Due Diligence.’”

A memorandum dated November 20, 2013, prepared by Mr. Dickson, offered additional detail regarding the presence of criminal organizations at or near Lower

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<sup>590</sup> Exhibit 181, Vander Graaf #1, exhibit O.

Mainland casinos.<sup>591</sup> The memorandum indicated that ongoing and recent intelligence received from different police agencies had “confirmed that the influence and existence of several Organized Crime groups ... in Lower Mainland” casinos was growing. While Mr. Dickson suggested that this was the case at all casinos in the region, it indicated that it was particularly prominent at the River Rock. The memorandum went on to explain that GPEB investigators had confirmed that a number of cash facilitators and their associates were affiliated to organized crime groups. It concluded:

1. It is believed that the presence of Organized Crime groups in and around [Lower Mainland] casinos and intervention by our GPEB investigators involved in investigations related to these types of people could present a safety hazard to them and others. As an organization, GPEB Investigations is not equipped to investigate or interact with known members and associates of [Organized Crime] groups. The criminal backgrounds and levels of violence employed by these individuals, in my opinion, completely rules out any interdiction strategies directed at curtailing the flow of suspicious currency / loan sharking / money laundering activities in [Lower Mainland] casinos.
2. The amount of suspicious cash being brought into the [Lower Mainland] casinos continues to increase. In conjunction with this, the increasing presence of [Organized Crime] groups in and around the venues also continues to increase the risk posed to the overall integrity of gaming in the Province.

In his evidence, Mr. Dickson expanded upon what he meant by “interdiction strategies” as the term is used in the first point above.<sup>592</sup> Mr. Dickson explained that, in his view, the interdiction strategies ruled out by the information set out in the memo included both seizing funds and interviewing casino patrons, though he acknowledged that the investigation division had decided against interviewing patrons prior to the date of this memorandum.<sup>593</sup> While I can understand the risk that might be posed by attempting to directly intervene with a cash facilitator who might be associated with an organized crime group, as I discuss in Chapter 14, it is less clear to me how these same risks would arise if a GPEB investigator were to ask questions of a casino patron within the confines of heavily monitored casino.

## **State of Response to Large and Suspicious Cash Transactions at End of 2013**

As 2013 drew to a close, there were few signs of meaningful action to address the large and suspicious cash transactions prevalent in the province’s casinos. Both the rate and value of such transactions were rising rapidly and BCLC was in the process of making

<sup>591</sup> Ibid, exhibit E.

<sup>592</sup> Evidence of D. Dickson, Transcript, January 22, 2021, pp 99–104.

<sup>593</sup> Ibid.

permanent a significant increase in high-limit bet limits. GPEB's investigation division had solidified its view that it could not safely ask patrons about the source of their funds, and BCLC's investigators had been instructed that they were not to do so. As will be discussed below and in Chapter 11, the industry remained more than a year away from meaningful implementation of phase three of the anti-money laundering strategy devised in 2011 – the first phase contemplated to involve significant action beyond the development and promotion of voluntary cash alternatives. In this context, it is unsurprising that, as discussed below, the rate at which suspicious cash was entering the province's casinos showed no sign of slowing as the industry entered 2014.

## **Suspicious Transactions, Betting Limits, and Enhancements to VIP Offerings in 2014 and Early 2015**

In 2014, British Columbia's gaming industry continued to fuel the growth of cash in the province's casinos through increased betting limits and the continued development of VIP facilities. As it did so, the rate of suspicious cash transactions continued to accelerate through 2014 and into early 2015. Below, I discuss the action taken by GPEB and BCLC in response to the continued growth of these transactions and the extent to which those actions made any meaningful impact on the growing problem of suspicious cash entering Lower Mainland casinos. While GPEB was partly preoccupied through much of 2014 with an organizational review and restructuring, it continued to develop the regulatory response to this issue to be implemented as phase three of the anti-money laundering strategy developed in 2011. It did not, however, take any meaningful action to actually curb these transactions, despite the initial timeline for the strategy identifying December 2013 as the timing of implementation of phase three. BCLC also responded to this increase in suspicious activity, most significantly by encouraging law enforcement engagement and placing restrictions on two prolific VIP players that prohibited those patrons from buying-in with unsourced cash. At the same time, however, BCLC continued to downplay the significance of this suspicious activity to both government and its own staff.

## **Large and Suspicious Cash Transactions in 2014 and Early 2015**

The first year for which BCLC suspicious transaction reporting data is available is 2014. These data indicate that, in 2014, BCLC reported to FINTRAC a total of 1,631 suspicious transactions. Of these, 493 involved transactions with values between \$50,001 and \$100,000 and 595 involved transactions with values over \$100,000.<sup>594</sup> This means that, on average, a suspicious transaction with a value of \$50,000 or more took place nearly three times per day during 2014. The total value of all suspicious transactions reported during this year was \$195,282,332, an average of just under \$120,000 per transaction, and more than \$500,000 per day.<sup>595</sup>

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<sup>594</sup> Exhibit 482, Cuglietta #1, exhibit A.

<sup>595</sup> Exhibit 784, Cuglietta #2, exhibit A.

While equivalent data for years prior to 2014 is not available – preventing me from comparing 2014 figures to identical metrics from previous years – there is compelling evidence that the volume of suspicious transactions reported in 2014 represented a significant increase from past years. This is apparent in part from data related to suspicious currency transaction reports submitted to GPEB pursuant to section 86 of the *Gaming Control Act*. A GPEB report of findings produced in October 2014 offers the following data regarding the number of transactions reported, and the cumulative value of those transactions, for the years 2012–13 to 2014–15.<sup>596</sup>

**Table 10.5: Suspicious Cash Transactions Submitted to GPEB, 2012–2015**

<b>Year</b>	<b>Section 86 SCT Reports</b>	<b>Total Value of SCTs</b>
2012–13	1,059	\$82,369,077
2013–14	1,382	\$118,693,215
2014–15  (Note: Partial data for first six months of year)	876	\$92,891,065

Source: Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit Q.

The report extrapolates from the partial data for 2014–15 to project that a total of 1,750 suspicious currency transactions, with a cumulative value of over \$185 million, would be reported for the year in its entirety. The suspicious currency reports received within the first six months of 2014–15 represented more than 63 percent of the total reports received in all of 2013–14. The value of the transactions represented by the reports received in those six months was more than 78 percent of the total value of all such transactions in the previous year.

As I discuss in Chapter 11, these elevated levels of suspicious transactions would continue into 2015. An analysis conducted by GPEB of suspicious transactions of \$50,000 or more in July 2015 found that Lower Mainland casinos had accepted more than \$20 million in cash, including over \$14 million in \$20 bills, in such transactions in that month alone.<sup>597</sup>

## **Growth and Evolution of Cash Facilitation**

As the number and value of suspicious transactions taking place in the province’s casinos grew, BCLC identified an increase in cash facilitation activity in 2014. Mr. Desmarais testified that he was briefed by his staff in 2014 that they had become aware of an

<sup>596</sup> Exhibit 181, Vander Graaf #1, exhibit Q.

<sup>597</sup> Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22; Exhibit 145, Barber #1, exhibit F; Exhibit 144, Ackles #3, paras 23–24 and exhibit F; Evidence of K. Ackles, Transcript, November 2, 2021, p 41.

increasing number of cash facilitators operating in the vicinity of the River Rock.<sup>598</sup> His evidence was that this was of sufficient concern to BCLC that they believed that it warranted police investigation, and BCLC began forwarding additional information to the RCMP.<sup>599</sup> These efforts will be addressed in more detail later in this chapter.

Alongside this growth in cash facilitation, those engaged in the gaming industry at the time also observed an evolution in the form of this activity. Specifically, both Great Canadian and BCLC observed that patrons were frequently buying-in using large amounts of cash and leaving the casino with the chips they had purchased without playing.<sup>600</sup> On several occasions, these patrons were observed attending a guest room in the hotel connected to the River Rock Casino,<sup>601</sup> and BCLC eventually came to believe that the room was being used by cash facilitators to supply VIP patrons with cash and chips.<sup>602</sup>

## **Increased Betting Limits and Enhancements to VIP Offerings**

Even as the rate of suspicious transactions increased, the industry continued to implement changes that seem designed to increase high-limit VIP play. These included increases to betting limits in high-limit areas and enhancements to VIP space.

### ***Increased Betting Limits***

As discussed in detail earlier in this chapter, BCLC made two changes to betting limits applicable to high-limit areas in January 2014. The first of these was to make permanent a trial bet limit change that had commenced in 2013, which increased limits in high-limit areas from \$5,000 to \$10,000 per hand. The second was to permit patrons playing at private tables to bet up to \$100,000 per hand. In effect, this amounted to an increase of \$10,000 per hand at private tables as, in the absence of this change, patrons playing all nine positions on a baccarat table could have bet up to \$90,000 following the increase from \$5,000 to \$10,000 per position.<sup>603</sup>

Given that the industry was still heavily reliant on cash, it seems clear that this change would have resulted in increases in the volume of cash entering British Columbia casinos.

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598 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 86–87; Exhibit 522, Desmarais #1, para 69.

599 Exhibit 522, Desmarais #1, para 69; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 87–88.

600 Exhibit 145, Barber #1, exhibits A, B; Evidence of M. Hiller, Transcript, November 9, 2020, pp 91–96; Exhibit 522, Desmarais #1, para 97 and exhibit 75; Exhibit 124, Email from Brad Desmarais, re Heads Up on Another Large Cash Buy-in River Rock 2014–52289 (November 23, 2017); Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 27–29; Exhibit 490, Kroeker #1, para 70 and exhibits 15–17.

601 Exhibit 168, Email exchange between Mike Hiller and Jim Wall, re Buy-ins with No Play (August 18, 2014); Evidence of M. Hiller, Transcript, November 9, 2020, pp 91–96; Exhibit 124, Email from Brad Desmarais, re H Heads Up on Another Large Cash Buy-in River Rock 2014–52289 (November 23, 2017); Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 27–29; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 94–95; Exhibit 148, Tottenham #1, paras 194–95 and exhibit 106.

602 Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 30–31; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 95–96.

603 Exhibit 505, Lightbody #1, para. 47, exhibits 15, 22; Exhibit 543, MOF Briefing Document, Limits in Casinos (December 13, 2013), p 3; Evidence of J. Lightbody, Transcript, January 28, 2021, p 10.

The first of the two changes referred to above effectively doubled the amount any high-limit patron could bet on a single hand. While this increase was launched as a pilot in 2013 and was in effect in some casinos prior to 2014, its continuation into 2014 meant that patrons could continue to bet at these levels in this year. The increase in private table aggregate bet limits from \$90,000 to \$100,000 is unlikely to have had as significant an impact, given that it was a much more modest percentage increase with narrower application. Nevertheless, it permitted patrons to bet at higher amounts and seems likely to have increased the volume of cash used in the province's casinos to some degree.

### ***Enhancements to VIP Offerings***

Alongside these increases in betting limits, enhancements were made to VIP offerings in casinos in the Lower Mainland in 2014 and 2015. These included the opening of a high-limit room at the Edgewater Casino and proposals for enhancements to high-limit space at the River Rock Casino.

On January 29, 2014, Mr. Lightbody received a letter from Jerry Williamson, BCLC director of gaming facilities, advising that the Edgewater Casino high-limit room was scheduled to open to the public on January 31, 2014.<sup>604</sup> The letter advised that this room consisted of 12 live gaming tables, including seven private and semi-private rooms and provided related details about surveillance, security, and staff training, among other information. Mr. Lightbody gave evidence that, as BCLC's vice-president of casino and community gaming, he was ultimately responsible for approving the opening of the Edgewater high-limit room on behalf of BCLC and that he approved the direction to move forward with the opening. Mr. Lightbody also gave evidence that, at the time, no new gaming area could open without the approval of the BCLC security team.<sup>605</sup>

Later in the year, a proposal was developed within Great Canadian to expand and upgrade the VIP facilities at the River Rock Casino as part of its business and budget planning process for 2015.<sup>606</sup> This proposal was set out in a memorandum dated October 14, 2014.<sup>607</sup> The evidence before me indicates that the proposed River Rock upgrades were motivated by increases to revenue observed to that point in 2014.<sup>608</sup>

The enhancements proposed at this time were described as follows in the proposal:<sup>609</sup>

1. Salon Privé and Phoenix Room's new design layout will be more appealing to the Chinese. Brighter color scheme tones, brighter lighting and tiered layering gaming zones will be similar to Macau's VIP gaming areas thus more welcoming to our elite VIPs;

<sup>604</sup> Exhibit 505, Lightbody #1, paras 37–39 and exhibit 9.

<sup>605</sup> Ibid.

<sup>606</sup> Evidence of W. Soo, Transcript, February 9, 2021, p 54.

<sup>607</sup> Exhibit 559, Soo #1, paras 75–79 and exhibit J. An earlier draft of this proposal dated October 1, 2014 is also in evidence: Exhibit 559, Soo #1, exhibit J.

<sup>608</sup> Evidence of W. Soo, Transcript, February 9, 2021, p 55.

<sup>609</sup> Exhibit 559, Soo #1, exhibit J.

2. An “Inner Sanctum” interior space will be constructed in the Salon Privé’s new expansion area (former the surveillance and security space). This configuration marks the first time gaming and dining will be combined to add convenience and utmost discretion and privacy for our uber elite Baccarat players;
3. Introduction of smaller Baccarat tables which accommodate up to 5 players (rather than full size tables which accommodate 9 players). These tables will induce more reserve games which typically [seat] 1–3 players, resulting in higher productivity (faster rounds of play – increased hands per hour) and floor efficiency (optimize space utilization);
4. Gaming capacity increases by 17 tables – an additional 8 in Salon Privé and 9 in the Phoenix Room;
5. Secure BCLC pre-approval to offer higher bet limits (\$150,000 table aggregate) which will be deployed at [Great Canadian’s] discretion; and
6. Introduction of a \$25,000 chip/plaque to create/induce aspirational play and to satisfy the demand for a higher maximum bet requested by an exclusive segment of our uber elite Baccarat players.

It is clear from this proposal that, rather than being deterred by the continued growth in suspicious cash transactions, some within Great Canadian sought to further capitalize on the highest-level players, including by seeking increased betting limits and attempting to induce faster play and higher wagers.

While at least some of these changes were implemented,<sup>610</sup> table aggregate bet limits were never increased to \$150,000.

The proposal also identified a set of five “assumptions” on which the proposal was based, including the following two paragraphs, among others:<sup>611</sup>

1. China Central Government’s anti-corruption and flight capital campaign will escalate in 2015 thus discouraging and diverting a fair portion of VIP Baccarat play from Macau to River Rock Casino. It is widely believed that campaign scrutiny will ramp up when findings are completed and reported back to Beijing in 2015;
- ...
2. The United States’ campaign against illicit money laundering (American Justice Department, U.S. Treasury Department and FinCEN) will continue to intensify its investigation into the governance

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610 Evidence of W. Soo, Transcript, February 9, 2021, pp 54–57.

611 Exhibit 559, Soo #1, exhibit J.

and ethical practices of Las Vegas gaming companies operating in Macau (Wynn, Sands, and MGM). [People’s Republic of China] VIPs will encounter more restrictions to access funds for gaming in Macau and Las Vegas, reducing their desire to frequent these destinations and diverting their play to River Rock Casino ...

On their face, these “assumptions” would seem to indicate that Great Canadian was seeking to attract players connected to corruption or who would be attracted to the River Rock because their funds would be subjected to less scrutiny in British Columbia casinos than they would in Macau or Las Vegas. This interpretation was contested in the Commission’s hearings.<sup>612</sup> There is evidence before me that the inclusion of these factors was based on a practice of considering global geopolitical trends in trying to understand business trends and that the commentary in these paragraphs represented an attempt to explain why the River Rock’s business had increased in 2014 and to determine whether or not this trend would continue into 2015.<sup>613</sup>

Terrence Doyle, who has worked in various roles with Great Canadian over the span of two decades and was appointed chief operating officer in 2015,<sup>614</sup> was asked whether he would condone a business strategy that was aimed at attracting patrons “who didn’t want to comply with China’s anticorruption laws or didn’t want to comply with United States money laundering rules.”<sup>615</sup> Mr. Doyle, who was the audience for this proposal and not its author,<sup>616</sup> responded that he would not:<sup>617</sup>

No. I mean, it’s a concept that is totally counter to the values of our company and quite honestly would be bad business for so many reasons. You know, it’s hard for me to even begin to state that, but there is no opportunity for Great Canadian. And certainly even if management wanted to pursue something like that, there would be no opportunity from our board, who from a governance point of view would never allow those type of actions to happen, nor would I personally.

I accept in principle Mr. Doyle’s evidence that he would not personally condone a business strategy focused on attracting patrons seeking to avoid anti-corruption or anti-money laundering laws in other jurisdictions. In light of the contents of the October 14, 2014, memorandum and other evidence related to this proposal, however, it seems clear that the strategy set out in this document does just that. I understand that the interest reflected in this proposal in the effect of anti-corruption laws in China and anti-money laundering laws in the United States arose from the assistance they provided in explaining the increase in business observed in 2014 and determining

612 Evidence of W. Soo, Transcript, February 9, 2021, pp 58–68.

613 Ibid, pp 58 and 66–68.

614 Exhibit 560, Doyle #1, paras 6 and 8.

615 Evidence of T. Doyle, Transcript, February 10, 2021, p 107.

616 Ibid, pp 119-121.

617 Ibid.

whether this increased business was likely to continue into 2015. On this basis, the proposal included enhancements to the River Rock's VIP space and seeking an increase in bet limits to accommodate and maximize this increased business. If the increase in business in 2014 was driven by patrons avoiding anti-corruption and anti-money laundering regulation in other jurisdictions and the River Rock sought to make changes to its VIP offerings to accommodate these patrons and enable them to gamble at higher levels than they had in 2014, I cannot see how this proposal is not clearly an attempt to attract additional business displaced by more rigorous regulation in other parts of the world.

## **Actions of BCLC During 2014 and Early 2015**

As indicated above, it is clear from Mr. Desmarais's evidence that BCLC recognized the increases in cash transactions and cash facilitation that occurred in 2014 and was concerned by these developments.<sup>618</sup> As suspicious transactions accelerated in 2014 and 2015, BCLC took steps to respond to these trends and enhance its anti-money laundering program. Of particular significance, these steps included efforts to encourage law enforcement to commence an investigation into the sources of the growing volumes of cash present in casinos. BCLC also imposed conditions on two VIP patrons that prohibited them from buying-in with cash in the absence of proof that it was derived from a legitimate source. Even as it took steps to respond to this issue, however, BCLC continued in its internal and external communications to cast doubt on whether money laundering was an issue in the gaming industry and whether the growing number of suspicious cash transactions in the province's casinos were connected to money laundering.

## **BCLC Enhancements to Anti-Money Laundering Program and Response to Suspicious Transactions**

In 2014 and the early part of 2015, BCLC took a number of steps to enhance its anti-money laundering regime and to respond to the growth in suspicious transactions observed in the province's casinos. These efforts included creating an information-sharing agreement with the RCMP, barring individuals who posed a public safety risk from the province's casinos, attempting to procure a new software system to enhance anti-money laundering efforts, and proposing new cash alternatives. In addition, BCLC began to take limited steps focused on large cash transactions. These included efforts to encourage law enforcement to investigate those transactions and the placement of conditions on two VIP patrons involved in repeated suspicious transactions.

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<sup>618</sup> Exhibit 522, Desmarais #1, para 69; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 86–88.

## 2014 Information-Sharing Agreement

BCLC entered into an information-sharing agreement with the RCMP in January 2014.<sup>619</sup> Mr. Desmarais described the rationale for entering into the agreement and what he perceived to be its value for BCLC as follows:<sup>620</sup>

I felt that given the fact that we were a Crown corporation and uniquely positioned to be able to ... enter into information sharing agreements with the RCMP, notwithstanding they are federal, as well as other provincial or municipal police agencies, that would be an appropriate and, in my view, almost key element to moving forward. I think it also provided us [with] the ability to provide information to the police and where they could provide information to us obviously within certain barriers, within certain guidelines.

As we started to build out our AML risk matrix, we felt that we needed the ability to determine whether individuals that were spending a lot of money in our casinos were in fact criminals and that we ought to be able to ask the police that. In addition to that – and this is a really big one ... one of the best ways to keep criminal activity out of casinos is not to allow people that have a propensity to commit criminal offences.

So based on that, we were hopeful that the information sharing agreement – and this ended up bearing fruit some months later – would allow police to advise us of people who just shouldn't be in the casinos.

A number of other current and former BCLC employees gave evidence regarding the value of this agreement.<sup>621</sup> Mr. Lightbody testified that the agreement was important to BCLC because it allowed BCLC to identify known criminals and their associates and proactively bar them from the province's casinos.<sup>622</sup> Mr. Beeksma agreed that the agreement allowed BCLC greater insight into player backgrounds and source of funds and eventually enabled BCLC to implement its cash conditions program in 2015.<sup>623</sup> In his affidavit, Mr. Kroeker explained the value of the agreement for both BCLC and the RCMP:<sup>624</sup>

In 2014, Mr. Desmarais at BCLC negotiated an information sharing agreement (“ISA”) with the RCMP ... The ISA was key to BCLC's AML efforts as it allowed BCLC to identify patrons with connections to organized crime and proactively ban them. This enhanced BCLC's ability to reliably identify

619 Exhibit 490, Kroeker #1, para 114 and exhibit 41; Exhibit 522, Desmarais #1, para 26 and exhibit 6.

620 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 64–65.

621 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 148–49; Evidence of R. Alderson, Transcript, September 9, 2021, pp 127–29; Exhibit 505, Lightbody #1, para 79; Exhibit 490, Kroeker #1, para 114; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 113–14; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 59–60.

622 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 59–60.

623 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 148–50.

624 Exhibit 490, Kroeker #1, para 114.

casino patrons who may be connected to criminal activity. The ISA was also of significant value to the RCMP as it allowed BCLC to provide information to them without a production order.

While I do not doubt that this information-sharing agreement was a positive step for BCLC and that it enhanced its ability to exclude those with connections to organized crime from casinos, there is reason to question whether it was likely to have any meaningful impact on the acceptance of large volumes of suspicious cash, which continued to grow at that time. As discussed above, by this time, the cash facilitators providing cash to casino patrons were based outside of casino property and attended casinos only to deliver cash, while patrons who received and used this cash were generally not affiliated with organized crime. As such, the RCMP was unlikely to provide BCLC with information about these patrons, and while the RCMP may have provided information to BCLC that would have justified barring cash facilitators, this was unlikely to have any impact on their ability to continue providing patrons with cash.

### **Public Safety Barrings**

Once BCLC's information-sharing agreement with the RCMP was in place, BCLC sought to put it to use by obtaining information that would assist in identifying patrons who posed a risk to public safety or should otherwise be barred from the province's casinos. In April 2014, BCLC contacted CFSEU as well as RCMP detachments in jurisdictions that were home to gaming facilities seeking information pursuant to the agreement.<sup>625</sup> Specifically, BCLC sought information about individuals who were known to frequent gaming facilities and who were "undesirable" in the sense that they posed a threat to public safety, belonged to an organized crime group or gang, or were engaged in criminal activity that tended to generate the proceeds of crime.<sup>626</sup>

In May 2014, BCLC received from CFSEU a list of CFSEU's top 1,000 targets in the province.<sup>627</sup> BCLC's anti-money laundering unit cross-referenced this list with the iTrak database, identifying 109 patrons who were on the target list.<sup>628</sup> To these 109 patrons, BCLC added an additional 10 that it understood had significant histories of involvement in organized crime (but were not on the CFSEU list or were not identified during cross-referencing).<sup>629</sup> Of these 119 patrons, 33 were identified as already subject to a long-term barring by BCLC or voluntarily self-exclusion from British Columbia casinos.<sup>630</sup> In an email to Mr. Tottenham dated June 6, 2014, Mr. Karlovcec proposed

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625 Exhibit 148, Tottenham #1, para 108 and exhibit 20; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 46–47.

626 Exhibit 148, Tottenham #1, exhibit 20; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 92–93.

627 Exhibit 148, Tottenham #1, para 109.

628 Ibid, para 109; Exhibit 116, Email from Daryl Tottenham to AML, re CFSEU / High Risk List Review – For Discussion [CFSEU / High Risk Tottenham Email]; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 9.

629 Evidence of J. Karlovcec, Transcript, October 30, 2020, p 10; Exhibit 116, CFSEU / High Risk Tottenham Email.

630 Exhibit 116, CFSEU / High Risk Tottenham Email.

that any of the 119 patrons identified as having an established business relationship with BCLC should be barred for five years, while those who had never entered a gaming facility would not. The email indicated that BCLC required additional information to determine how to move forward with some of those on the list and would reach out to CFSEU for that additional information.<sup>631</sup>

### **SAS Software System**

As BCLC was working to proactively bar known criminals from the province's casinos, it was also taking steps to enhance the analytical capacity of its anti-money laundering unit. After assuming the role of manager of the new unit in 2013, Mr. Karlovcec identified a need for improvements to BCLC's anti-money laundering software, in part to assist in meeting new requirements created by amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, that were scheduled to take effect in February 2014.<sup>632</sup> On May 9, 2014, Mr. Karlovcec completed a business case recommending that BCLC acquire new anti-money laundering software with analytical capabilities.<sup>633</sup> Mr. Karlovcec's recommendation was accepted.<sup>634</sup> While there were challenges in the implementation of the software's reporting functions and that aspect was never implemented,<sup>635</sup> its analytical component was implemented and, according to Mr. Karlovcec, functioned well.<sup>636</sup> Based on Mr. Karlovcec's evidence, the benefits of this analytical component were described in part in the business case as follows:<sup>637</sup>

- Having access to the analytics toolset at the enterprise level will provide the AML team with additional investigative tools to analyze patterns and identify anomalies.
- The casino analytics team captures transactional data that can be leveraged for AML analysis, and help to form a more complete picture of player activity.

Based on the evidence before me, I accept that the enhanced analytics capacity likely improved BCLC's ability to understand patterns in player activity. While I have no concerns about BCLC acquiring and making use of this software, it does not seem to me as though any level of sophisticated analytical capacity was necessary to understand the nature and scale of suspicious cash transactions prevalent in casinos at this time and I see this development as largely distinct from that issue.

631 Exhibit 117, Email from John Karlovcec to Daryl Tottenham, re CFSEU / High Risk List Review – For Discussion (June 6, 2014).

632 Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 140–41; Exhibit 140, AML Compliance & Analytics Enhancement Project Business Case Fiscal 2014/15.

633 Evidence of J. Karlovcec, Transcript, October 30, 2020, p 141; Exhibit 140, AML Compliance & Analytics Enhancement Project Business Case Fiscal 2014/15.

634 Evidence of J. Karlovcec, Transcript, October 30, 2020, p 144.

635 Ibid, pp 144–145; Evidence of R. Alderson, Transcript, September 10, 2021, pp 24–26.

636 Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 144–45.

637 Ibid, pp 143–44; Exhibit 140, AML Compliance & Analytics Enhancement Project Business Case Fiscal 2014/15, p 3.

## **2015 Cash Alternative Proposals**

As it pursued the enhancements to its anti-money laundering regime identified above, BCLC continued to seek to expand upon the cash alternatives offered to casino patrons. In 2015, BCLC proposed the following three changes:<sup>638</sup>

1. To allow cash deposits into PGF accounts at the initial account opening and for subsequent deposits for [VVIPs];
2. To allow [VVIPs] to receive the full amount of cash outs via convenience cheque, without a weekly cheque issuance limit; and
3. To allow PGF overdraft privileges, at no cost, to [VVIPs] who meet specific criteria.

The proposed measures, and their anticipated risks and benefits, were detailed in a document forwarded to GPEB by BCLC in April 2015.<sup>639</sup> The benefits of the proposals identified in this document include elements with some connection to the mitigation of money laundering risk, including possible reductions in suspicious transaction reporting and the creation of an “enhanced audit trail,” as well as other benefits, including improved safety and convenience for patrons and enhanced revenue. Money laundering is actually identified as an associated *risk* of the first proposal, given the inherent risk associated with cash deposits. BCLC proposed to mitigate this risk through verification of the patron’s identify and declaration of the source of funds deposited in the account and by monitoring the usage of the account to ensure the funds deposited were used for gaming.

A further cash alternative – international electronic funds transfers – was also proposed by BCLC in 2015<sup>640</sup> but not addressed in the April 2015 document.

In a letter dated September 1, 2015, Mr. Mazure indicated that the first three proposals had been approved in principle by GPEB, but that additional detail regarding the associated risks was required to allow GPEB to “determine if the recommendations align with GPEB’s expectations in terms of enhanced Customer Due Diligence (CDD) and [“Know Your Customer” practices].”<sup>641</sup> According to the evidence of Mr. Kroeker, who appears to have taken on responsibility for these proposals after joining BCLC in September 2015, BCLC provided further information on these proposals in November 2015, and discussions between GPEB and BCLC continued into 2016 before GPEB advised BCLC that its approval was not, in fact, required for the proposals to permit international electronic funds transfers or to eliminate limits on convenience cheques.<sup>642</sup> BCLC immediately took steps toward implementation of these measures, though I understand that limits on the permissible value of convenience cheques

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638 Exhibit 505, Lightbody #1, exhibit 50; Exhibit 490, Kroeker #1, exhibit 63.

639 Exhibit 490, Kroeker #1, exhibit 63.

640 Exhibit 490, Kroeker #1, para 139 and exhibit 61.

641 Exhibit 505, Lightbody #1, para 50.

642 Exhibit 490, Kroeker #1, paras 139–42 and exhibit 63.

ultimately remained in place.<sup>643</sup> Based on Mr. Kroeker’s evidence, it does not appear that BCLC ever received a firm response from GPEB regarding overdraft privileges for certain VVIP patrons, and this proposal was abandoned.<sup>644</sup> It also does not appear that BCLC moved forward with the proposal to permit funding of PGF accounts with cash, a proposal that seems ill-advised in the context of an attempt to move the industry away from a reliance on cash.

### ***BCLC Efforts to Encourage Police Investigation***

The rise in the volume of cash accepted in the province’s casinos and the apparent increase in cash facilitation activity observed in 2014 was of sufficient concern to BCLC that it believed that investigation by law enforcement was required. While BCLC had been providing information about suspicious transactions in the province’s casinos to law enforcement for many years, in 2014 it enhanced its efforts in this regard by proactively encouraging law enforcement to commence an investigation into the sources of funds used in increasing suspicious transactions. As I describe in detail in Chapter 39, BCLC approached a series of law enforcement agencies and units over the course of 10 months in 2014 and 2015.

These efforts commenced with an overture to CFSEU in April 2014, which showed initial promise but ultimately did not lead to an investigation, as CFSEU eventually advised BCLC that its focus was “guns and gangs” not proceeds of crime.<sup>645</sup> BCLC also approached other law enforcement units and officers, including the Real Time Intelligence Centre, the Richmond RCMP detachment, and BCLC’s former contacts with the RCMP IPOC unit, which by that time had been disbanded.<sup>646</sup> These efforts met a similar fate as those made with respect to CFSEU.<sup>647</sup> I note that, while BCLC appears to have made the most concerted efforts to encourage law enforcement engagement at this time, they were not alone in these attempts. Some of the units contacted by BCLC were also approached by others in the gaming industry in or around this time. Mr. Barber, for example, took the initiative to contact a number of law enforcement agencies about his own concerns about suspicious transactions during his tenure as a GPEB investigator, including CFSEU, the Real Time Intelligence Centre, and the Criminal Intelligence Service British Columbia / Yukon Territory.<sup>648</sup> Similarly, during his tenure with Great Canadian, Mr. Kroeker reached out to the Richmond RCMP detachment in response to a media article regarding possible money laundering at the River Rock, which suggested that placing an RCMP officer in the River Rock

643 Ibid, paras 142, 146; Exhibit 148, Tottenham #1, para 14.

644 Exhibit 490, Kroeker #1, paras 143–44.

645 Exhibit 148, Tottenham #1, paras 102–7, 115–18; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 65–68; Evidence of John Karlovcec, Transcript, October 30, 2020, pp 19–25; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 127–28.

646 Exhibit 148, Tottenham #1, paras 119–22.

647 Ibid.

648 Exhibit 145, Barber #1, para 60; Evidence of R. Barber, Transcript, November 3, 2020, p 137.

surveillance room could resolve the issue.<sup>649</sup> A representative of the Richmond detachment responded to Mr. Kroeker as follows:<sup>650</sup>

As you recall I used to work at IPOC for over a decade and conducted numerous money laundering investigations and have a real in-depth understanding of money laundering... [W]e as the police force of jurisdiction are very satisfied with the regimes, policies, and procedures followed by the River Rock, BCLC, FINTRAC, BC Gaming Branch and the police to prevent the activity. We do not have a concern about money laundering at the River Rock. You can tell from the news article, we were not approached or consulted. The solution of a police officer on the floor or surveillance room will not likely stop any sophisticated money laundering operation, anywhere, and I don't believe the casinos in BC can even be a participant in a sophisticated organized money laundering process with the existing reporting regimes ... designed to prevent the activity. I know that "proceeds of crime" could potentially be gambled, however, without [an] extensive investigation by police, the casinos would never be able to determine the source of all funds spent in their facilities.

As discussed in Chapters 3 and 39, approximately 10 months after it initially approached CFSEU, BCLC achieved its goal of persuading a law enforcement unit to investigate the sources of cash used in suspicious transactions at the province's casinos. In February 2015, the RCMP Federal and Serious Organized Crime unit agreed to assign a few investigators to examine the issue, due in part to Mr. Desmarais leveraging a personal relationship with one of the unit's senior officers.<sup>651</sup> After several days of surveillance conducted over the span of approximately three months, the Federal and Serious Organized Crime unit confirmed a "direct link" between the suspicious cash provided to patrons at the River Rock and an illegal cash facility in Richmond,<sup>652</sup> leading to the commencement of the E-Pirate investigation described in detail in Chapter 3.

### ***Initial Conditioning of VIP Patrons***

In November 2014, as it struggled to encourage CFSEU to take interest in the large and suspicious cash transactions occurring with greater frequency in the gaming industry, BCLC began to take action itself to limit the ability of a VIP patron, identified earlier in this chapter as "Patron A," to play with cash. Seemingly for the first time, BCLC imposed conditions on a VIP player with a recent history of extraordinarily large cash buy-ins that prohibited that patron from buying-in with cash. While it appears that this initial, limited effort was an *ad hoc* attempt to respond to a single patron engaged

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649 Evidence of R. Kroeker, Transcript, January 25, 2021, pp 98–100; Exhibit 490, Kroeker #1, para 61 and exhibit 13.

650 Exhibit 490, Kroeker #1, exhibit 13.

651 Evidence of B. Desmarais, Transcript, February 1, 2021, p 118; Exhibit 522, Desmarais #1, paras 76–78; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 65–66, 104–5.

652 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–122; Exhibit 522, Desmarais #1, paras 76–78 and exhibit 55; Evidence of R. Alderson, Transcript, September 9, 2020, pp 41–43.

in concerning activity, it would eventually evolve into a more systematic program aimed at requiring certain VIP patrons regularly buying-in with large amounts of cash to provide proof of the source of their funds if they wished to continue playing with cash or other bearer monetary instruments.

According to a report of findings prepared by the GPEB investigation division, on a single night spanning September 24 and 25, 2014, Patron A bought-in for a total of over \$1 million, almost entirely in \$20 bills, at the River Rock Casino.<sup>653</sup> On two occasions that evening, having exhausted or nearly exhausted his supply of casino chips, Patron A was observed making a phone call and obtaining approximately \$500,000 in cash from vehicles he met on casino property.<sup>654</sup>

Approximately three weeks later, on October 18, 2014, again at the River Rock, Patron A was observed receiving a phone call and then meeting a vehicle in the casino parking lot at 3 a.m. Patron A retrieved a shopping bag containing \$645,105 in cash packaged in bricks and wrapped in elastic bands.<sup>655</sup> That afternoon, Mr. Karlovcec sent an email to several BCLC and Great Canadian employees, including Mr. Desmarais, Mr. Ennis, and Mr. Kroeker.<sup>656</sup> In his email, Mr. Karlovcec noted that the previous incident on September 24 and 25 had “caused GPEB investigations to go on a rampage” and that the October 18 incident would “no doubt fuel Larry [Vander Graaf] and Joe [Schalk]’s fire.”<sup>657</sup> Mr. Karlovcec suggested further discussion of the incident at an upcoming meeting.<sup>658</sup>

In the two weeks that followed, Great Canadian made a number of attempts to speak with Patron A to warn him about the risks of obtaining large quantities of cash from cash facilitators and to encourage him to use his PGF account or other cash alternatives.<sup>659</sup> It appears that Patron A was also spoken with twice by BCLC staff, including one conversation with Mr. Desmarais himself.<sup>660</sup> Despite these efforts, on November 26, 2014, BCLC placed Patron A on conditions that prohibited him from buying-in with cash if he could not provide proof that he obtained that cash from a legitimate source.<sup>661</sup>

A second patron, Patron B, was placed on similar conditions on April 14, 2015, following a series of extremely large cash buy-ins using cash obtained from cash facilitators.<sup>662</sup> As with Patron A, BCLC allowed service provider staff an opportunity to

653 Exhibit 181, Vander Graaf #1, exhibit P.

654 Ibid.

655 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 58–63; Exhibit 78, Beeksma #1, exhibit D; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 40.

656 Exhibit 127, Email from John Karlovcec to Brad Desmarais, re FW Unusual Financial Transaction.

657 Ibid.

658 Ibid.

659 Exhibit 559, Soo #1, paras 86–91 and exhibits L, M, N, O, P, Q, R.

660 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 103–6; Exhibit 522, Desmarais #1, exhibit 12.

661 Exhibit 148, Tottenham #1, para 79 and exhibit 6; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 80–82; Exhibit 505, Lightbody #1, para 84 and exhibit 26; Exhibit 522, Desmarais #1, para 39.

662 Exhibit 148, Tottenham #1, paras 82–83; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 124–45.

speak with Patron B before he was placed on conditions in the hope that they would be able to “rein him in.”<sup>663</sup> Mr. Tottenham recalled that when Patron B was placed on conditions, Great Canadian management expressed concern that the River Rock would lose the patron’s business,<sup>664</sup> but following a short drop-off in his play, and apparent attempts to circumvent the conditions by using unsourced chips,<sup>665</sup> Patron B began depositing substantial bank drafts ranging from \$100,000 to \$1 million into his PGF account.<sup>666</sup>

Shortly after Patron B was placed on conditions, the process for doing so was formalized in a written protocol by BCLC.<sup>667</sup> As I discuss in Chapter 11, this formal cash conditions program would slowly continue to evolve and expand in the years followed, eventually resulting in the placement of hundreds of patrons on conditions; however, even as the program evolved, Lower Mainland casinos continued to accept substantial sums of suspicious unsourced cash.

### ***Revenue and Patron Relationship Considerations in Imposing Conditions on VIP Patrons***

I recognize that the decision to place these patrons on conditions was a measure designed to reduce suspicious cash being accepted by British Columbia casinos. In my view, however, it is important to recognize that there are indications in the record before me that BCLC’s actions in this regard were tempered by concerns for the impact of these measures on revenue and on relationships between service providers and these patrons. This is observed in BCLC’s willingness to make concessions to service providers in the manner in which it approached this process and in internal BCLC email correspondence.

It is clear from the record before me that, prior to the imposition of conditions on Patron A, BCLC agreed to adjust its process for speaking with VIP patrons in response to Great Canadian’s concerns about its relationships with these patrons. In October 2014, representatives of Great Canadian initiated a meeting with BCLC to discuss their concerns about the manner in which BCLC investigators had approached a VIP patron at the River Rock and the potential impact these actions could have on their relationship with the patron.<sup>668</sup> In response to these concerns, BCLC agreed to adjust its process such that it would be service provider staff that initially interacted directly with patrons.<sup>669</sup>

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663 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 126–27.

664 Exhibit 148, Tottenham #1, para 83.

665 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 150–58; Evidence of D. Tottenham, Transcript, November 10, 2020, p 192; Exhibit 1033, Email from Brad Desmarais, re Gao latest (April 27, 2015), p 2.

666 Exhibit 148, Tottenham #1, para 84.

667 Evidence of B. Desmarais, Transcript, February 2, 2021, p 106.

668 Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 38–40; Exhibit 126, Email from John Karlovcec to Patrick Ennis, re Meeting to Discuss Protocol for Approaching VIP Players (October 17, 2014); Evidence of D. Tottenham, Transcript, November 4, 2020, pp 94–98; Evidence of P. Ennis, Transcript, February 3, 2021, pp 104–8.

669 Evidence of D. Tottenham, Transcript, November 4, 2020, p 98.

The impact of this change in process is evident in the events leading up to the conditions imposed on the two patrons discussed above. In each case, service providers were provided multiple opportunities to persuade the patron to cease their concerning activity before they were placed on conditions. In the case of Patron B, more than two months elapsed between BCLC’s initial request that Grand Villa staff speak to the patron and the ultimate imposition of conditions.<sup>670</sup> During that time, Patron B was permitted to continue buying-in with unsourced chips and large amounts of cash dropped off to him at casinos.<sup>671</sup>

That revenue was on the minds of those within BCLC responsible for making decisions about how to proceed with patrons engaged in suspicious transactions is also evident from internal BCLC emails at this time. On December 31, 2014, for example, Mr. Karlovcec wrote to Mr. Desmarais about the activity of a patron who had bought-in for \$1.8 million over the course of seven days, mostly in small bills.<sup>672</sup> Mr. Karlovcec suggested that BCLC ask River Rock management to speak with the patron and monitor his activities, but made the following comments about possible further steps if these actions did not have their intended effect:

I recognize that we do not want to jeopardize revenue however if the dialogue does not garner the intended results we may need to have our investigators have a chat with him and/or look at imposing additional restrictions relative to his use of cash to play.

Approximately five months later, Mr. Alderson, based on a direction from Mr. Desmarais, asked BCLC staff to advise him and another BCLC manager prior to “suspending, barring, or putting conditions on any of the VVIP players which may impact revenue.”<sup>673</sup> Mr. Alderson explained in his evidence that he was new in his role at the time this email was sent and that he understood there had been “pushback” from service providers in response to action taken with respect to one player. Mr. Desmarais had requested he be “kept in the loop” so that he could have discussions with service providers about such measures in the future.<sup>674</sup> This requirement was eventually lifted as interview protocols were established.<sup>675</sup>

I accept that neither of these emails amount to an explicit direction or acknowledgment that conditions or other sanctions should not be placed on VIP patrons due to revenue considerations. Rather, both emails contemplate the imposition of these types of measures *despite* the possible impact on revenue. Still, these emails indicate that the impact on revenue was on the minds of BCLC staff

670 Exhibit 148, Tottenham #1, para 83; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 124–27.

671 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 121–123, 139–41, 143–49.

672 Exhibit 148, Tottenham #1, exhibit 7; Evidence of D. Tottenham, Transcript, November 4, 2021, pp 112–16; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 47–50.

673 Evidence of R. Alderson, Transcript, September 10, 2021, pp 59–60; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 167–69; Exhibit 148, Tottenham #1, exhibit 118.

674 Evidence of R. Alderson, Transcript, September 10, 2021, pp 57–58.

675 Ibid, p 60.

tasked with imposing these conditions and safeguarding the province’s casinos from money laundering, and may have affected the speed with which cash conditions were pursued in respect of some patrons.

## **BCLC Communications Regarding Large Cash Transactions**

There is evidence before me that, in late 2014, even as BCLC was urging multiple law enforcement units to commence an investigation into the sources of cash used in British Columbia casinos and prohibiting some of the province’s most prolific gamblers from using cash, BCLC continued to resist the view that this cash was the proceeds of crime and connected to money laundering. This is evident in BCLC’s communications with senior government officials and its own staff in late 2014 and early 2015.

### **2014 Yak Article**

Earlier in this chapter, I discussed two articles written by Mr. Desmarais in 2013 that appeared in BCLC’s internal newsletter, the *Yak*, which challenged the notion that money laundering was occurring in the province’s casinos and proposed legitimate explanations for the source of the large amounts of cash increasingly used by patrons. A further two-part article written by Mr. Desmarais appeared in the newsletter on November 3 and 14, 2014, titled “Setting the Record Straight on Money Laundering in BC Casinos.”<sup>676</sup> In part one of this article,<sup>677</sup> Mr. Desmarais noted recent media reporting on suspicious financial transactions in gaming facilities and indicated that the purpose of the article was to “set the record straight.” In attempting to explain what money laundering is, Mr. Desmarais suggested that the “high levels of security and surveillance in addition to policies and procedures” in effect in casinos were a deterrent to money laundering and asserted that “if a player comes in with a large amount of cash and plays for a while, then decides to cash out their chips – they will receive cash back. This is not money laundering.”<sup>678</sup> In responding to the question, “Where does all of this cash come from?” Mr. Desmarais offered several possible sources, without acknowledging the possibility that these funds could be the proceeds of crime.<sup>679</sup>

It’s been reported that tens of millions of dollars come into Canada through YVR every year, mainly from China. It is not illegal to bring money into Canada if it’s reported (although it may not be legal in China to take money out of the country). This is one source.

The other source may be the underground economy such as contractors or others who do business in cash. Finally, there are those who prefer to

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676 Exhibit 522, Desmarais #1, para 65 and exhibits 39, 40; Exhibit 166, Hiller #1, exhibit T.

677 Exhibit 522, Desmarais #1, exhibit 39.

678 Ibid, p 219 and exhibit 39.

679 Ibid, exhibit 39.

use cash and, until just a few years ago, there were few options to play with anything other than cash. We have made progress in moving players over to traceable, non-cash alternatives, but this will take time.

Part two of the article indicated that, in British Columbia, casinos accounted for only 1.96 percent of large cash transaction reports made to FINTRAC between 2010 and 2013 and described BCLC's acquisition of new anti-money laundering software and the information-sharing agreement with the RCMP completed in January 2014.

It is difficult to reconcile Mr. Desmarais's comments in part one of this article, reproduced above, with the imposition of the first cash conditions on a casino patron only a few weeks later and, in particular, with the ongoing efforts he and those under his direction were making to encourage law enforcement to investigate the large volumes of cash that patrons were using to buy-in in British Columbia casinos. If Mr. Desmarais believed that the large cash transactions observed in casinos could be explained through importation, cash derived from cash-based businesses, or patron preference, there would be little reason for police investigation.

Mr. Hiller testified that he had similar concerns about Mr. Desmarais' article.<sup>680</sup>

Again, I was very concerned that – of a viewpoint that was likely correct to some degree that these were possibilities of cash coming into the casino, but I was concerned about the article because it didn't contain the most likely concern ... that the money was coming from organized crime.

Mr. Hiller's evidence was that he shared these concerns with his supervisor by way of an email in which he had embedded his own comments in the text of the article. He received no substantive response to this email.<sup>681</sup>

Mr. Desmarais testified that his purpose in writing this article was to assure employees that BCLC was not knowingly engaging criminals inside casinos, and that it was not his intention to suggest that casinos could not receive proceeds of crime. He acknowledged that he understood that there was a real risk at this time that proceeds of crime were being used inside casinos.<sup>682</sup> I cannot accept this explanation in light of the contents of this article. In the article, Mr. Desmarais directly addressed the question of "Where does all of this cash come from?" He offered three possible answers to this question, none of which involved cash sourced from illicit activity. I accept that Mr. Desmarais may well have wanted to offer some assurance to BCLC employees in the wake of troubling media coverage. In doing so, however, I find that he provided those employees with misleading information that minimized the risk of money laundering that Mr. Desmarais knew faced the gaming industry at this time.

680 Evidence of M. Hiller, Transcript, November 9, 2020, p 61.

681 Exhibit 166, Hiller #1, para 87, exhibits U, V; Evidence of M. Hiller, Transcript, November 9, 2020, pp 59–63.

682 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 96–97.

### **January 2015 Meeting with Cheryl Wenezenki-Yolland**

Mr. Desmarais offered similar views in a meeting with associate deputy minister, Cheryl Wenezenki-Yolland, in January 2015, several months after BCLC had begun asking law enforcement to investigate suspicious transactions and following the imposition of cash conditions on one casino patron. Mr. Desmarais, Ms. Wenezenki-Yolland, and Mr. Meilleur all gave evidence of this meeting. While it is clear from their descriptions of the meeting that all four were describing the same event, Mr. Desmarais recalled that it took place in December 2014 and Ms. Wenezenki-Yolland and Mr. Meilleur both testified that it occurred in January 2015.<sup>683</sup> The month in which the meeting took place is not particularly material, but the contents of the discussion that took place at the meeting are.

In her affidavit, Ms. Wenezenki-Yolland indicated that Mr. Desmarais suggested in this meeting that increasing suspicious cash transactions could be explained by cultural preferences and the use of *hawala*.<sup>684</sup>

In response to questions during his presentation, Mr. Desmarais described what he thought was behind the increase in [suspicious cash transactions]. I understood Mr. Desmarais to be suggesting that some of the suspicious cash entering BC casinos could be explained as the result of cultural practices. He explained that foreign visitors had a preference for cash and that they may have been obtaining this cash through a practice known as hawala.

I had not heard of hawala prior to this presentation, but based on my knowledge of finance and banking regulations, this explanation was concerning to me. I recall telling Mr. Desmarais that if his theory was true, BCLC should not be accepting this cash and that government would not want that business.

Mr. Desmarais agreed that he advised Ms. Wenezenki-Yolland that large cash transactions in the province's casinos could be partly attributable to underground banking. Mr. Desmarais recalled that he indicated that cash facilitation could be a component of underground banking but could not recall if he mentioned the suspected connection between cash facilitators and criminality or that BCLC had been meeting with CFSEU about cash facilitators.<sup>685</sup>

Based on Ms. Wenezenki-Yolland's recollections of and reaction to this meeting, I am satisfied that the focus of Mr. Desmarais's presentation was on the possibility that the source of the suspicious cash observed in casinos was underground banking and that he did not emphasize suspected links between cash facilitation and

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683 Exhibit 922, Affidavit #1 of Cheryl Wenezenki-Yolland, sworn on April 8, 2021 [Wenezenki-Yolland #1], para 96; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 84–85, 117–18; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 40–41; Evidence of L. Meilleur, Transcript, March 10, 2021, pp 93–94.

684 Exhibit 922, Wenezenki-Yolland #1, paras 97–98.

685 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 117–18.

criminality.<sup>686</sup> As with the article written in the *Yak* by Mr. Desmarais approximately two months earlier, I have difficulty understanding how, at a time when BCLC’s concern about the origins of these funds was so great that it was actively seeking police intervention, Mr. Desmarais could have neglected to focus on the likelihood that they were the proceeds of crime. Clearly, this was a material omission, and I find that this omission had the effect of misleading Ms. Wenezenki-Yolland and, by extension, the minister, whom Ms. Wenezenki-Yolland subsequently briefed on Mr. Desmarais’ presentation.<sup>687</sup>

## **GPEB Response to Rising Large and Suspicious Cash Transactions**

In 2014 and into the early part of 2015, GPEB also responded to the increase in large cash transactions and cash facilitation observed in the industry. In GPEB’s case, this response took the form of efforts to identify action to be taken as part of phase three of the anti-money laundering strategy developed in 2011. As these efforts were underway, however, GPEB also undertook a major organizational review and restructuring that led to significant turnover in the senior staff responsible for GPEB’s anti-money laundering response. While I do not suggest that there was anything improper or inappropriate about this review or the restructuring decisions that flowed from it, it appears that this undertaking divided GPEB’s attention at a critical juncture and ultimately slowed its response to the growing suspicious activity in British Columbia’s casinos.

## **Efforts to Define Phase Three of the Provincial Anti-Money Laundering Strategy**

Mr. Mazure testified that, in January or February 2014, he became aware of an increase in the rate of suspicious transactions occurring in the province’s casinos.<sup>688</sup> He testified that, in response to this increase, he indicated to GPEB’s anti-money laundering working group that there was a growing sense of urgency with respect to this issue and encouraged the group to “move things along a little bit quicker.”<sup>689</sup> While I do not doubt that Mr. Mazure pressed his staff to increase the pace of its work, I note that, at this stage, GPEB was continuing its efforts to determine the content of phase three of the provincial anti-money laundering strategy developed in 2011 and 2012, which was originally scheduled for implementation in December 2013.

<sup>686</sup> Mr. Meilleur’s evidence in this regard is not clarifying. The transcript of his evidence indicates that Mr. Meilleur suggested that Mr. Desmarais attributed “the cash coming into casinos for certain patrons” to a “money laundering culture.” Upon review of the recording of his evidence, however, it appears that Mr. Meilleur actually said “money lending culture.” In the broader context of Mr. Meilleur’s evidence, I believe that he meant to say “money lending culture”: Evidence of L. Meilleur, Transcript, February 12, 2021, pp 41–42.

<sup>687</sup> Exhibit 922, Wenezenki-Yolland #1, para 99.

<sup>688</sup> Evidence of J. Mazure, Transcript, February 5, 2021, p 23.

<sup>689</sup> Ibid.

### ***Malysh Associates Consulting’s “Client Due Diligence in BC Casinos” Report***

In September 2014, Malysh Associates Consulting Inc. produced a report titled “Client Due Diligence in BC Casinos” for GPEB’s anti–money laundering working group.<sup>690</sup> Mr. Mazure’s evidence was that the report was intended to inform GPEB’s efforts to identify the type of action that could be taken as part of phase three of the anti–money laundering strategy.<sup>691</sup> The purpose of the report is described in the “terms of engagement” set out on page three of the document:<sup>692</sup>

We were asked to develop information relating to the management practices used by deposit-taking institutions, money service businesses, brokerage firms, and gaming businesses for cash deposit transactions.

Our report summarizes best practices based upon experiences of businesses that are required to maintain an AML compliance regime under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its Regulations.

Additionally, we are to report on other AML compliance issues that we may encounter during our research to assist GPEB with conducting a gap analysis of their AML policies.

In describing the anti–money laundering practices of deposit-taking institutions related to cash deposits, the report notes that:<sup>693</sup>

Banks used to allow their clients to deposit large quantities of cash without questioning its source. Since the enactment of AML laws, banks routinely conduct [know your customer / customer due diligence] inquiries to deter [money laundering / terrorist financing] activities. This includes asking clients the source of funds and making a record of the response.

The report goes on to explain that, in such institutions, “[w]hen cash over \$10,000 is tendered, a supervisor will interview the client to determine the source of funds and other related questions to ensure the deposit is of non-criminal origin”<sup>694</sup> and that some institutions require customers to complete and sign a source-of-funds declaration.<sup>695</sup> It further notes that most deposit-taking institutions “have adopted a policy to exit a client relationship if more than [three suspicious transaction reports] have been filed against the client”.<sup>696</sup>

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690 Exhibit 181, Vander Graaf #1, paras 87–88 and exhibit CC.

691 Exhibit 541, Mazure #1, para 73.

692 Exhibit 181, Vander Graaf #1, exhibit CC, p 3.

693 Exhibit 181, Vander Graaf #1, exhibit CC, p 11; Evidence of L. Meilleur, Transcript, February 12, 2021, p 12.

694 Exhibit 181, Vander Graaf #1, exhibit CC, p 12.

695 Ibid.

696 Ibid, exhibit CC, p 11.

In respect of gaming businesses, the report provides that the consultants conducted a survey of compliance officers of casinos in Canada, Nevada, and Washington state.<sup>697</sup> The report noted that the “current US [money laundering] issue is to conduct [customer due diligence] for determining source of wealth and source of funds.”<sup>698</sup> It provided that “[s]ource of funds and source of wealth interviews are becoming normal procedures as FINCEN is developing policy initiatives to increase [know your customer / customer due diligence] activities.”<sup>699</sup> It further explained that casinos in Ontario “will not allow more than \$10,000 to \$15,000 cash/in. These large deposits trigger a [customer due diligence] interview to learn the source of funds. The interview is usually conducted by [an] [Ontario Provincial Police] police officer [stationed at the casino].”<sup>700</sup>

The report concluded with two recommendations, made in response to the direction to the consultants to “comment on any gaps [they] encountered that may assist GPEB in its role as regulator of the gaming industry.”<sup>701</sup> The first of these called for the creation of an “AML compliance regime regulation”.<sup>702</sup>

We believe that GPEB could greatly enhance its leadership in AML compliance by creating an AML compliance regime regulation under the Gaming Control Act/Regulations. Additionally, a companion Guideline for Deterring and Detecting Money Laundering should be implemented to establish the policy expectations of the new regulation. Alternatively, a Public Interest Directive could be issued to establish GPEB’s AML program.

The intention is to direct gaming industry businesses in their responsibility to develop and maintain robust AML compliance programs that meet GPEB’s governance and control expectations.

The Guideline is not to replace the federal guidelines published by FINTRAC nor create any new requirements under federal legislation.

They are to establish the “tone at the top” and provide industry specific policy for AML compliance expectations.

As an example, if GPEB wants specific policy for the determination of source of funds, the policy expectation can be specified in the Guideline. Gaming businesses can determine the procedures required to comply with policy.

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697 Ibid, exhibit CC, p 22.

698 Ibid.

699 Ibid, exhibit CC, p 23.

700 Ibid.

701 Ibid, exhibit CC, pp 27–28.

702 Ibid, exhibit CC, p 27.

The second recommendation made in the report was to establish a “police-accredited unit” to perform a number of functions identified below:<sup>703</sup>

GPEB currently does not have resources dedicated to criminal intelligence and crime analysis relating to the gaming industry.

Further, the province does not have dedicated police officers responsible for gaming related investigations and prosecutions.

GPEB should consider establishing a police-accredited unit to provide policing services for the gaming industry, including but not limited to:

- criminal intelligence and risk analysis
- investigations and prosecutions
- liaison with police departments in communities that host casinos
- information sharing program between GPEB, the BC police community, FINTRAC, and other law enforcement agencies
- assist GPEB’s Special Provincial Constables with conducting intelligence inquiries
- annual reporting to GPEB executive on the overall risks to gaming
- subject-matter experts in gaming industry related issues

Len Meilleur, who was the executive director of GPEB’s registration and certification division at the time the report was completed, was also a member of a GPEB subcommittee focused on customer due diligence.<sup>704</sup> He testified that this report was received by the subcommittee and that the subcommittee discussed the example raised in the report of a policy related to determination of the source of funds used in the gaming industry.<sup>705</sup> Mr. Meilleur’s view was that the creation of such a policy would have required that the general manager of GPEB receive a direction to that effect.<sup>706</sup>

Mr. Mazure was also asked about the recommendation that GPEB create an anti-money laundering compliance regime regulation and the example offered in that report of a policy for determination of source of funds as part of that regulation.<sup>707</sup> In response, Mr. Mazure testified that the notion of requiring service providers to obtain source-of-funds declarations had arisen within GPEB prior to this report and that the report would

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703 Ibid, exhibit CC, p 28.

704 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 10–11; Exhibit 587, Affidavit #1 of Joseph Emile Leonard Meilleur, made on February 9, 2021 [Meilleur #1], paras 20–21.

705 Evidence of L. Meilleur, Transcript, February 12, 2021, p 17.

706 Ibid.

707 Evidence of J. Mazure, Transcript, February 5, 2021, pp 38–41, 186–90.

have offered some endorsement of this option.<sup>708</sup> Mr. Mazure acknowledged, however, that no steps were taken at this time to implement this recommendation, linking this inaction to uncertainty as to the extent of GPEB's authority:<sup>709</sup>

[W]e were reviewing this. And this particular one is interesting in the way it's worded ... I think we need[ed] to do a little bit of work going back to the reviewer because some of the language here that's used ... we needed to better understand exactly what they were talking about, like a companion guideline for ... detecting the money laundering.

I'm not sure even to this day what that means. I might have known at the time, but I think we had to further explore that. And then – within our legislative framework, I guess is what I'm saying. I'm not sure ... the language used here necessarily translates to that. So, we would have looked at okay, what is he really getting at here and ... what are the mechanisms around under our legislation that would allow us to do that. So there was ... some more work that was required there.

Mr. Mazure went on in his evidence to suggest that GPEB “would have” obtained a legal opinion as to whether a policy of the sort proposed was consistent with the relevant statutory provisions, but did not seem to have an actual recollection of having done so, or any advice that GPEB received.<sup>710</sup> He suggested that the fact that GPEB did not pursue this type of measure later in his tenure meant that there must have been a reason why GPEB could not do so, but he could not recall what that reason was:<sup>711</sup>

We didn't explore it later on in my tenure, so to me that suggests there was sort of some reason why we couldn't do it. And I just cannot for the life of me remember what that was.

While GPEB did not unilaterally seek to implement a measure of this sort during Mr. Mazure's tenure, GPEB did eventually, in September 2015, seek a directive from the minister responsible for gaming. In doing so, GPEB put forward to the minister example directives that included measures aimed at requiring verification of the source of funds.<sup>712</sup> That GPEB sought the minister's intervention at that time supports Mr. Mazure's evidence that GPEB likely concluded that it did not have the unilateral authority to implement such measures itself. I address these proposed directives and the minister's response in Chapter 11.

708 Evidence of J. Mazure, Transcript, February 5, 2021, pp 40–41, 190–92.

709 Ibid, p 192.

710 Ibid, p 194.

711 Ibid, p 194.

712 Exhibit 553, MOF Briefing Document, Options for Issuing Anti-Money Laundering Directives to BCLC (September 1, 2015).

## January 2015 Briefing Document

GPEB continued to consider the actions it could take as part of phase three of the anti-money laundering strategy following receipt of the report prepared by Malysh Associates Consulting Inc. In January 2015, Mr. Mazure directed Terri Van Sleuwen, then an executive director with GPEB responsible for the Branch’s audit program,<sup>713</sup> to prepare a briefing document identifying actions that GPEB could take to “ensure that the integrity of BC’s gambling industry is protected from those that would attempt to use the industry to legitimize funds and proceeds resulting from criminal activities.”<sup>714</sup>

In response to this direction, Ms. Van Sleuwen prepared a briefing document titled “Minimizing Unlawful Activity in BC Gambling Industry” dated February 6, 2015. The report identified that phases one and two of the anti-money laundering strategy were substantially complete and that the completion of the Malysh and Associates report was part of phase three.<sup>715</sup> While the document indicated that phase three of the strategy had commenced at this stage, it also made clear that GPEB was still in the process of developing “potential direct intervention options.”<sup>716</sup> I find accordingly that, more than a year after the scheduled December 2013 implementation of phase three of the anti-money laundering strategy, GPEB continued to work to determine the action that would form part of that phase of the strategy and had not yet commenced the direct “regulator intervention” contemplated if the introduction and promotion of cash alternatives undertaken in the first two phases of the strategy failed to yield satisfactory results, which it is clear they had.

In this briefing document, Ms. Van Sleuwen made the following recommendation:<sup>717</sup>

- A multi-prong approach should be considered as there are areas where we need to be prescriptive because our tolerance for risk is less and other areas where we can provide general expectations because our tolerance for risk is higher.
- Initiate a multi-prong approach which includes the following components:
  - Make changes to the *Gaming Control Act Regulation*: introduce regulations that provide high level expectations for the BC gambling industry to prevent unlawful activities at BC casinos, particularly, in relation to anti-money laundering.
  - Introduce a public interest standard, excluding the enhanced procedures, and a regulation change which requires that service providers, as a condition of their registration, must comply with

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713 Exhibit 1044, Affidavit #1 of Terri Van Sleuwen, sworn on August 23, 2021.

714 Exhibit 542, MOF Briefing Document, Minimizing Unlawful Activity in BC Gambling Industry (February 6, 2015), p 1.

715 Ibid, p 1.

716 Ibid, p 4.

717 Ibid, p 8.

Enhanced Cash Transaction Handling Procedures and Enhanced Reporting Requirements, as outlined above, as established by GPEB.

- Prepare a directive to BCLC to outline GPEB participation in building a Patron Banning Strategy which may include: BCLC and service provider banning criteria; circumstances where GPEB would ban a patron; and, timeframes for bans.
- Solicit input from GPEB AML Working Groups and Industry Working Group during development and implementation stages.

The “Enhanced Cash Transaction Handling Procedures” and “Enhanced Reporting Requirements” referred to in these recommendations were also set out in this briefing document.<sup>718</sup> The proposed cash transaction handling procedures included a number of measures that would have restricted the use of cash in casinos, including:<sup>719</sup>

- Cash transactions (in bundles and denominations of \$20) received in excess of prescribed amount cannot be accepted.
- No cash transactions allowed in high limit rooms.
- Mandatory use of PGF accounts for transactions in excess of prescribed amount.
- Establish a maximum amount of small denomination bills for casino buy-in by a single patron

Mr. Mazure testified that he viewed the recommendations set out in this briefing document as being very ambitious for the time.<sup>720</sup> He understood that he did not have the authority to implement those recommendations himself and that that involvement of the associate deputy minister and minister would have been required.<sup>721</sup> Mr. Mazure could not recall with certainty whether he forwarded the briefing document to these senior levels of government but was “fairly certain” he did not “take [it] forward.”<sup>722</sup> Mr. Mazure suggested that, instead of advancing this recommendation to government, GPEB began discussing these changes with BCLC and other stakeholders, including as part of a workshop held in June 2015,<sup>723</sup> which I discuss in Chapter 11.

During his testimony, Mr. Mazure was asked specifically about the suggestion in the briefing note that a term and condition of registration be established limiting the amount of cash that service providers could accept in \$20 bills.<sup>724</sup> Mr. Mazure

718 Ibid, p 7.

719 Ibid.

720 Evidence of J. Mazure, Transcript, February 5, 2021, pp 47–49.

721 Ibid, pp 49–50.

722 Ibid, p 49.

723 Ibid, p 51.

724 Ibid, pp 52–54.

agreed that he understood that, as general manager, he had the authority to set terms and conditions of registration without any outside approval.<sup>725</sup> Mr. Mazure could not recall, given his understanding of his authority, why he did not implement this particular measure. He suggested that he likely would have obtained legal advice on the matter and that the reason why it was not implemented may have been connected to the prohibition on GPEB infringing on BCLC's mandate to "conduct and manage" gaming.<sup>726</sup>

Given the limits of Mr. Mazure's memory, I am left with an unsatisfying account of what was done with the recommendations made by Ms. Van Sleuwen and, in particular, why the limits on cash transactions proposed in those recommendations were not implemented. Based on Mr. Mazure's evidence, however, and the absence of any evidence to the contrary, I am able to find that neither this briefing document nor the recommendations contained within it were forwarded to Ms. Wenezenki-Yolland or to the sitting minister responsible for gaming. As I discuss in Chapter 11, it is clear that in the years that followed this briefing document, Mr. Mazure became increasingly frustrated by what he perceived to be BCLC's inaction with respect to large and suspicious cash transactions in the Ministry of Finance's casinos. In that context, the absence of any evidence that GPEB meaningfully pursued these measures suggests that, even as he criticized his counterparts at BCLC for their failures to act, Mr. Mazure and GPEB had not exhausted all avenues available to respond to the issue themselves.

## **2014 GPEB Review and Reorganization**

As GPEB considered its response to the increasing large cash transactions taking place in the industry it was responsible for regulating, it was also engaged in an organizational review and, eventually, reorganization. A few months into his tenure with GPEB, Mr. Mazure initiated this review, which was conducted by the province's Strategic Human Resources Branch.<sup>727</sup> In his affidavit, Mr. Mazure described the origins and purpose of the review:<sup>728</sup>

By late November 2013, I had several conversations with Ms. Wenezenki-Yolland about lacking sufficient information regarding GPEB's operations, challenges, and opportunities in several areas. I expressed a need for this information to chart a course for GPEB and to better position the organization to meet its mandate in a rapidly evolving gaming environment.

This led to a review of GPEB by the Ministry of Finance Corporate Services Division Strategic Human Resources Branch. This review was intended to further identify areas where additional information was required and to get an independent, unbiased view of what the organization was doing to help inform future direction and actions.

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725 Ibid, p 53.

726 Ibid, pp 53–54.

727 Exhibit 541, Mazure #1, paras 78–86; Exhibit 922, Wenezenki-Yolland #1, paras 59–63.

728 Exhibit 541, Mazure #1, paras 78–83.

The review was not about personalities or individual performance, but about determining what GPEB was doing, whether it was getting results.

I did not believe that GPEB had the capacity to manage this review internally. I was familiar with the Strategic Human Resources Branch of the Ministry of Finance and their capacity to conduct such reviews from my previous experience with the Ministry of Finance.

The Strategic Human Resources Branch conducted the review using their own methodology. I was the executive sponsor of the review with the support of Ms. Wenezenki-Yolland.

I met with the person overseeing the review in late January 2014 and the review got underway in April 2014.

Mr. Mazure expanded upon some of the issues that motivated the review in his oral evidence.<sup>729</sup> He explained that he hoped to “get a sense of what [GPEB was] actually doing and whether it was serving our ends, whether we were focusing on the right things, whether we were being effective.”<sup>730</sup> Mr. Mazure also identified specific concerns he had at the time about low morale within the organization generally and about his perception that the GPEB audit and investigation divisions were working in silos.<sup>731</sup>

The results of this review were set out in a September 18, 2014, report.<sup>732</sup> These results were expressed, in part, through the identification of 20 “main themes and issues,” which were categorized into the following four categories:<sup>733</sup>

1. “Maintain performance” – themes and issues not deemed significant concerns and which are recommended to continue at current levels as much as possible;
2. “Improve performance” – programs, services and/or issues that “require enhancing in the area of quality of delivery, quantity, timeliness, or costs”;
3. “Establish performance” – issues “where nothing is being done, and actions or strategies need to be put in place”; and
4. “Extinguish performance” – “issues that GPEB must stop.”

Of particular relevance to the mandate of this Commission, the issues included in the “improve performance” category included “Investigations Leadership, Priorities,

<sup>729</sup> Evidence of J. Mazure, Transcript, February 5, 2021, p 86–87.

<sup>730</sup> Ibid, p 86.

<sup>731</sup> Ibid, pp 86–87.

<sup>732</sup> Exhibit 546, MOF Gaming Policy and Enforcement Branch Review (September 18, 2014).

<sup>733</sup> Ibid, pp 4–5, 23–24.

Quality of Files and Staff Competence”<sup>734</sup> and “Enhance Relationships with Key Stakeholders.”<sup>735</sup> With respect to the first of these, the report noted that “[i]nterviews with GPEB staff, the Executive Director of Investigations and Regional Operations, and BCLC executives raise several concerns around the leadership, current priorities and actions, quality of work and staff competence [within the Investigations and Regional Operations Division].” It included the following recommendation:<sup>736</sup>

A new investigations program is recommended for GPEB, built on evidence generated from a review of the area’s current actions. This division is a critical component of GPEB’s mandate, and the organization cannot risk its credibility or the integrity of gambling in the province by continuing investigations operations in this manner. One of the outcomes of an investigations review is the messaging it sends to staff, the GPEB and the ADM, GPEB are interested in developing an accountable and transparent organization.

The discussion of the investigation division included concerns about the division’s relationship with BCLC, which it described as “so adversarial it has resulted in dysfunction in several layers within the division and BCLC.”<sup>737</sup>

This theme was expanded upon in the next issue addressed in the report, the need to “enhance relationships with key stakeholders.”<sup>738</sup> This section identified strained relationships between various GPEB divisions and a number of stakeholders, including the Ministry of Finance executive,<sup>739</sup> but focused on the relationship between BCLC and the investigation and other divisions of GPEB, concluding, in part:<sup>740</sup>

Trust not only does not exist between BCLC and GPEB’s Audit and Compliance, Investigations, and the Corporate Services Divisions – it has been broken. Operating in a broken trust environment has resulted in unsatisfactory handling of investigations files (as described in the previous section), duplication of work (such as BCLC investigators re-writing [Reports to Crown Counsel] drafted by GPEB investigators, or auditors at BCLC, KPMG and GPEB conducting the same audit), and withholding of information due to suspicion over the reason for it being requested. Strong resentment and disregard for professional competence and integrity exists between BCLC and GPEB in all of these divisions. Overall, this results in an increase in time spent on regulatory and policy issues, and this time could be used much more productively. If the relationship continues with no change, GPEB will always be reactive in its policy and issues management,

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734 Ibid, p 31.

735 Ibid, p 32.

736 Ibid, p 33.

737 Ibid, p 32.

738 Ibid.

739 Ibid, pp 33–34.

740 Ibid, p 34.

and will continue to stale date as a regulator in a dynamic industry. The entire system of how gambling is regulated in the province could be made more efficient with a focus on mending the broken relationship with BCLC.

An additional issue identified in the report that is of relevance to the Commission's mandate is the inadequacy of the legislative and regulatory regime under which GPEB operated at the time. The report recommended that GPEB build a business case for a “comprehensive legislation and regulatory review” describing the challenges arising from the *Gaming Control Act* as it existed at the time as follows:<sup>741</sup>

One of the most significant issues raised through the Review by staff, BCLC executives, and GPEB Executive Team is the poor legislative and regulatory framework under which gambling in BC operates. It is a well-known sentiment among almost all in the industry that the *Gaming Control Act* does not meet the needs of the regulator. The organizations that came together to form GPEB brought their respective legislation, regulations, and policy and pasted together an Act without much strategic consideration for the future implications of gambling in the province. It is also a common sentiment heard throughout GPEB that the *Act* does not provide a modern framework that is flexible and adaptable to the needs of the regulator, BCLC, service providers, and other key stakeholders in the industry. The *Act* also did not take into consideration the differences in regulating technology-based business such as eGaming and electronic 50/50 fundraising events. In general, the *Act* is not an enabler of GPEB's mandate; it is inconsistent between its sections, requires GPEB to continue regulatory actions and programs that were once a priority but are now deemed low risk, and is out of date in terms of providing a modern compliance and enforcement direction that supports the desired future state of GPEB. The *Act* is built in sections based on the current GPEB structure, and if the future organizational design of GPEB includes consolidation of divisions and program areas, there is an additional urgency to revising and updating it.

Finally, the report included a recommendation that GPEB be restructured, concluding that “making no change to the current GPEB structure is not a viable option” and that “significant structural change” was required for GPEB “to successfully achieve its new vision and mission.”<sup>742</sup> The report offered two options for reorganizing GPEB, both of which involved a significant reduction in the number of divisions in the organization, which stood at eight prior to the review.<sup>743</sup> The first option proposed reorganizing GPEB into three divisions: compliance and enforcement; responsible and problem gaming, and grants; and policy and corporate services.<sup>744</sup> The second proposed four divisions, including the three identified in the first model, as well as a separate

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741 Ibid, p 47.

742 Ibid, p 50.

743 Ibid, pp 51–54

744 Ibid, p 51.

licensing, registration, and certification division, removing these areas of responsibility from the compliance and enforcement division, where they were located in the three-division model.<sup>745</sup> In both proposed models, the functions of the investigation division were encompassed within the new compliance and enforcement division.

### ***Investigations and Regional Operations, Audit, and Compliance Divisions Review***

As noted above, this review identified significant concerns about the GPEB investigation and regional operations divisions as well as the audit and compliance division. From Mr. Mazure’s evidence, I understand that, as these issues began to come to light in the course of the review, the need for particular expertise to properly consider these matters was identified:<sup>746</sup>

As part of the Strategic Human Resources Branch review of GPEB, a supplementary report was prepared regarding the Investigations and Audit Divisions.

The need for this supplementary report was not identified initially. I met periodically with those overseeing the Strategic Human Resources Branch review. During the review, an issue was identified regarding the need for caution in the use of information gathered through investigations and audits as the use of information obtained through these regulatory activities in criminal proceedings could pose a problem. This was an issue that GPEB needed to be aware of in considering integrating the work of its various compliance-related functions.

It became clear that expertise was needed to address this issue. Tom Steenvoorden of Police Services Division, Ministry of Public Safety and Solicitor General was brought in to address this issue.

The engagement of Mr. Steenvoorden resulted in a second report, also dated September 18, 2014, focused specifically on these two divisions.<sup>747</sup> As with the first report discussed above, this second report raised concerns about the leadership of the investigation division and its relationship with other stakeholders, among other issues.<sup>748</sup> It noted that, “based on the interviews conducted, it is suspected that the intransigent position taken by the current Investigation Division leadership has led to the current dysfunctional relationship with stakeholders.”<sup>749</sup> While the report itself did not identify the nature of this “intransigent position,” Mr. Mazure, in his evidence, suggested that it referred to the division’s views on “suspicious cash and what should be done to address the problem” and to

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745 Ibid, p 53.

746 Exhibit 541, Mazure #1, paras 87–89.

747 Exhibit 547, MOF GPEB Review Investigations and Regional Operations and Audit and Compliance Divisions Review (September 18, 2014).

748 Ibid, p 4.

749 Ibid.

Mr. Vander Graaf’s unwillingness to “entertain and discuss” other viewpoints on this issue.<sup>750</sup> What this report does not address was whether Mr. Vander Graaf’s views on the criminal origins of the suspicious cash and the implausibility of some of the alternative theories being advanced were correct. As I discuss in Chapter 13, it is clear that they were.

### ***Reorganization of GPEB and Terminations of Mr. Schalk and Mr. Vander Graaf***

Following receipt of these two reports, Mr. Mazure proceeded with reorganizing GPEB by consolidating its eight divisions into fewer, smaller divisions.<sup>751</sup> Rather than adopting either of the models proposed in the review, GPEB was reorganized into five divisions, with the investigations and regional operations divisions consolidated into a newly reconstituted compliance division, led by Mr. Meilleur.<sup>752</sup> Mr. Mazure testified that, as part of this reorganization, five senior management positions became redundant, including those of Mr. Schalk and Mr. Vander Graaf, who were terminated in early December 2014.<sup>753</sup>

Both Mr. Schalk and Mr. Vander Graaf testified that they believe that they were terminated from their positions because they persistently raised concerns about money laundering in British Columbia’s gaming industry.<sup>754</sup> Mr. Mazure and Ms. Wenezenki-Yolland unequivocally denied that Mr. Vander Graaf’s and Mr. Schalk’s position on suspicious transactions of money laundering was in any way the cause of their termination.<sup>755</sup>

I accept the beliefs of Mr. Vander Graaf and Mr. Schalk in this regard as sincere. I can understand how, after many years of persistently raising concerns about the growth of suspicious cash in the industry as little was done to address these concerns, it would seem likely to Mr. Schalk and Mr. Vander Graaf that this would have been connected to their termination. Further, based on the evidence before me, it appears that there was at least a grain of truth in these beliefs. Mr. Steenvoorden’s report, discussed above, raises concerns about the investigation division’s relationships with other stakeholders, identifying their “intransigent position” as a source of the problems in those relationships.<sup>756</sup> Mr. Mazure understood this to be a reference to the division’s views on suspicious cash transactions.<sup>757</sup>

750 Exhibit 541, Mazure #1, para 105; Evidence of J. Mazure, Transcript, February 5, 2021, pp 96–97.

751 Exhibit 541, Mazure #1, paras 122, 125.

752 Exhibit 541, Mazure #1, paras 122, 125; Exhibit 587, Meilleur #1, para 29.

753 Exhibit 541, Mazure #1, paras 125–27; see also Evidence of J. Schalk, Transcript, January 22, 2021, p 152; Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 223; Exhibit 181, Vander Graaf #1, para 143 and exhibit QQ.

754 Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 223; Evidence of J. Schalk, Transcript, January 22, 2021, pp 153–56; Exhibit 181, Vander Graaf #1, paras 143–44.

755 Exhibit 541, Mazure #1, para 129; Exhibit 922, Wenezenki-Yolland #1, para 71; Evidence of J. Mazure, Transcript, February 5, 2021, p 107; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 33–34.

756 Exhibit 547, MOF GPEB Review Investigations and Regional Operations and Audit and Compliance Divisions Review (September 18, 2014), p 4.

757 Exhibit 541, Mazure #1, para 105; Evidence of J. Mazure, Transcript, February 5, 2021, pp 96–97.

A briefing document prepared by Mr. Mazure for Ms. Wenezenki-Yolland regarding the terminations of those whose positions were made redundant following the reorganization of GPEB made clear that the concerns identified in the review were a factor in the decision to terminate Mr. Schalk and Mr. Vander Graaf. It said, in part:<sup>758</sup>

- Successful implementation of review recommendations and transition to the new regulatory approach described above would be highly improbable and not without significant risk under existing [investigation division] leadership given the concerns identified [based on the review findings and recommendations] and the key leadership competencies (e.g., accountability, collaboration, information sharing, change management, results-oriented) required going forward.
- The [assistant deputy minister, Mr. Mazure] does not have the confidence that Larry Vander Graaf and Joe Schalk have the abilities to implement, nor would they be likely to support, the new regulatory compliance framework and the role of the investigations function within it. Current [investigation division] leadership has a fundamentally different perspective on the purpose of the investigative function that is not aligned with a modern regulatory approach.
- In summary, the [assistant deputy minister] lacks confidence and trust in ... Larry Vander Graaf and Joe Schalk based on his experience at GPEB over the last 12 months and the concerns identified in the review.
- Based on the concerns identified in the review regarding the leadership competencies of Larry Vander Graaf and Joe Schalk and their classification levels, there are no equivalent positions elsewhere in GPEB to place the two individuals.
- For the same reason, placing these individuals elsewhere in government would carry the same risks.

Clearly, it was not the case that Mr. Vander Graaf and Mr. Schalk were terminated solely because their positions were made redundant. A further factor was that Mr. Mazure did not have confidence that either would be willing or able to implement the changes to the organization he thought necessary. His concerns in this regard were grounded, in part, in the conclusion that the GPEB investigation division could not maintain constructive relationships with other stakeholders.<sup>759</sup> The primary source of the relationship challenges identified in the review on which Mr. Mazure relied was their intransigent position on suspicious transactions. As such, the dismissal of Mr. Vander Graaf and Mr. Schalk was not entirely divorced from their position regarding

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758 Exhibit 549 (previously marked as Exhibit C), MOF Gaming Policy & Enforcement Briefing Note prepared for Cheryl Wenezenki-Yolland (November 26, 2014), p 3.

759 Ibid, pp 1–2.

suspicious cash. For years they had been vocal and persistent advocates of that position. While the manner in which they voiced their concerns may have rubbed some the wrong way, they were ultimately correct.

That said, I am persuaded that neither Mr. Mazure nor Ms. Wenezenki-Yolland terminated Mr. Vander Graaf or Mr. Schalk in order to silence them for the purpose of facilitating the continued acceptance of proceeds of crime in the province's casinos. Ms. Wenezenki-Yolland, who advised Mr. Mazure that her preference was that these individuals be placed in roles within GPEB or elsewhere in government rather than terminated,<sup>760</sup> reasonably relied on the advice she received from Mr. Mazure about what was required. As for Mr. Mazure, I accept that he based his decision in part on the reality that the reorganization rendered some positions redundant and on his genuine concern about interpersonal difficulties and other issues identified in the review. While I accept that a history of interpersonal conflict was a valid consideration and acknowledge that it was not the sole issue raised in the review, I do wonder if the nature of this conflict may have been viewed differently by the reviewers and by Mr. Mazure had they recognized that any intransigence on the part of Mr. Vander Graaf and Mr. Schalk was grounded in a multi-year history of their accurate warnings about illicit cash and money laundering in British Columbia casinos being ignored and belittled. It is not surprising that the reviewer may have been unaware of this dynamic. By the end of 2014, however, Mr. Mazure should have been.

### ***GPEB Investigative Function Under Mr. Meilleur***

Mr. Meilleur testified that he was appointed executive director of GPEB's newly constituted compliance division on the same day that Mr. Vander Graaf and Mr. Schalk were terminated from their positions.<sup>761</sup> In this role, Mr. Meilleur became responsible for some, but not all, of GPEB's investigative staff.<sup>762</sup> This included six GPEB casino investigators stationed in the Lower Mainland who reported to Mr. Dickson.<sup>763</sup>

After assuming responsibility for the compliance division, Mr. Meilleur instituted reforms to GPEB's investigative operations informed by the review leading to the Branch's reorganization. These included more closely integrating the new compliance division's audit and investigation functions,<sup>764</sup> changing filing protocols for reports submitted to GPEB pursuant to section 86 of the *Gaming Control Act*,<sup>765</sup> and meeting monthly with Mr. Desmarais and, later, his successor Mr. Kroeker in order to rebuild the relationship with BCLC.<sup>766</sup> As I discuss in more detail in Chapter 11, Mr. Meilleur

<sup>760</sup> Exhibit 922, Wenezenki-Yolland #1, para 71.

<sup>761</sup> Exhibit 587, Meilleur #1, para 29; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 31–32.

<sup>762</sup> Evidence of L. Meilleur, Transcript, March 10, 2021, pp 146–49; Exhibit 710, GPEB Organization Chart (January 26, 2015).

<sup>763</sup> Evidence of L. Meilleur, Transcript, March 10, 2021, p 146.

<sup>764</sup> Evidence of L. Meilleur, Transcript, February 12, 2021, p 33.

<sup>765</sup> Ibid, pp 33–34.

<sup>766</sup> Exhibit 587, Meilleur #1, para 32.

would also establish an intelligence unit within the new compliance division in 2016.<sup>767</sup>

It is clear from Mr. Meilleur's evidence, however, that suspicious cash transactions remained a focus of GPEB's casino investigation staff and that, like Mr. Vander Graaf, he struggled with how to deploy the investigators under his direction in response to this issue. Mr. Meilleur testified that, following his appointment to this new role, he was advised by the casino investigations staff who remained from Mr. Vander Graaf's tenure that they continued to have concerns about money laundering in the province's casinos.<sup>768</sup> These individuals wanted the new division to continue to respond to this issue.<sup>769</sup>

Mr. Meilleur testified that, while money laundering remained a priority for GPEB, he understood that the role the Branch could play in responding to this issue was constrained by the *Gaming Control Act*.<sup>770</sup> His evidence was that he received legal advice that the investigation of money laundering was outside of GPEB's mandate and properly the responsibility of law enforcement.<sup>771</sup> Mr. Meilleur understood that GPEB's role was to "collect information, share it with the police, support any requests for assistance, and report up."<sup>772</sup> This role did not, according to Mr. Meilleur, include interviewing patrons about the source of funds they used in transactions in the province's casinos.<sup>773</sup>

While Mr. Meilleur appears to have accepted this advice, it is clear that, like the investigators under his direction and his predecessor, Mr. Vander Graaf, he was dissatisfied with the limits on GPEB's capacity to respond to the elevated levels of suspicious transactions occurring in British Columbia's casinos. He testified that he was troubled by the legal opinions he received and the absence of any authority to bar people from casinos.<sup>774</sup> Mr. Meilleur's evidence was that, in his view, there was a need for changes to the governing legislation or direction or guidance from senior levels of government as to what GPEB should do "to curtail money laundering"<sup>775</sup> but that he felt as though the onus of resolving this issue was placed on him and his team without support from those senior levels of government.<sup>776</sup>

Despite this perceived lack of support, Mr. Meilleur and the newly constituted compliance division that he led would soon make significant strides in persuading both GPEB's leadership and senior government officials of the magnitude of the problem posed by suspicious cash transactions in the province's casinos at that time. As I discuss in the next chapter, with suspicious transactions spiking in the summer of

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767 Ibid, paras 61–62.

768 Exhibit 587, Meilleur #1, para 67; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 42–43.

769 Ibid.

770 Exhibit 587, Meilleur #1, para 68.

771 Ibid, paras 31, 68–69, 73.

772 Ibid, para 68.

773 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 34–35; Transcript, March 10, 2021, pp 63–64, 102–7.

774 Evidence of L. Meilleur, Transcript, March 10, 2021, pp 14–16.

775 Ibid, p 16.

776 Evidence of L. Meilleur, Transcript, February 12, 2021, p 133; Transcript, March 10, 2021, pp 13–14.

2015, a confluence of factors, including an analysis of these transactions undertaken by investigators under Mr. Meilleur’s supervision, prompted greater interest and action on the part of multiple gaming industry actors, leading to the beginning of a decline in the rate at which suspicious cash was entering the province’s casinos.

## Chapter 11

### Gaming Narrative: 2015–2017

The summer of 2015 marked a critical turning point in efforts to combat money laundering and proceeds of crime in British Columbia's gaming industry. Two events in particular seem to have shed new light on the nature and scale of the challenge facing the industry. The first of these involved revelations uncovered as part of an RCMP investigation into suspicious transactions at the River Rock Casino. The second was an analysis undertaken by two GPEB investigators of suspicious transactions in Lower Mainland casinos that occurred during July 2015, revealing a spike in suspicious transactions that month. I do not mean to suggest that the nature and extent of the proceeds of crime and money laundering problem facing the province's gaming industry could not or should not have been appreciated prior to these events, or that the responses prompted by these events were sufficient to the information they revealed. It is clear, however, that these events left GPEB, BCLC, and government with little doubt that the province's gaming industry faced significant risks associated with acceptance of the proceeds of crime and sparked meaningful action from stakeholders to combat this issue. Despite some level of consensus as to the existence of this problem and the need for action, however, these events did not result in agreement among stakeholders as to precisely what measures were required to address the problem, and significant debate ensued as to the appropriate and necessary response to this issue.

## June 2015 “Exploring Common Ground, Building Solutions” Workshop

In the spring of 2015, Mr. Meilleur, then a few months into his role as executive director of GPEB’s compliance division,<sup>1</sup> and Ross Alderson, who had just been or was about to be appointed director of anti–money laundering and operational analysis for BCLC,<sup>2</sup> began to plan a meeting of those with a connection to the issue of money laundering in the gaming industry, including law enforcement, FINTRAC, government officials, gaming service providers, and private sector financial institutions.<sup>3</sup> The workshop took place on June 4, 2015.<sup>4</sup>

The goals of the gathering were described as being to “identify strength[s] and weaknesses of the current [anti–money laundering] strategy and framework for gaming facilities, increase awareness, and identify and develop possible options and approaches for enhancing [anti–money laundering] policies, procedures, and practices.”<sup>5</sup>

The purposes of the workshop were also tied to GPEB’s 2011 Anti–Money Laundering Strategy.<sup>6</sup> A briefing document prepared by GPEB for the minister responsible for gaming, Michael de Jong, a month before the workshop identified it as part of a process for developing recommendations for the minister. The document described the purpose of the workshop, in part, as follows:<sup>7</sup>

The findings of the September 2014 Malysch study and the information obtained from the workshop process will be used by ... GPEB to complete Phase 3 of the [anti–money laundering] Strategy. GPEB will develop recommendations which will be brought forward for the Minister’s consideration in order to assist government’s strategy in reducing risk concerning money laundering in casinos. This will include collaborative strategies intended to heighten awareness, increase compliance where necessary, reduce risk to the industry and respond to public concern. The recommendations will be provided to the Minister’s office by fall 2015.

Evidence of the discussions that took place at, and outcomes of, this workshop present a revealing snapshot in time of the perspectives held by these stakeholders on money laundering in British Columbia’s gaming industry at this juncture. The workshop took place at a critical point in the evolution of the industry’s response to the risk of money laundering. Only a few weeks later, BCLC, GPEB, and the provincial

1 Evidence of L. Meilleur, Transcript, February 10, 2021, p 31.

2 Evidence of R. Alderson, Transcript, September 10, 2021, p 17.

3 Exhibit 587, Affidavit #1 of Joseph Emile Leonard Meilleur, made on February 9, 2021 [Meilleur #1], paras 74, 76 and exhibits BB, EE.

4 Evidence of R. Alderson, Transcript, September 10, 2021, p 82.

5 Exhibit 587, Meilleur #1, exhibit CC.

6 Exhibit 522, Affidavit #1 of Brad Desmarais, affirmed on January 28, 2021 [Desmarais #1], exhibit 18.

7 Exhibit 587, Meilleur #1, exhibit CC.

government would learn that the RCMP believed that they had confirmed a connection between suspicious transactions in casinos and organized crime. Accordingly, the views expressed at the workshop are indicative of the attitudes held within the industry around the time that law enforcement was actively investigating and, in its view, confirming that the province’s casinos were, in fact, accepting funds originating from criminal activity.

Despite this reality, documents produced following the meeting suggest that there was generally a level of satisfaction with the anti–money laundering measures in place in the industry at that time. A concept paper titled “Cash in Gaming Facilities” produced by a consultant who had been retained to assist in organizing the workshop,<sup>8</sup> referred to the existing regime in the following favourable terms:<sup>9</sup>

The government has a robust regime in place related to proceeds of crime (money laundering) for B.C. gaming facilities. Concerted action has been taken over the past five years to enhance the [anti–money laundering] policies and practices in B.C. gaming facilities with a focus on reducing cash transactions.

Mr. Meilleur confirmed in his oral evidence that the concept paper accurately reflected what was discussed in the workshop.<sup>10</sup> He agreed with this assessment of the gaming industry’s anti–money laundering regime at the time of the workshop.<sup>11</sup>

Despite this apparent satisfaction with the state of the industry’s efforts to combat money laundering at this time, the concept paper suggested that concern about year-over-year growth in suspicious transactions was expressed during the workshop.<sup>12</sup> The source of this concern, however, does not seem to have been a settled belief that this growth in suspicious transaction reports represented increased money laundering or acceptance of the proceeds of crime in the province’s casinos but rather, at least to some degree, the adverse media and political attention attracted by the rise in suspicious transactions. The concept paper explained:<sup>13</sup>

Despite these efforts, over this same period, the number of suspicious transaction reports (STRs) made with regard to suspected money laundering incidents has increased significantly year over year. The increase in STRs has sparked repeated media attention and interest from government’s opposition with reports suggesting that this is evidence that criminal activity is occurring in B.C. gaming facilities.

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8 Evidence of L. Meilleur, Transcript, February 12, 2021, p 63; Ibid, Transcript, March 10, 2021, pp 150–52; Exhibit 587, Meilleur #1, para 43 and exhibits K, BB.

9 Exhibit 587, Meilleur #1, exhibits K.

10 Evidence of L. Meilleur, Transcript, March 10, 2021, pp 151–52.

11 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 63–64.

12 Exhibit 587, Meilleur #1, exhibit K, p 1.

13 Ibid.

Accordingly, it does not appear that there was a consensus among the workshop participants that money laundering or acceptance of proceeds of crime was a real issue for the province’s gaming industry at the time. However, there does seem to have been recognition of a need to take action to develop “a better understanding of the extent and nature of money laundering in gaming facilities” and to further strengthen efforts to prevent money laundering.<sup>14</sup>

Strategies for achieving these objectives – and, it would seem, for combatting negative perceptions of the gaming industry – were also generated at the workshop.<sup>15</sup> These were summarized in a GPEB document prepared for John Mazure, then the general manager of GPEB, on June 25, 2015, as follows:<sup>16</sup>

1. Enhanced customer due diligence focused on “knowing your customer” to address concerns over the source of the wealth of casino patrons and the source of the funds used in transactions at casinos, including the introduction of a “source of funds questionnaire” which “may reduce the need for filing of a Suspicious Transaction Reports for that individual to avoid over-reporting.”
2. Preparation, by the British Columbia Lottery Corporation, of a “business case” for enhancing non-cash alternatives such as credit and unlimited convenience cheques.
3. Development of a public education and information strategy that would counter negative perception about the increasing numbers of suspicious cash transactions reported.
4. Development of a coordinated audit, compliance, intelligence, and enforcement capacity.
5. Increasing the working relationship and sharing of tools between the Gaming Policy and Enforcement Branch Compliance Division and British Columbia Lottery Corporation Corporate Security in the area of anti-money laundering.
6. Continue ongoing dialogue with RCMP senior management about the possibility of shared intelligence responsibility and work on a tactical intelligence report on gaming in British Columbia.
7. Assessment of need for interdiction team as a final stage of process.
8. Assessment of need for an internal AML oversight committee.

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14 Ibid.

15 Ibid, exhibits K, GG.

16 Ibid, para 79 and exhibit GG, pp 2–4.

A shorter, but not inconsistent, list of proposed strategies was included in the concept paper prepared by the consultant. These included:<sup>17</sup>

1. A Ministerial Directive to the British Columbia Lottery Corporation (BCLC) requiring development and implementation of additional standards in its enhanced Customer Due Diligence (CDD) program to address money laundering. These would be constructed around financial industry standards that include Know Your Customer (KYC) policy and practices with a particular focus on source of funds assessment. A Ministerial Directive will align with the current Ministerial Mandate Letter to BCLC and will ossify the government's role in ensuring integrity in gaming.
2. Development and implementation of additional cash alternatives to further transition from cash-based transactions to electronic and other forms of transactions and instruments.
3. Enhanced coordinated and collaborative intelligence, analysis, audit, compliance, and enforcement between BCLC and GPEB and other stakeholders.
4. Public information and education strategy.

These proposed strategies include some actions that had the potential to have an impact on the volume of suspicious cash accepted by British Columbia gaming facilities. However, the extent to which they seem focused on combatting *perceptions* of money laundering in casinos and on casino patrons themselves, rather than the cash they were using, detracts from their likely success. It is significant that both articulations of the strategies discussed at the workshop contemplate public information and education campaigns, with the first specifying that such a campaign would be aimed at countering negative perceptions about increases in the number of suspicious transactions reported. Implicit in the identification of this strategy is the belief that these negative perceptions were *incorrect* and that public concern about rising suspicious transactions was unjustified. The solution to negative perceptions that were viewed as accurate would be to resolve the problem, not to persuade the public it does not exist.

Similarly, the “source of funds” questionnaire identified in the first articulation of the proposed strategies is presented as a means of reducing the need for suspicious transaction reporting. This indicates an expectation that, rather than confirming the criminal origin of cash used in casino buy-ins, source-of-funds inquiries will reveal that funds used in suspicious transactions are legitimate, justifying acceptance of the funds and obviating the need to report.

While the documents referred to above reflect the general tenor of the discussion and outcomes of the workshop, they do not profess to represent the unanimous views

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<sup>17</sup> Ibid, exhibit K, p 1.

of all of its participants. Given the diversity of the backgrounds of those involved in the workshop, it is likely that some of the participants may have held very different views, while others may have had little previous exposure to the gaming industry and not held any firm views at all.

An absence of consensus among those who participated in the workshop is reflected in the evidence of attendee Calvin Chrustie, then of the RCMP Federal Serious and Organized Crime unit.<sup>18</sup> In his testimony, Mr. Chrustie recalled leaving the workshop concerned that nothing substantive had been accomplished because of a tendency to highlight possible legitimate explanations for the rise in cash transactions in casinos, including through a presentation by a journalist who had previously delivered two presentations to BCLC staff, which were discussed in Chapter 10.<sup>19</sup> Mr. Chrustie had more information than many of the others in attendance. He was privy to information obtained through an ongoing investigation, discussed below, that was unavailable to others, and through the 2010 probe into cash facilitators conducted by the RCMP Integrated Proceeds of Crime unit discussed in Chapter 10 and Chapter 39. However, he had no greater insight into the magnitude and character of the large cash transactions regularly taking place at Lower Mainland casinos. Others at the workshop may also have been skeptical of some of the views reflected in the concept paper.

Information from the workshop does reveal that there was clearly a general understanding within the industry that there was an elevated risk of money laundering associated with growth in suspicious transactions and that efforts should be made to address this risk. However, it is evident that at least some of the concern associated with this elevated risk was related to public, media, and political perceptions, and predicated on the belief that these perceptions were incorrect. Further, it is evident that the measures proposed to address this issue were aimed as much at persuading the public that there was no cause for concern as they were focused on taking steps to meaningfully reduce the risk of money laundering in British Columbia's gaming industry.

## **July 2015 E-Pirate Revelations**

### **Notification and Initial Response Within BCLC**

The workshop was soon followed by the first of the two events of the summer of 2015 that led to significant developments in anti-money laundering initiatives within the province's gaming industry. On July 22, 2015, Mr. Alderson, still only a few months into his new role as BCLC's director of anti-money laundering and operational analysis, met with Mr. Chrustie for coffee in response to an invitation from Mr. Chrustie.<sup>20</sup>

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18 Evidence of C. Chrustie, Transcript, March 29, 2021, pp 3–4.

19 Ibid, pp 76–85, 203; Exhibit 762, Email between Calvin Chrustie and Len Meilleur et al., re June 4, 2015 Anti-Money Laundering Workshop (June 6, 2015).

20 Evidence of R. Alderson, Transcript, September 9, 2021, p 42.

At that meeting, Mr. Chrustie advised Mr. Alderson that an investigation, which would come to be known as E-Pirate and which the Federal Serious and Organized Crime unit had undertaken at BCLC's encouragement,<sup>21</sup> had begun to yield results. Specifically, Mr. Chrustie told Mr. Alderson that the investigation had confirmed a direct link between criminal organizations and cash transactions at the River Rock Casino.<sup>22</sup> According to Mr. Alderson, Mr. Chrustie also shared his concern that those providing the cash used in these transactions were linked to transnational organized crime and terrorist financing.<sup>23</sup>

Following this meeting, Mr. Alderson, cognizant of his obligation as a registered gaming worker to report wrongdoing to GPEB, contacted Mr. Meilleur.<sup>24</sup> Mr. Alderson was appropriately cautious in sharing information provided to him by Mr. Chrustie and rather than relaying what he had learned to Mr. Meilleur himself, advised Mr. Meilleur that he was very disturbed by information provided to him by Mr. Chrustie and encouraged Mr. Meilleur to contact Mr. Chrustie directly.<sup>25</sup>

Mr. Alderson's evidence was that Mr. Meilleur phoned him back within half an hour of this initial conversation.<sup>26</sup> Mr. Meilleur told Mr. Alderson that he was also very concerned by what he had learned from Mr. Chrustie<sup>27</sup> and advised Mr. Alderson that he should brief BCLC CEO Jim Lightbody and his other superiors within BCLC on what he had learned. Mr. Meilleur also advised Mr. Alderson that the information provided by Mr. Chrustie would be brought to the attention of the minister responsible for gaming, Mr. de Jong.<sup>28</sup>

Mr. Alderson took Mr. Meilleur's advice. He immediately had Mr. Lightbody, Mr. Desmarais, then BCLC's vice-president of corporate security and compliance, and Susan Dolinski, BCLC's vice-president of social responsibility and communications, removed from a meeting in order to brief them on what he had learned from Mr. Chrustie.<sup>29</sup>

In his evidence, Mr. Lightbody recalled learning, during this briefing from Mr. Alderson, that the RCMP had discovered that a money services business based in Richmond, British Columbia, was using cash obtained through criminal activity to make loans to individuals, including casino patrons.<sup>30</sup>

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21 Evidence of B. Desmarais, Transcript, February 1, 2021, p 118; Exhibit 522, Desmarais #1, paras 76–78; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 65–66, 104–5.

22 Evidence of R. Alderson, Transcript, September 9, 2021, pp 42–43; Exhibit 587, Meilleur #1, exhibits II, KK.

23 Evidence of R. Alderson, Transcript, September 9, 2021, pp 42–43; Exhibit 587, Meilleur #1, exhibits II, KK; Evidence of B. Desmarais, Transcript, February 1, 2021, p 122.

24 Evidence of R. Alderson, Transcript, September 9, 2021, p 43 and Transcript, September 10, 2021, pp 150–51; Evidence of L. Meilleur, Transcript, February 12, 2021, p 59; Exhibit 587, Meilleur #1, para 81 and exhibits II, KK.

25 Evidence of R. Alderson, Transcript, September 9, 2021, p 43 and Transcript, September 10, 2021, pp 150–51; Exhibit 587, Meilleur #1, para 81 and exhibits II, KK.

26 Evidence of R. Alderson, Transcript, September 9, 2021, pp 43–44.

27 Ibid; Evidence of R. Alderson, Transcript, September 10, 2021, p 28.

28 Evidence of R. Alderson, Transcript, September 9, 2021, pp 43–44.

29 Ibid, p 44; Exhibit 587, Meilleur #1, exhibits II, KK.

30 Exhibit 505, Affidavit #1 of Jim Lightbody, sworn on January 25, 2021 [Lightbody #1], para 113; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 26–27, 34 and Transcript, January 29, 2021, p 49.

Mr. Lightbody recalled being shocked by this information.<sup>31</sup> Prior to this time, he had been aware that there was a risk that cash transactions could be conducted using the proceeds of crime or that such transactions could be linked to money laundering.<sup>32</sup> According to Mr. Lightbody, however, this was the first time that he was aware that BCLC had been told by law enforcement directly that there was evidence that proceeds of crime were actually being used by to casino patrons.<sup>33</sup> Mr. Lightbody described this as a pivotal moment for BCLC, and one in which it became immediately apparent to him that there was a need for greater efforts not only to identify customers and the sources of their wealth, but also to understand the sources of cash being used in transactions conducted in the province's casinos.<sup>34</sup>

## **Notification and Initial Response Within GPEB**

As Mr. Alderson was briefing his superiors within BCLC, Mr. Meilleur was making similar efforts to notify those senior to him within the GPEB and government.

Following the initial phone call from Mr. Alderson, Mr. Meilleur took Mr. Alderson's advice and contacted Mr. Chrustie immediately.<sup>35</sup> Mr. Chrustie advised Mr. Meilleur that BCLC had approached the Federal Serious and Organized Crime unit with concerns about a specific individual, which had commenced an investigation in response to this complaint.<sup>36</sup> Mr. Chrustie advised that the investigation had evolved into a much larger endeavour than was initially expected<sup>37</sup> and also expressed concern to Mr. Meilleur about the confidentiality of the investigation and asked for Mr. Meilleur's assistance in limiting dissemination of the information that Mr. Chrustie provided.<sup>38</sup> Mr. Meilleur advised Mr. Chrustie that he would need to brief his superiors about what he had learned, but assured him that he would refrain from sharing specifics of the investigation.<sup>39</sup>

Mr. Meilleur immediately proceeded to brief Mr. Mazure about his phone call with Mr. Chrustie, while honouring his commitment not to share details of the investigation.<sup>40</sup> Mr. Meilleur recalled that Mr. Mazure was concerned about what they had learned but pleased that it appeared that law enforcement had begun to take action on suspicious transactions following a long period in which police engagement on this issue appeared minimal.<sup>41</sup>

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31 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 35–36.

32 Ibid, p 37.

33 Exhibit 505, Lightbody #1, para 113; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 26, 34.

34 Exhibit 505, Lightbody #1, para 113; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 26–27, 34.

35 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 59–60; Exhibit 587, Meilleur #1, para 83.

36 Ibid.

37 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 59–60.

38 Ibid.

39 Ibid.

40 Evidence of L. Meilleur, Transcript, February 12, 2021, p 60; Evidence of J. Mazure, Transcript, February 5, 2021, pp 111–12; Exhibit 587, Meilleur #1, para 85.

41 Evidence of L. Meilleur, Transcript, February 12, 2021, p 61.

Mr. Meilleur recalled that Mr. Mazure advised him that he subsequently briefed the associate deputy minister, Cheryl Wenezenki-Yolland.<sup>42</sup> Mr. Meilleur also understood that Mr. de Jong was soon briefed on the investigation.<sup>43</sup>

While Mr. Mazure's evidence was generally consistent with Mr. Meilleur's, it appears that Mr. Meilleur was mistaken about Ms. Wenezenki-Yolland having been briefed by Mr. Mazure. Mr. Mazure's evidence was that he briefed the deputy minister, Peter Milburn, about the investigation and that Mr. Milburn advised Mr. Mazure that he would brief Mr. de Jong the same day.<sup>44</sup> This is consistent with Ms. Wenezenki-Yolland's evidence that she was on vacation at this time, that she did not learn of the investigation until later, and that it was likely Mr. Milburn who was briefed by Mr. Mazure.<sup>45</sup>

Accordingly, it appears that, while the minister was briefed on the investigation shortly after GPEB learned of it, it was Mr. Milburn that was the conduit of that information, not Ms. Wenezenki-Yolland. Ms. Wenezenki-Yolland did not learn of the investigation until late August 2015, as will be discussed below.

Mr. de Jong testified that he recalled being briefed on the investigation, but told me that it was his practice during his tenure as finance minister to receive very limited information about matters over which he had no influence – such as police investigations.<sup>46</sup> As such, Mr. de Jong suggested that the briefing was likely not very long or detailed.<sup>47</sup> Based on Mr. de Jong's practices as finance minister and Mr. Meilleur's evidence of the limited details he shared with Mr. Mazure, it seems likely that, while Mr. de Jong was advised of the investigation shortly after GPEB learned of it, he would have been provided with very little information beyond the fact of its existence.

## **Absence of Notification and Involvement of Service Providers**

While the information provided to Mr. Alderson was being shared between BCLC and GPEB and was rapidly ascending through the ranks of each organization and government, neither Mr. Alderson nor Mr. Meilleur took steps to notify service providers of the investigation. In their evidence, both cited requests from the RCMP that they not disseminate the information they had been provided as their rationale for not doing so.<sup>48</sup> In the days following Mr. Alderson's meeting with Mr. Chrustie, BCLC officials, including Mr. Lightbody, Mr. Desmarais, and Mr. Alderson, and senior GPEB officials including Mr. Mazure and Mr. Meilleur communicated with the RCMP regarding how BCLC and GPEB could support the Federal Serious and Organized Crime

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42 Ibid, pp 61–62; Exhibit 587, Meilleur #1, para 84.

43 Exhibit 587, Meilleur #1, para 84; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 61–62.

44 Exhibit 541, Affidavit #1 of John Mazure, sworn on February 4, 2021 [Mazure #1], paras 138–39.

45 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 47.

46 Evidence of M. de Jong, Transcript, April 23, 2021, pp 69–70.

47 Ibid.

48 Evidence of L. Meilleur, Transcript, February 12, 2021, p 63; Evidence of R. Alderson, Transcript, September 10, 2021, p 10.

unit as the investigation progressed.<sup>49</sup> Service providers were not included in these communications nor does it appear that they were being asked to take any steps to assist in or respond to the investigation at this early stage. Mr. Doyle gave evidence that while Great Canadian Gaming Corporation (Great Canadian) had a general awareness that an investigation was underway at this time, it was initially provided with very little information about the investigation and had no knowledge of its targets.<sup>50</sup> I do not suggest it was inappropriate for law enforcement to keep the circle of knowledge regarding this ongoing investigation small, but simply point out that, at this early stage, the degree of detail regarding the precise nature of the threat was not shared equally with all industry actors.

## Reaction to Workshop and E-Pirate Revelations

Before discussing the second event that led to substantial change in perspectives on large and suspicious cash transactions in the gaming industry, I will address some of the actions taken in response to the June 4 workshop and the disclosure of the E-Pirate investigation discussed above. These include the beginning of an exchange of correspondence between Mr. Mazure and Mr. Lightbody that would continue for nearly two years, and the acceleration of BCLC’s nascent “cash conditions” program, the origins of which were discussed in Chapter 10.

### Mr. Mazure’s Letter of August 7, 2015, and Mr. Lightbody’s Response

On August 7, 2015, approximately two months after the June 4 workshop and a little more than two weeks following Mr. Christie’s meeting with Mr. Alderson regarding the E-Pirate investigation, Mr. Mazure wrote a letter to Mr. Lightbody.<sup>51</sup> In his evidence, Mr. Mazure explained that this letter was written in response to the June 4 workshop, shortly after he had learned of the investigation.<sup>52</sup> He testified that it was intended to send a message that BCLC needed to take further action to address the prevalence of suspicious cash in British Columbia casinos.<sup>53</sup>

In his letter, Mr. Mazure requested that BCLC pursue the following four actions, which are similar to the four strategies identified in the “Cash in Gaming Facilities” concept paper prepared following the workshop:<sup>54</sup>

1. Develop and implement additional Customer Due Diligence (CDD) policies and practices constructed around financial industry standards

<sup>49</sup> Evidence of L. Meilleur, Transcript, February 12, 2021, pp 65–67; Exhibit 587, Meilleur #1, exhibit KK; Exhibit 505, Lightbody #1, para 113; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 26–27.

<sup>50</sup> Evidence of T. Doyle, Transcript, February 9, 2021, pp 155–56.

<sup>51</sup> Exhibit 505, Lightbody #1, para 180, exhibit 48; Exhibit 541, Mazure #1, para 156; Evidence of J. Mazure, Transcript, February 5, 2021, pp 124–26, 198.

<sup>52</sup> Evidence of J. Mazure, Transcript, February 5, 2021, pp 125–26, 198.

<sup>53</sup> Ibid; Exhibit 541, Mazure #1, paras 156–58.

<sup>54</sup> Exhibit 505, Lightbody #1, exhibit 48; Exhibit 587, Meilleur #1, exhibit K.

and robust Know Your Customer (KYC) requirements, with a focus on identifying source of wealth and funds as integral components to client risk assessment. This assessment should be based upon suspicious currency transaction occurrences.

2. Develop and implement additional cash alternatives, focusing on furthering the transition from cash-based to electronic and other forms of transactions, and instruments, and exploring new ways to promote existing and new cash alternatives. These alternatives should form part of a broader strategy for increasing the use of cash alternatives in gaming facilities, including implementing a performance measurement framework and an evaluation plan to determine service provider participation.
3. Work with GPEB to develop processes and approaches to clarify roles and responsibilities around [anti-money laundering] intelligence, analysis, audit and compliance activities. This includes considering information sharing and access to systems that support the [anti-money laundering] strategy's elements.
4. Work with GPEB and other stakeholders such as FINTRAC to develop a BCLC public information and education strategy and action plan for government's review and approval. The plan should include coordinated messaging about anti-money laundering activities in gaming facilities, and outline the requirements, roles and responsibilities for identification, reporting, investigation and enforcement.

Mr. Mazure concluded the letter by recommending that BCLC staff “consult and review with GPEB staff on developing approaches and specific actions to implement” the recommended activities.<sup>55</sup>

Mr. Mazure's evidence was that he chose the wording of this letter carefully because he was aware that, as general manager of GPEB, he did not have the authority to issue directions to BCLC without the approval of the responsible minister.<sup>56</sup> This provides context for Mr. Mazure's decision to use language such as “BCLC *is asked* to pursue the following activities” [emphasis added] and “I *recommend* that BCLC staff ...” [emphasis added]. Mr. Mazure's letter of August 7, 2015, was not in the nature of a direction to BCLC, as Mr. Mazure had no legal authority to issue such a direction. As I discuss later in this chapter, however, this does not mean that BCLC was free to simply ignore Mr. Mazure's letter and the correspondence that followed.

Mr. Lightbody's initial response to Mr. Mazure's letter came in the form of a letter addressed to Mr. de Jong, dated August 24, 2015.<sup>57</sup>

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55 Exhibit 505, Lightbody #1, exhibit 48.

56 Evidence of J. Mazure, Transcript, February 5, 2021, p 207; Exhibit 541, Mazure #1, para 159.

57 Exhibit 505, Lightbody #1, exhibit 49.

In this letter, Mr. Lightbody focused on the first request made in Mr. Mazure's letter: the identification of casino patrons' source of wealth and source of funds. Mr. Lightbody did not indicate whether BCLC would implement the measures sought by Mr. Mazure. He instead commented on the challenges associated with identification of the source of funds used in transactions in casinos as follows:

While it is generally easier to identify an individual's source of wealth, identifying the actual source of funds per transaction is far more problematic, especially when the funds are presented as cash. It is financial industry standard to ask a customer to declare the source of funds for all transactions (including cash) over CAD \$10,000.00 however little follow up investigation is then conducted. It is also common practice in the financial industry to terminate a business relationship with a customer after two or three suspicious transaction reports.

In this letter, Mr. Lightbody went on to express skepticism that any single agency in British Columbia was capable of adequately identifying the source of funds used in casino transactions:

BCLC believe that currently no one agency in British Columbia is equipped to identify the actual source of funds. To do so would require in most cases, law enforcement intervention. Currently BCLC and GPEB lack the legislative authority, and law enforcement lack the available budget, resources, and visibility.

The letter concluded with two recommendations. One was that government support cash alternative initiatives, including facilitation of "credit to Chinese high limit players," without which, according to Mr. Lightbody, "BC faces a potential substantial drop in gaming revenue." The other recommendation made in Mr. Lightbody's letter was the creation of "a dedicated law enforcement gaming unit ... established by the provincial government." Mr. Lightbody elaborated on the focus and composition of this proposed unit as follows in his letter:

The primary focus of this unit would be on identifying and eliminating proceeds of crime entering into BC gaming facilities, as well as identifying and preventing all illegal or "underground" gambling in BC, including "grey market" or illegal internet gambling.

The Gaming unit ideally, would contain experts in Gaming within BC, Proceeds of Crime, Money Laundering and Terrorist Financing as well as personnel with experience and designated authority to conduct surveillance, execute search warrants, property seizures, and forfeiture, and an understanding of Chinese culture and associated languages.

There was some dispute among witnesses as to whether this letter represented resistance or "pushback" against the measures requested by Mr. Mazure, in particular

the request that BCLC implement additional measures to identify the source of funds used in suspicious transactions.<sup>58</sup>

An examination of the actions taken by BCLC prior to and following this correspondence, as well as the communication between BCLC, government, and GPEB in subsequent years, shed some light on this issue.

I note that Mr. de Jong, to whom Mr. Lightbody's letter was addressed, did not read this letter as pushing back against Mr. Mazure's requests. Mr. de Jong instead understood this letter to be an indication of BCLC's view that greater law enforcement engagement was necessary to resolve the issues identified in Mr. Mazure's letter.<sup>59</sup>

## **BCLC “Cash Conditions” Program**

Despite Mr. Lightbody's apparent reservations about BCLC's ability to unilaterally take meaningful action to address suspicious transactions in the province's casinos through source-of-funds inquiries, BCLC had begun to take some action to inquire into the source of funds used in the most suspicious transactions and to reduce those transactions. These efforts were accelerated following the June 4 workshop and, in particular, following Mr. Alderson's meeting with Mr. Chrustie on July 22.

As discussed in Chapter 10, in 2014, BCLC had begun placing a small number of its most prolific VIP players on conditions that limited their ability to conduct transactions in cash at the province's casinos. By April 2015, two such players had been placed on conditions that prohibited them from buying-in with cash unless they could provide proof of its source.<sup>60</sup>

While these measures seem to have been *ad hoc* solutions to address specific challenges arising from the activity of these two players, BCLC began to expand and formalize these efforts in the spring of 2015, prior to the June 4 workshop and Mr. Alderson's meeting with Mr. Chrustie.<sup>61</sup> Mr. Desmarais, who was BCLC's vice-president of corporate security and compliance until September 2015, when he moved into a different role, was initially the BCLC executive with oversight of the development of this program. Mr. Desmarais connected the development of the formal “cash conditions” program to a shift in BCLC's risk tolerance:<sup>62</sup>

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58 Evidence of M. de Jong, Transcript, April 23, 2021, p 159–62; Evidence of C. Wenezenki-Yolland, Transcript, April 27, pp 57–61, 75, 78, 102, 124–25; Exhibit 922, Affidavit #1 of Cheryl Wenezenki-Yolland, sworn on April 8, 2021 [Wenezenki-Yolland #1], para 132.

59 Evidence of M. de Jong, Transcript, April 23, 2021, pp 161–62.

60 Exhibit 148, Affidavit #1 of Daryl Tottenham, sworn on October 30, 2020 [Tottenham #1], paras 79, 83; Exhibit 522, Desmarais #1, para 39 and exhibit 12; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 79–80, 117–18, 150–51; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 85–86.

61 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 37–38 and Transcript, January 29, 2021, p 117; Evidence of D. Tottenham, Transcript, November 4, 2020, p 117; Evidence of M. Hiller, Transcript, November 9, 2020, pp 126–27; Evidence of B. Desmarais, Transcript, February 2, 2021, p 106.

62 Evidence of B. Desmarais, Transcript, February 2, 2021, p 31.

So as we started to move forward, particularly in 2015, understanding that it was going to be really difficult to figure out ... what money was coming from where and ... how we were going to deal with it, the best course of action would be to lower our risk tolerance around cash, particularly cash coming in from cash facilitators and ultimately that included [money services businesses], at the same time over the preceding year or so educating players in the different ways of consuming our products using other noncash means.

Practically, the formalization of this program and its advancement from a bespoke solution to challenges posed by two prolific players began with the creation of a document titled “Protocol for Education, Warning and Sanctioning Players” dated April 16, 2015.<sup>63</sup> This protocol identified a number of actions that could be taken in response to patron behaviour, activity, or conduct that:<sup>64</sup>

1. is considered a risk to his or her safety or the safety of others;
2. is considered unacceptable or suspicious in nature; and/or
3. is inconsistent with anti–money laundering strategies.

In such cases, and depending on circumstances including the severity of the patron’s behaviour and the patron’s history, the protocol indicated that the following actions could be taken:<sup>65</sup>

1. Service Provider Session with Patron to Educate;
2. Service Provider Session with Patron to Warn;
3. BCLC Investigator Interview of Patron to Educate;
4. BCLC Investigator Interview of Patron to Warn;
5. Immediate Barring from Gambling Pending an Interview by a BCLC Investigator;
6. BCLC sanctions that could possibly be imposed:
  - Not permitted to play with un-sourced chips;
  - Not permitted to play with un-sourced funds;
  - Requirement to open and utilize a Patron Gaming Fund account.
7. BCLC Provincial Barring up to five (5) years.

63 Evidence of S. Beeksma, Transcript, October 26, 2020, p 151; Exhibit 78, Affidavit #1 of Steve Beeksma, affirmed on October 22, 2020 [Beeksma #1], exhibit O; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 185–87; Evidence of B. Desmarais, Transcript, February 2, 2021, p 106.

64 Exhibit 78, Beeksma #1, exhibit O, p 2.

65 Ibid, pp 3–4.

While the manner in which these actions are identified suggests that interviews conducted by BCLC investigators were intended to provide information to patrons (“education” or “warnings”), the protocol goes on to make clear that one of the objectives of an interview conducted by an investigator may be to determine the source of funds used by the patron.<sup>66</sup>

### ***Impact of E-Pirate Revelations on Development of Cash Conditions Program***

While this protocol was in place prior to Mr. Alderson’s meeting with Mr. Chrustie, the information obtained by Mr. Alderson in that meeting impacted the program in at least two ways. First, it provided BCLC with a list of high-risk patrons to whom the protocol could be applied, and second, at the direction of Mr. Desmarais’s successor Mr. Kroeker, it inspired the strengthening of the protocol and acceleration of its application.<sup>67</sup>

In August 2015, following receipt of the information provided by Mr. Chrustie to Mr. Alderson on July 22, 2015, BCLC identified 10 patrons connected to the investigation and placed them on conditions.<sup>68</sup> The patrons subjected to conditions at this time included some of the top players in the province, based on the size of their buy-ins and the frequency of their play.<sup>69</sup> Many of these players had a record of suspicious buy-ins, some dating back to 2012.<sup>70</sup>

The precise conditions placed on these patrons were set out in an email from Mr. Alderson to service providers alerting them to the identities of these patrons.<sup>71</sup> The conditions as described by Mr. Alderson were as follows:<sup>72</sup>

1. Un-sourced Cash and Chips
  - If any of the players on the list decides to buy-in using cash (any amount), this buy-in must be accompanied by a withdrawal slip from an accredited financial institution showing the same date as the attempted buy-in.
  - If any of the players on the list decides to buy-in with gaming chips, the site must be able to show that the chips were the result

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66 Ibid, pp 7–8; Exhibit 522, Desmarais #1, exhibit 22.

67 Evidence of D. Tottenham, Transcript, November 10, 2020, pp 144–46; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 97–98, 161, 183–84; Exhibit 490, Affidavit #1 of Robert Kroeker, made on January 15, 2021 [Kroeker #1], para 100; Evidence of B. Desmarais, Transcript, February 2, 2021, p 162.

68 Evidence of D. Tottenham, Transcript, November 4, 2020, p 177; Evidence of R. Alderson, Transcript, September 9, 2021, pp 132–33; Evidence of S. Beeksma, Transcript, October 26, 2020, p 80; Exhibit 148, Tottenham #1, exhibit 45.

69 Exhibit 78, Beeksma #1, para 78; Evidence of R. Alderson, Transcript, September 9, 2021, pp 132–33.

70 Evidence of D. Tottenham, Transcript, November 4, 2020, p 181 and Transcript, November 10, 2020, pp 23–31.

71 Exhibit 148, Tottenham #1, exhibit 45.

72 Ibid.

of a previous verified win, otherwise they will not be accepted at this time until BCLC has conducted a player interview.

- No player on this list can accept any cash or chips (either sourced or un-sourced) from any other persons at any time. E.g., no “chip passing” of any kind

Please note the above applies to all transactions, regardless of amount.

## 2. Bank Drafts

- If any of the players on the list make a deposit into their [patron gaming fund (PGF)] Account using a bank draft, the following restrictions apply:
  - Bank draft must be from an accredited financial institution
  - The player must be able to show that the bank draft is derived from their own bank account, and must be made payable to the Casino accepting the deposit

A little more than a month later, cash conditions were imposed on 36 patrons identified as having connections to the investigation.<sup>73</sup> These patrons were identified to service providers through a letter from Mr. Alderson dated September 11, 2015.<sup>74</sup> The cash conditions program and the number of patrons subject to it would continue to grow in the years that followed.<sup>75</sup> Its continued evolution and impact will be addressed later in this chapter.

## Robert Kroeker’s Arrival and Development of Cash Conditions Program

Days before this expansion of the number of patrons subject to cash conditions, Mr. Desmarais, who had accepted a new role within BCLC in June 2015, was replaced as BCLC’s vice-president of corporate security and compliance by Mr. Kroeker.<sup>76</sup> While Mr. Kroeker did not initiate the cash conditions program, he became responsible for it and quickly came to exert significant influence over its development.

Mr. Kroeker, who joined BCLC after leaving the role of vice-president of compliance and legal with Great Canadian,<sup>77</sup> learned of the E-Pirate investigation in a briefing with Mr. Alderson, discussed in more detail below, shortly after his arrival at BCLC.<sup>78</sup>

<sup>73</sup> Exhibit 148, Tottenham #1, paras 87–88, 133 and exhibit 8; Exhibit 490, Kroeker #1, paras 98–99; Exhibit 522, Desmarais #1, para 49 and exhibit 25; Evidence of R. Alderson, Transcript, September 9, 2021, p 133.

<sup>74</sup> Exhibit 148, Tottenham #1, paras 87–88 and 133 and exhibit 8; Exhibit 490, Kroeker #1, para 99; Exhibit 522, Desmarais #1, para 49 and exhibit 25; Evidence of D. Tottenham, Transcript, November 4, 2020, p 19.

<sup>75</sup> Evidence of D. Tottenham, Transcript, November 4, 2020, p 192; Exhibit 490, Kroeker #1, para 92; Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020 [Cuglietta #1], exhibit A.

<sup>76</sup> Exhibit 490, Kroeker #1, paras 8, 86; Exhibit 522, Desmarais #1, paras 16, 18–19.

<sup>77</sup> Exhibit 490, Kroeker #1, para 32.

<sup>78</sup> Ibid, para 98; Exhibit 493, Corporate Security & Compliance AML Document (September 8, 2015) [Corporate Security].

Mr. Kroeker gave evidence that he supported the measures being taken by BCLC, including the banning and conditioning of players, at the time he joined the organization.<sup>79</sup> Mr. Kroeker’s evidence, however, was that he believed this program to be an insufficient response to the information BCLC had been provided by Mr. Christie, and that, from the time of his arrival, he advocated for an expansion of the program.<sup>80</sup> Mr. Kroeker believed that BCLC should expand its focus beyond the players identified as connected to the investigation and begin to examine *any* player engaged in cash transactions where there was a concern over the source of the player’s funds.<sup>81</sup> If such a player could not explain the source of funds they were using to gamble, Mr. Kroeker believed they should be barred or placed on conditions.<sup>82</sup>

Following Mr. Kroeker’s arrival, a supplementary protocol was developed that provided more detailed direction and established a more stringent regime than that set up in April 2015.<sup>83</sup> The supplementary protocol also suggests a greater focus on suspicious transactions and identification of the source of funds used in such transactions.<sup>84</sup> This is evident from the list of “additional suspicious indicators warranting conditions and/or interview” found on page 2 of the document, which includes:<sup>85</sup>

- Patron buys in predominately in cash particularly using small bills
- Patron’s occupation is not consistent with buy in[s], either the amount or type of buy in
- Patron refuses to provide information regarding occupation or employer
- Patron receives cash deliveries or cash exchanges
- Patron buys chips using cash and leaves the facility with no or little play
- Patron attends Casino with large amount of un-sourced chips
- Patron is involved in chip passing consistent with a commercial nature
- BCLC receive[s] information from an outside agency, including Law Enforcement pertaining to suspicious behavior involving the patron

The protocol goes on to specify that, in these instances, the patron must be interviewed by a BCLC investigator.<sup>86</sup>

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79 Exhibit 490, Kroeker #1, para 100; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 97–98, 161.

80 Exhibit 490, Kroeker #1, para 100; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 97–98, 161.

81 Exhibit 490, Kroeker #1, para 100; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 97–98.

82 Exhibit 490, Kroeker #1, para 100.

83 Evidence of R. Alderson, Transcript, September 10, 2021, pp 62–65, 73; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 152–53; Exhibit 86, BCLC Anti Money Laundering (AML) Protocol for Conditions and Interviews [BCLC Protocols].

84 Evidence of R. Alderson, Transcript, September 10, 2021, pp 63–65.

85 Exhibit 86, BCLC Protocols, p 2.

86 Ibid.

## September 8 Briefing Document

As indicated above, Mr. Kroeker received a briefing from Mr. Alderson shortly after his arrival at BCLC.<sup>87</sup> As part of this briefing, Mr. Alderson provided Mr. Kroeker with a seven-page document that included information about the history of the BCLC anti-money laundering unit and illegal gaming sites. It also described the events leading up to and following Mr. Alderson’s meeting with Mr. Chrustie, in which BCLC was advised of links between cash used in buy-ins by casino patrons and “transnational drug trafficking.”<sup>88</sup>

The briefing document also included a list of recommendations made by Mr. Alderson.<sup>89</sup> While the evidence does not reveal the extent to which these recommendations were discussed during the briefing or Mr. Kroeker’s reaction or actions he may have taken in response, they do offer some insight into the types of anti-money laundering measures identified within BCLC after learning of the information obtained through the E-Pirate investigation. These recommendations, as articulated in the briefing document, included:

- Having service providers ask and document players for Source of Funds for all cash deposits at an agreed upon threshold. (I [Mr. Alderson] recommend \$20K although that can be determined by the denomination submitted.)
- Banning all players from using un-sourced cash that have confirmed links to criminality.
- An acceptance by BCLC that underground banking involving money and Chinese Nationals is suspicious and is likely not legal regardless of the original source of funds.
- BCLC Investigations conducting more interviews with patrons involved in suspicious transaction reports based on a more aggressive criteria. Eg: number of [suspicious transaction reports], actual [suspicious transaction report] circumstances.
- Terminating business relationships when it is warranted.
- A broader understanding at Executive Level of transnational money laundering.
- Continue to reinforce to Government that an agency equipped to investigate criminal activity in Gaming is required. That includes one with the ability to track, investigate, and prosecute on proceeds of crime.

<sup>87</sup> Exhibit 490, Kroeker #1, paras 97–98; Exhibit 493, Corporate Security.

<sup>88</sup> Exhibit 493, Corporate Security.

<sup>89</sup> Ibid, pp 6–8.

As discussed above and below, several of these measures – or versions thereof – were implemented at this time or in the months and years that followed; others were not.

One measure that was addressed at length in the Commission’s hearings was the first of those listed above, requiring declarations (and in other formulations, proof) of the source of funds used in cash transactions with a value exceeding an identified threshold. The inclusion of this measure in this briefing document is one of the earliest instances of a proposal of this type of anti-money laundering strategy emanating from within BCLC.

Mr. Alderson’s evidence was that this strategy was not implemented following this briefing until January 2018, when a similar measure was implemented,<sup>90</sup> though one requiring proof, rather than just a declaration, of the source of funds. Mr. Alderson did not know what Mr. Kroeker did with this recommendation and was unable to explain why this measure was not implemented in the nearly three years following his briefing of Mr. Kroeker. Mr. Alderson told me that he did not believe he had the authority to unilaterally implement this measure in the position he held at the time.<sup>91</sup>

## July 2015 GPEB Spreadsheet

The second event of the summer of 2015 that led to significant action related to anti-money laundering efforts within the province’s gaming industry was the compilation of a spreadsheet by Robert Barber and Ken Ackles, two GPEB investigators then assigned to the River Rock Casino.<sup>92</sup> The spreadsheet produced by Mr. Ackles and Mr. Barber listed large cash transactions of \$50,000 or more (along with two transactions of just below \$50,000) that took place at Lower Mainland casinos during July 2015.<sup>93</sup> In addition to the date, location, and value of the transaction, and the identity of the casino patron(s) involved, the spreadsheet also identified the total value of \$20 bills used in each transaction, a synopsis of the events associated with each transaction, and additional details including associated individuals and vehicles.<sup>94</sup> What seemed to cause those presented with the spreadsheet to take note was that it included over \$20 million in cash transactions in the month of July alone, including \$14 million in \$20 bills.<sup>95</sup>

Mr. Barber testified that, prior to this time, he typically prepared reports on transactions of the sort included in the spreadsheet but focused only on single

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90 This measure was introduced in response to recommendations made in a review conducted by Dr. Peter German, which I discuss in Chapter 12.

91 Evidence of R. Alderson, Transcript, September 9, 2021, pp 39–41.

92 Exhibit 144, Affidavit #3 of Ken Ackles, made on October 28, 2020 [Ackles #3], paras 8, 23–24 and exhibit D; Evidence of R. Barber, Transcript, November 3, 2020, pp 3, 21–22; Exhibit 145, Affidavit #1 of Robert Barber, made on October 29, 2020 [Barber #1], paras 12, 92–93 and exhibit F; Evidence of K. Ackles, Transcript, November 2, 2020, pp 40–41.

93 Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22; Evidence of K. Ackles, Transcript, November 2, 2020, pp 44–46; Exhibit 145, Barber #1, para 92 and exhibit F.

94 Exhibit 145, Barber #1, exhibit F.

95 Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22; Evidence of K. Ackles, Transcript, November 2, 2020, p 47; Exhibit 145, Barber #1, para 95; Exhibit 587, Meilleur #1, para 87; Exhibit 922, Wenezenki-Yolland #1, para 108.

transactions.<sup>96</sup> I note, however, that there are a number of examples in the record before me, several of which I describe in Chapter 10, of GPEB “reports of findings” detailing series of related transactions or broad trends in suspicious activity in casinos.<sup>97</sup> In his evidence, Mr. Barber indicated that the decision to compile this spreadsheet arose from frustration over a perceived lack of action resulting from these reports on individual transactions.<sup>98</sup> Similarly, Mr. Ackles indicated that he proposed creating the spreadsheet because he was concerned that reports on individual transactions failed to accurately convey the scale of large cash transactions occurring in casinos, and he believed that a spreadsheet would give the reader a better understanding of the magnitude of cash accepted over a given period of time.<sup>99</sup>

As I discuss below, this spreadsheet had a significant impact on GPEB senior leadership and senior government officials. It is important to note, however, both the absence of new information contained in the document and the modesty of the analysis undertaken in its preparation. In his evidence, Mr. Ackles explained that the spreadsheet contained “exactly the same information” as the reports of individual transactions prepared previously.<sup>100</sup> The “analysis” conducted to create the spreadsheet amounted to little more than reformatting reports, as they had been prepared previously such that they were included in a single document. This is not meant to belittle the efforts of Mr. Ackles and Mr. Barber or diminish the impact of their work. It is obvious that the document they prepared had the effect of spurring action at the time it was produced, and they deserve commendation for having the insight to identify that a different approach was required.

However, the preparation of the spreadsheet required no great expertise or specialized analytical skill. It seems clear that the type of information presented in this spreadsheet had been available to those at senior levels of GPEB for years, including in reports of findings prepared by the investigation division. I can see no reason why an analysis of this sort was required for other senior managers in GPEB to recognize the magnitude and urgency of the problem.

## **Mr. Meilleur’s Reaction to the GPEB Spreadsheet**

Mr. Ackles and Mr. Barber presented their spreadsheet to Mr. Meilleur on August 13, 2015.<sup>101</sup> Mr. Meilleur telephoned Mr. Ackles that night and told him that he was shocked by what he had reviewed in the document, to the point that he questioned whether the

96 Exhibit 145, Barber #1, para 94; see also Evidence of K. Ackles, Transcript, November 2, 2020, pp 40–41.

97 Exhibit 181, Affidavit #1 of Larry Vander Graaf, made on November 8, 2020, exhibits G–Q; Exhibit 507, Affidavit #1 of Derek Sturko, made on January 18, 2021, exhibit E.

98 Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22.

99 Exhibit 144, Ackles #3, para 24; Evidence of K. Ackles, Transcript, November 2, 2020, pp 40–42; Exhibit 145, Barber #1, para 94.

100 Evidence of K. Ackles, Transcript, November 2, 2020, p 41; see also Evidence of L. Meilleur, Transcript, February 12, 2021, pp 68–69.

101 Exhibit 587, Meilleur #1, para 86; Evidence of K. Ackles, Transcript, November 2, 2020, p 42; Evidence of R. Barber, Transcript, November 3, 2020, p 153.

spreadsheet contained erroneous information and had been provided to him as a joke.<sup>102</sup> It became clear to Mr. Ackles at this point that he was correct in his hypothesis that the reports on individual incidents prepared prior to the creation of the spreadsheet had not adequately conveyed the scale at which suspicious cash was being accepted by the province's casinos.<sup>103</sup> Mr. Meilleur advised Mr. Ackles that he had provided the spreadsheet to Ms. Wenezenki-Yolland.<sup>104</sup>

Mr. Meilleur described his reaction to the spreadsheet as follows:<sup>105</sup>

The activity described in those reports was very troubling. This is the first time I had seen this level of detail. The spreadsheet showed vast amounts of cash, \$20 bills, being used to buy-in at casinos and what appeared to be cash drop offs. I immediately called both Mr. Ackles and Mr. Barber to ask them to explain where the information contained in the descriptive narrative column of the spreadsheet was sourced from. They advised the information was sourced entirely from the Section 86 reports filed by the gaming services providers and ultimately reported to FINTRAC.

When asked to expand upon what he meant by the “level of detail” in the spreadsheet, Mr. Meilleur acknowledged that the information contained in the spreadsheet had always been available through reports filed by service providers pursuant to section 86 of the *Gaming Control Act*, SBC 2002 c 14. He said, however, that “no one had ever taken the time to compile it in a spreadsheet like that and present it to someone in [a] leadership role.”<sup>106</sup> While Mr. Meilleur may well be correct that this information had not previously been compiled in a *spreadsheet*, I note that under the leadership of Mr. Schalk and Mr. Vander Graaf, the former investigation division did, on several occasions, compile data about trends in suspicious transactions over various time periods in reports of findings. I do not accept that the sort of analysis found in the spreadsheet was entirely new to GPEB or that its senior leadership did not previously have access to information about suspicious cash transactions in a format adequate to allow an understanding of the nature, frequency, and magnitude of such transactions.

As he had indicated to Mr. Ackles, Mr. Meilleur quickly took steps to bring the spreadsheet to the attention of Ms. Wenezenki-Yolland. Mr. Mazure was away from the office at the time and Mr. Meilleur was the acting assistant deputy minister and general manager of GPEB in Mr. Mazure's absence.<sup>107</sup> Ms. Wenezenki-Yolland returned from vacation on August 27, 2015, and was scheduled to receive a briefing from Mr. Meilleur that day.<sup>108</sup> Typically, upon returning from an absence, Ms. Wenezenki-Yolland would be

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102 Evidence of K. Ackles, Transcript, November 2, 2020, p 47.

103 Ibid.

104 Ibid, p 48.

105 Exhibit 587, Meilleur #1, para 87.

106 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 68–69.

107 Exhibit 587, Meilleur #1, para 91; Evidence of L. Meilleur, Transcript, February 12, 2021, p 72.

108 Exhibit 922, Wenezenki-Yolland #1, paras 103–4.

briefed on events that had transpired while she was away.<sup>109</sup> Given the information he had received from Mr. Ackles and Mr. Barber, Mr. Meilleur chose to reappropriate this scheduled meeting to brief Ms. Wenezenki-Yolland on suspicious cash transactions in the province’s casinos, providing her with the spreadsheet prepared by Mr. Ackles and Mr. Barber.<sup>110</sup> Mr. Meilleur also provided a limited briefing on the E-Pirate investigation.<sup>111</sup>

Ms. Wenezenki-Yolland’s reaction to this information was similar to that of Mr. Meilleur. She gave evidence that she was shocked and disturbed by what she was told in this briefing.<sup>112</sup> Mr. Meilleur recalled that Ms. Wenezenki-Yolland advised him that it had caused her to lose sleep.<sup>113</sup> It became clear to Ms. Wenezenki-Yolland that there was a need to accelerate efforts that she understood were already underway to enhance anti-money laundering efforts in the gaming industry and prioritize the preparation of briefing materials for the responsible minister.<sup>114</sup> Ms. Wenezenki-Yolland also formed the view that this matter should be brought to the attention of Mr. de Jong at the earliest possible opportunity, and set about arranging a briefing.<sup>115</sup> To this end, Ms. Wenezenki-Yolland, with Mr. Mazure’s blessing, directed Mr. Meilleur that GPEB should prioritize the preparation of briefing materials for the minister, specifically requesting a streamlined “strategy document” in place of a lengthier briefing document that Ms. Wenezenki-Yolland understood to be under development.<sup>116</sup> Ms. Wenezenki-Yolland also contacted Mr. Milburn in the hope of arranging a time to brief Mr. de Jong as soon as possible, but due to Mr. de Jong’s schedule, was unable to arrange a briefing until the latter part of September.<sup>117</sup>

## Briefing of Minister Responsible for Gaming

Ms. Wenezenki-Yolland was ultimately successful in arranging a briefing of Mr. de Jong. While there was some uncertainty among the witnesses involved in the briefing as to the precise date on which it occurred, the evidence suggests that it took place in mid- to late September 2015.<sup>118</sup>

109 Ibid, paras 104–5; Exhibit 587, Meilleur #1, para 91; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 45–46.

110 Exhibit 587, Meilleur #1, para 91; Evidence of L. Meilleur, Transcript, February 12, 2021, p 72; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 45–46.

111 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 45–47; Exhibit 922, Wenezenki-Yolland #1, para 106; Evidence of L. Meilleur, Transcript, February 12, 2021, p 72; Exhibit 587, Meilleur #1, para 91.

112 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 46–47; Exhibit 922, Wenezenki-Yolland #1, para 106.

113 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 72–73; Exhibit 541, Mazure #1, paras 150–51.

114 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 48; Exhibit 922, Wenezenki-Yolland #1, paras 108–9.

115 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 48; Exhibit 922, Wenezenki-Yolland #1, paras 108–12.

116 Exhibit 922, Wenezenki-Yolland #1, paras 109,114; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 48–50.

117 Exhibit 922, Wenezenki-Yolland #1, paras 112, 119–20; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 49–51.

118 Evidence of M. de Jong, Transcript, April 23, 2021, pp 66–67; Exhibit 541, Mazure #1, para 181; Evidence of J. Mazure, Transcript, February 5, 2021, pp 114–15; Exhibit 922, Wenezenki-Yolland #1, para 119; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 49–51.

Those present for the briefing included, at least, Mr. de Jong, Ms. Wenezenki-Yolland, Mr. Mazure, and the deputy minister – either Mr. Milburn or his successor.<sup>119</sup> In her evidence, Ms. Wenezenki-Yolland described the “strategy” for this briefing as being to identify for Mr. de Jong all of the measures that GPEB was already pursuing as well as additional options that could be pursued but which would require direction or a decision from Mr. de Jong himself.<sup>120</sup>

All of these measures – including those already being pursued by GPEB and those requiring direction from the minister – were set out in two documents provided to Mr. de Jong at the briefing.<sup>121</sup> The first of these was the “strategy document” requested of Mr. Meilleur by Ms. Wenezenki-Yolland, which identified a number of different courses of action that could be taken to address concerns about suspicious cash in the province’s casinos.<sup>122</sup> The second was a briefing note identifying possible directives that could be issued to BCLC by Mr. de Jong, or by Mr. Mazure with the approval of Mr. de Jong.<sup>123</sup>

While there was some uncertainty as to whether the version of the strategy document that was entered into evidence was the final version presented to the minister, it is clear that it accurately represents the substance of what was presented to Mr. de Jong.<sup>124</sup> The strategy document sets out several measures that could be employed to address the concerns over suspicious cash in casinos that had arisen as a result of the spreadsheet prepared by Mr. Ackles and Mr. Barber. These included:<sup>125</sup>

- a strategic external review of BCLC reporting of suspicious and large cash transactions, focused on “gaming service provider and BCLC processes on customer due diligence specifically on source of funds and suspicious currency transactions”;
- a ministerial directive to general manager of GPEB/BCLC – a two-part directive was recommended. The first part being “a broad Ministerial directive establishing obligations that BCLC must carry out. This is followed by a detailed general manager directive on specific initiatives with a focus on establish[ing] source of funds and source of wealth”; and
- creation of a GPEB compliance division intelligence unit “which will collect and analyze data which will help to identify trends and prevent further incidents of suspected illegal activity from occurring.”

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119 Exhibit 922, Wenezenki-Yolland #1, para 135.

120 Ibid, para 134.

121 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 50; Evidence of J. Mazure, Transcript, February 5, 2021, pp 120–21.

122 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 51; Evidence of M. de Jong, Transcript, April 23, 2021, pp 67–68; Evidence of J. Mazure, Transcript, February 5, 2021, pp 115–18; Exhibit 552, MOF Strategy Document, Gaming Policy and Enforcement Branch’s Anti–Money Laundering Strategy Phase 3 (September 3, 2015) [MOF Strategy]; Exhibit 922, Wenezenki-Yolland #1, paras 134–35.

123 Exhibit 553, MOF Briefing Document, Options for Issuing Anti–Money Laundering Directives to BCLC (September 1, 2015) [MOF Briefing Document]; Exhibit 922, Wenezenki-Yolland #1, para 138; Evidence of J. Mazure, Transcript, February 5, 2021, pp 119–21.

124 Exhibit 922, Wenezenki-Yolland #1, para 135.

125 Exhibit 552, MOF Strategy, pp 9–10.

As part of the final measure, the authors of the strategy document also noted that at the June 4 workshop, GPEB and BCLC identified a lack of interdiction and enforcement presence in Lower Mainland casinos. The strategy document indicated that “[a]pproval needs to be granted from government for an assessment as to whether GPEB’s role is to be increased or whether it is viable to examine the need and benefits of a joint interdiction team with police ...”<sup>126</sup>

The second document provided to Mr. de Jong was a briefing document that included further detail regarding the ministerial directive proposed in the strategy document.<sup>127</sup> The briefing document outlined several options for providing direction to BCLC, including a directive from the minister, a directive from the general manager of GPEB with the consent of the minister, and combinations of these two options.<sup>128</sup> The appendices to this briefing note include examples of possible directives. While Mr. Mazure stressed in his evidence that these appendices were meant to be examples,<sup>129</sup> each example included either a ministerial or general manager’s directive that are consistent with the requests made in Mr. Mazure’s letter of August 7, 2015.<sup>130</sup> In his evidence, Mr. Mazure agreed that the reason he sought a directive from the minister mirroring his letter of August 7, 2015, is that he did not receive the response to his letter that he had hoped for from Mr. Lightbody and BCLC.<sup>131</sup>

## **Outcomes of Briefing of Minister Responsible for Gaming**

Each of the measures identified in the strategy document provided to Mr. de Jong and referred to above led to action, in some form, from GPEB or from Mr. de Jong. These actions included the creation of an intelligence unit within GPEB’s compliance division; the creation of a new, gaming-focused law enforcement unit that would come to be called the Joint Illegal Gaming Investigation Team (JIGIT); a letter from Mr. de Jong to the chair of the board of BCLC dated October 1, 2015, and a review of anti–money laundering measures in the gaming industry conducted by Meyers Norris Penney LLP (MNP) that was completed in 2016. Each is addressed below, followed by a discussion of the actions taken by BCLC and service providers during and following the implementation of these measures.

## **Creation of the GPEB Compliance Division Intelligence Unit**

One of the measures proposed in the strategy document presented to Mr. de Jong was the creation of an intelligence unit within GPEB’s compliance division. Mr. Meilleur identified the need for greater intelligence capacity early in his tenure as executive director of the compliance division as part of a strategy of greater engagement with

<sup>126</sup> Ibid, pp 10–11.

<sup>127</sup> Exhibit 553, MOF Briefing Document.

<sup>128</sup> Ibid, pp 3–5.

<sup>129</sup> Evidence of J. Mazure, Transcript, February 11, 2021, pp 135–36, 141.

<sup>130</sup> Exhibit 553, MOF Briefing Document, pp 7–10; Exhibit 505, Lightbody #1, exhibit 48.

<sup>131</sup> Evidence of J. Mazure, Transcript, February 5, 2021, p 131.

law enforcement.<sup>132</sup> Work toward the creation of the unit was already underway before Mr. Ackles and Mr. Barber created their spreadsheet.<sup>133</sup>

The intelligence unit was established with the GPEB compliance division in mid-2016 with two staff members.<sup>134</sup> The activities of the unit were described by Mr. Mazure in his affidavit as follows:<sup>135</sup>

Mr. Scott McGregor and Mr. Robert Stewart, his supervisor, created documents for use within GPEB for our investigator's situational awareness of trends in transnational organized crime, gambling, and for sharing with law enforcement partners they were working with. I read the documents produced by the intelligence unit to inform myself and they were subsequently shared/and or used in briefings to [assistant deputy minister] Mr. Mazure, [associate deputy minister] Wenezenki-Yolland and other GPEB Executives.

I pause here to note that while GPEB seems to have established this intelligence unit in order to make better use of the information available to it, GPEB did not take steps to significantly enhance the collection of information about what was actually taking place in the province's casinos. As discussed in Chapter 10, GPEB had historically maintained a limited day-to-day presence within casinos, relying on service providers and BCLC's investigators to obtain information about suspicious transactions and the patrons engaged in such transactions. Based on the evidence before me, it does not appear that changing the nature of GPEB's in-casino presence was given serious consideration even in the wake of the E-Pirate revelations and the spreadsheet produced by Mr. Ackles and Mr. Barber. Even as BCLC had begun to make efforts to gather information about the source of funds used in large and suspicious transactions, including by interviewing the patrons involved in those transactions, GPEB did not begin to engage directly with these patrons.<sup>136</sup>

The issue of whether GPEB investigators could have interviewed patrons about the source of their funds was raised frequently throughout the Commission's hearings. Mr. Meilleur, who oversaw GPEB's investigators during this time period, was asked why they could not interview patrons about the source of their funds. He responded that he understood this type of investigation was the responsibility of law enforcement<sup>137</sup> and that GPEB had received legal advice that he understood to mean that its investigators could not conduct such interviews.<sup>138</sup> I return to this topic in Chapter 14.

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132 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 94–97.

133 Exhibit 587, Meilleur #1, para 62 and exhibit Z.

134 Ibid, paras 61–62.

135 Ibid, para 66.

136 Evidence of J. Mazure, Transcript, February 5, 2021, pp 134–35.

137 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 34–35.

138 Evidence of L. Meilleur, Transcript, March 10, 2021, pp 4–16; Exhibit 1058, Affidavit #3 of Joseph Emile Leonard Meilleur, sworn on September 17, 2021 [Meilleur #3]; Exhibit 587, Meilleur #1, paras 68–69, 73; Exhibit 586, Compliance Under the Gaming Control Act – an Opinion Prepared for BC GPEB and BCLC – by Dr. Peter German (December 4, 2016).

## Creation of the Joint Illegal Gaming Investigation Team

As part of the proposal to establish an intelligence unit within GPEB’s compliance division, the strategy document identified a “lack of interdiction and enforcement presence at casinos ... in the Lower Mainland.”<sup>139</sup> This gap had previously been identified at the June 4 workshop, and there seemed to be clear agreement between BCLC and GPEB that there was a real need for greater law enforcement engagement in the gaming industry.<sup>140</sup> As noted above, Mr. Lightbody had advocated to Mr. de Jong for dedicated law enforcement resources in his letter of August 24, 2015, and gave evidence of a meeting with the minister around this time in which he and Bud Smith, then the chair of BCLC’s board, expressed frustration at a lack of action by law enforcement on information reported to FINTRAC, police, and GPEB.<sup>141</sup> In the words of Mr. de Jong, by the fall of 2015, BCLC and GPEB were “singing from the same song sheet with a boisterous voice that in order to make further progress, we were going to need to see a level of police investigative presence that simply wasn’t there.”<sup>142</sup>

While this may have been the first time that the need for greater law enforcement engagement had been brought to Mr. de Jong’s attention,<sup>143</sup> the notion that there was a need for a dedicated law enforcement unit focused on the gaming industry was not new. As discussed in Chapters 9 and 10, the need for greater police engagement had been identified repeatedly dating back to the late 1990s.<sup>144</sup> This included, but was not limited to, in proposals prepared by Ward Clapham<sup>145</sup> and Fred Pinnock,<sup>146</sup> and in discussions between Kevin Begg and the RCMP in early 2010.<sup>147</sup> This does not undermine the importance of the decision to establish JIGIT, discussed below, but raises the question of why, in light of the repeated identification of the need for such a unit, it was not until 2016 that such a unit was created.

Leaving aside, for now, the question of how previous proposals were handled, upon receiving GPEB’s strategy document identifying a gap in law enforcement in

139 Exhibit 552, MOF Strategy, p 10.

140 Exhibit 587, Meilleur #1, para 144; Evidence of M. de Jong, Transcript, April 23, 2021, pp 65–66; Exhibit 505, Lightbody #1, para 118; Evidence of J. Lightbody, Transcript, January 28, 2021, p 27.

141 Exhibit 505, Lightbody #1, para 118, exhibit 49; Evidence of J. Lightbody, Transcript, January 28, 2021, p 27; Exhibit 537, Affidavit #1 of Stuart Douglas Boland Smith, sworn on January 22, 2021 [Smith #1], p 12.

142 Evidence of M. de Jong, Transcript, April 23, 2021, p 66.

143 Evidence of P. German, Transcript, April 13, 2021, pp 112, 118–19.

144 Exhibit 77, Overview Report: Integrated Illegal Gaming Enforcement Team, Appendix D, October 1997 Treasury Board Submission: Illegal Gambling Enforcement Unit.

145 Mr. Clapham is the former officer-in-charge of the Richmond RCMP. Evidence of W. Clapham, Transcript, October 27, 2020, pp 143–63 and Transcript, October 28, 2020, pp 11–12, 19; Exhibit 94, RCMP Briefing Note – Supt. Ward Clapham – Richmond RCMP Annual Reference Level Update 2007/2008; Exhibit 95, Calls for Service – Site Specific – The Great Canadian Casino and River Rock; Exhibit 96, Serious and Unreported Crime at the Casinos; Exhibit 97, City of Richmond – Report to Committee (September 1, 2006); Exhibit 98, City of Richmond – Additional Level Request Form for Budget Year 2007; Exhibit 101, RCMP Memorandum to City of Richmond (06–12–11).

146 Mr. Pinnock is the former officer-in-charge of the Integrated Illegal Gaming Enforcement Team. Evidence of F. Pinnock, Transcript, November 5, 2020, p 97; Exhibit 159, Integrated Illegal Gaming Enforcement Team (IIGET) – A Provincial Casino Enforcement-Intelligence Unit (June 27, 2007).

147 Mr. Begg is the former director of police services for the Province of British Columbia. Evidence of K. Begg, Transcript, April 21, 2021, pp 51–52.

the gaming industry, Mr. de Jong immediately gave direction to pursue the creation of a unit to fill this gap.<sup>148</sup> The following day, Mr. Mazure approved a draft letter to the commanding officer of the RCMP “E” Division seeking a meeting to discuss the creation of a coordinated team of RCMP, local police, and GPEB investigators with a mandate to enforce federal and provincial statutes related to gaming.<sup>149</sup>

These actions led to a complex and lengthy series of discussions between officials from a range of organizations, including the Ministry of Finance, the Ministry of Public Safety and Solicitor General, the RCMP, BCLC, and GPEB.<sup>150</sup> It is not necessary to review those machinations in detail for the purpose of this Report, but it is evident that all involved worked diligently to bring the proposed law enforcement unit to life and that it was accomplished with remarkable efficiency, given the complexity of the task and the normally deliberate pace for which government action is well known.<sup>151</sup>

The result of these endeavours was the creation of JIGIT, which was established in March 2016 within the existing Combined Forces Special Enforcement Unit.<sup>152</sup> The new unit consisted of 22 law enforcement personnel and four GPEB investigators.<sup>153</sup>

The purpose and objectives of the unit were set out in a letter dated March 10, 2016, to Mr. de Jong from the minister of public safety and solicitor general, Michael Morris. Mr. Morris’s letter indicated that JIGIT would:<sup>154</sup>

provide a dedicated, coordinated, multi-jurisdictional investigative and enforcement response to unlawful activities within British Columbia gaming facilities with an emphasis on anti-money laundering strategies, illegal gambling in British Columbia and provide a targeted focus on organized crime.

JIGIT’s primary strategic objectives will be targeting and disrupting top-tier organized crime and gang involvement in illegal gaming, and the prevention of criminal attempts to legalize the proceeds of crime through gaming facilities. The team’s secondary strategic objective will be to have a clear public education function with respect to the identification and reporting of illegal gambling in British Columbia with consideration of its provincial partners.

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148 Exhibit 541, Mazure #1, para 199; Evidence of M. de Jong, Transcript, April 23, 2021, pp 96–97.

149 Exhibit 541, Mazure #1, para 199.

150 Ibid, paras 200 and 202–203; Exhibit 505, Lightbody #1, paras 121–23; Evidence of J. Lightbody, Transcript, January 29, 2021, p 90; Exhibit 922, Wenezenki-Yolland #1, paras 141–48; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 68–69.

151 Evidence of C. Clark, Transcript, April 20, 2021, pp 56; Exhibit 922, Wenezenki-Yolland #1, para 141–48; Evidence of M. de Jong, Transcript, April 23, 2021, pp 96–97.

152 Evidence of M. de Jong, Transcript, April 23, 2021, pp 99–100; Exhibit 902, Letter from Mike Morris re JIGIT, March 10, 2016 [Morris Letter March 2016]; Evidence of K. Ackles, Transcript, November 2, 2020, pp 49–50.

153 Evidence of M. de Jong, Transcript, April 23, 2021, pp 99–100; Exhibit 902, Morris Letter March 2016; Evidence of K. Ackles, Transcript, November 2, 2020, p 49.

154 Exhibit 902, Morris Letter March 2016, p 1; Exhibit 144, Ackles #3, para 37.

The funding for JIGIT comes primarily from BCLC.<sup>155</sup> Allowances have been made within BCLC’s cost ratio for this expense.<sup>156</sup> Mr. de Jong made the decision that the unit should be funded by BCLC and insisted that the funding of JIGIT should be “fenced” to ensure that funds intended for this unit would not be diverted to other purposes.<sup>157</sup>

## Mr. de Jong’s Letter of October 1, 2015, and Subsequent Correspondence

As discussed above, one of the possible measures raised with Mr. de Jong during the briefing precipitated by the spreadsheet prepared by Mr. Ackles and Mr. Barber was the issuance of a directive from Mr. de Jong – or from Mr. Mazure with Mr. de Jong’s consent – to BCLC.<sup>158</sup>

Mr. de Jong issued a letter dated October 1, 2015, to Mr. Smith, then the chair of the board of directors of BCLC.<sup>159</sup> The letter began by acknowledging the involvement of BCLC in the first two phases of the province’s anti–money laundering strategy and indicated that the letter’s purpose was to provide direction regarding phase three of the strategy.<sup>160</sup> In the letter, Mr. de Jong explained that he had been advised that large and suspicious cash transactions remained prevalent in the province’s casinos and indicated that “BCLC is directed to take the following actions with respect to [anti–money laundering]”:<sup>161</sup>

1. Ensure that BCLC’s [anti–money laundering] compliance regime is focused on preserving the integrity and reputation of British Columbia’s gaming industry in the public interest, including those actions set out in the General Manager’s letter of August 7 (enclosed) and any subsequent actions or standards that may follow;
2. Participate in the development of a coordinated enforcement approach with the Gaming Policy and Enforcement Branch (GPEB), the RCMP and local police to mitigate the risks of criminal activities in the gaming industry; and
3. Enhance customer due diligence to mitigate the risk of money laundering in British Columbia gaming facilities through the

155 Exhibit 902, Morris Letter March 2016, p 1; Exhibit 922, Wenezenki-Yolland #1, para 146 and exhibits W, X; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 68–69; Exhibit 505, Lightbody #1, paras 121–22; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 90–92.

156 Exhibit 922, Wenezenki-Yolland #1, para 146 and exhibits W, X; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 68–69; Exhibit 505, Lightbody #1, paras 121–22; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 90–91.

157 Exhibit 902, Morris Letter March 2016, p 1; Exhibit 922, Wenezenki-Yolland #1, para 146 and exhibits W, X; Exhibit 144, Ackles #3, para 37.

158 Exhibit 552, MOF Strategy.

159 Exhibit 900, Letter from Michael de Jong, providing BCLC with direction on phase three of the AML strategy (October 1, 2015).

160 Ibid, p 1.

161 Ibid.

implementation of [anti-money laundering] compliance best practices including processes for evaluating the source of wealth and source of funds prior to cash acceptance.

Mr. de Jong concluded this correspondence by invoking Mr. Mazure's letter of August 7 a second time, advising that the actions directed in his letter "are in addition to, and in support of those activities identified in the August 7, 2015, letter from the general manager of GPEB to BCLC."<sup>162</sup>

The evidence before me indicates that these references to Mr. Mazure's letter were included by Mr. de Jong at the urging of Ms. Wenezenki-Yolland.<sup>163</sup> Ms. Wenezenki-Yolland told me that she requested that Mr. de Jong refer to Mr. Mazure's letter in order to reinforce his commitment to Mr. Mazure as general manager of GPEB and to affirm his expectation that BCLC would work with Mr. Mazure to address the issues raised in both letters.<sup>164</sup> In his own evidence, Mr. de Jong confirmed that the references to Mr. Mazure's letter were purposeful and intended to reflect that Mr. Mazure's letter had the full support of the responsible minister.<sup>165</sup>

### **Authority Invoked by Mr. de Jong's Letter of October 1, 2015**

The briefing document and example directives provided to Mr. de Jong during the September briefing suggested the issuance of a directive under the authority provided by the *Gaming Control Act* to Mr. de Jong as the responsible minister and/or Mr. Mazure as the general manager of GPEB.<sup>166</sup>

The authority, if any, that Mr. de Jong intended to invoke through his letter of October 1, 2015, however, is not evident on the face of the letter.<sup>167</sup> The broader record before the Commission, however, suggests that Mr. de Jong did not intend to invoke his authority under the *Gaming Control Act* in issuing this letter. In his evidence, Mr. de Jong candidly acknowledged that he did not turn his mind to the precise statutory authority on which he was relying in issuing the directions contained in this letter, but that he was aware that he had the authority to issue directions to BCLC as the representative of government, which is the sole shareholder in BCLC, and that it was his intention to do so.<sup>168</sup> This suggests that the letter was not intended as a direction issued under the *Gaming Control Act* and is consistent with the evidence of Ms. Wenezenki-Yolland, who suggested that the form of the letter was consistent with a desire to issue

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<sup>162</sup> Ibid, p 2.

<sup>163</sup> Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 57; Evidence of J. Mazure, Transcript, February 11, 2021, pp 185–86; Exhibit 922, Wenezenki-Yolland #1, para 149.

<sup>164</sup> Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 57; Exhibit 922, Wenezenki-Yolland #1, para 149.

<sup>165</sup> Evidence of M. de Jong, Transcript, April 23, 2021, pp 86–87.

<sup>166</sup> Exhibit 553, MOF Briefing Document.

<sup>167</sup> Exhibit 900, Letter from Michael de Jong, providing BCLC with direction on phase three of the AML strategy (October 1, 2015).

<sup>168</sup> Evidence of M. de Jong, Transcript, April 23, 2021, pp 85–86, 136–38.

direction under the “Crown accountability structure” rather than operational direction under the *Gaming Control Act*.<sup>169</sup> Further support for the conclusion that the letter does not represent directions issued under the *Gaming Control Act* is found in the apparent absence of compliance with the Act’s requirement that any ministerial direction be published and made available for inspection at the GPEB office.<sup>170</sup>

Based on this evidence, I am satisfied that Mr. de Jong’s letter of October 1, 2015, was not – and was not intended to be – a directive issued to BCLC pursuant to the authority granted to the responsible minister under the *Gaming Control Act*. However, Mr. de Jong gave evidence that while he did not have a precise statutory authority in mind when issuing this letter, he used the word “direct” in the letter deliberately and that it was his intention to be very clear that the letter contained directions reflecting the government’s expectations.<sup>171</sup> Mr. de Jong asserted in his evidence that it was his expectation that BCLC would respond by taking appropriate action.<sup>172</sup>

While Mr. de Jong may not have had a clear sense of the precise authority he was invoking, he clearly intended to express to BCLC the expectations of government through his letter of October 1, 2015. Further, this was clearly communicated in the letter itself and it should have been evident to BCLC that it had, at the very least, a moral obligation to comply with the directions contained in the letter, even if the minister did not strictly satisfy the preconditions to invoking any particular legal authority. Based on the evidence before me, I do not understand the question of whether BCLC ought to have complied with this letter to be a contentious one as, based on the evidence before me, I understand it to be the view of BCLC that it did, in fact, comply with the expectations set out in the minister’s letter. The precise meaning of the letter and the actions taken in response by BCLC are addressed below.

## **The Meaning of Mr. de Jong’s Letter of October 1, 2015**

Before considering BCLC’s actions following the directions issued in Mr. de Jong’s letter, it is necessary to determine, to the extent possible, not only what Mr. de Jong intended those directions to mean, but also whether that intention was effectively communicated.

The focus of this discussion will be on the reference in the third direction in Mr. de Jong’s letter to evaluation of the source of funds prior to cash acceptance and the reference in the first direction to the “General Manager’s letter of August 7 and any subsequent actions or standards that may follow” which is closely related to the issue of the evaluation of the source of funds. The reason for this focus, as will become apparent below, is that I understand there to be some degree of controversy as to BCLC’s actions in response to these elements of Mr. de Jong’s direction, whereas there seems to be little dispute with respect to BCLC’s adherence to the remaining directions.

<sup>169</sup> Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 62–63.

<sup>170</sup> *Gaming Control Act*, s 6(3); Evidence of M. de Jong, Transcript, April 23, 2021, p 137.

<sup>171</sup> Evidence of M. de Jong, Transcript, April 23, 2021, p 86.

<sup>172</sup> *Ibid.*

As indicated above, with respect to evaluation of the source of funds used in casino transactions, Mr. de Jong’s letter directed BCLC to:<sup>173</sup>

[e]nhance customer due diligence to mitigate the risk of money laundering in British Columbia gaming facilities through the implementation of [anti-money laundering] compliance best practices including processes for evaluating the source of wealth and source of funds prior to cash acceptance.

While this paragraph does not prescribe precise measures that BCLC is expected to implement, it does offer some guidance as to the response expected of BCLC. First, the use of the word “enhance” is clearly intended to indicate that BCLC is expected to improve or add to its current practices. The direction is not to maintain the status quo. Second, the enhancements to customer due diligence should be aimed at risk mitigation. This suggests that BCLC should take action to implement measures that reduce the overall risk of money laundering in casinos and not focus only on detecting and addressing actual instances of money laundering. Finally, the phrase “evaluating the source of wealth and source of funds prior to cash acceptance” draws a distinction between “source of wealth” and “source of funds” and directs BCLC to target both, while the concluding phrase “prior to cash acceptance” makes clear that this should be done before a transaction is accepted, presumably to allow cash transactions to be refused where appropriate.

Mr. de Jong’s evidence indicates that the absence of prescription in this letter was deliberate and that beyond directing BCLC to do something more than it was already doing, Mr. de Jong did not have a detailed expectation of precisely the measures he expected BCLC to implement. He described his intention as follows in his evidence:<sup>174</sup>

I did mean to convey ... that we needed to go beyond what was taking place presently, that the status quo level of scrutiny was not achieving the objectives that we were collectively hoping for. And you have heard my hesitancy about being more prescriptive than that, given the fact that others possess more information than I did about the proper way to assess risk and judge a transaction. But I certainly meant to convey, and hoped I did, a belief that the status quo wasn’t sufficient, and we were expecting officials to go beyond that.

While Mr. de Jong did not have a clear view as to precisely what measures BCLC ought to have implemented, he was able to provide an indication during his testimony of the measures he was *not* seeking from the BCLC. Mr. de Jong indicated in his evidence, for example, that he “did not mean to convey an intention that every single bank note” used in a transaction at a casino should be “scrutinized at a higher level.”<sup>175</sup> Mr. de Jong also made clear that he had been persuaded at that time of the advisability

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173 Exhibit 900, Letter from Michael de Jong, providing BCLC with direction on phase three of the AML strategy (October 1, 2015).

174 Evidence of M. de Jong, Transcript, April 23, 2021, p 88.

175 Ibid; see also Exhibit 903, Email exchange between Brittney Speed and Len Meilleur, re AML Strategy Language – draft BCLC mandate letter (November 19, 2015).

of remaining within a “risk-based” or “standards-based” framework and that he should avoid overly prescriptive measures, such as a threshold over which cash would need to be sourced before acceptance, or a ban on cash.<sup>176</sup>

Later in his evidence, however, Mr. de Jong indicated that he believed that the further measures he was directing BCLC to implement should be tied to suspicious transaction reporting:<sup>177</sup>

[W]hat I was urging upon or attempting to urge upon the lottery corporation is this notion of working with the regulator to settle upon – the regulator being GPEB – to settle upon processes. So, for example, it occurred to me at the time that if the presentation of cash in a casino was generating a suspicious cash transaction report, that that should trigger some additional investigation or activity. I wasn’t purporting to prescribe precisely what that should be, but it should be a trigger for additional activity.

Ms. Wenezeki-Yolland testified about her understanding of what Mr. de Jong meant when he directed BCLC to take additional measures to evaluate source of funds prior to cash acceptance.<sup>178</sup> She seems to have had a different perspective on Mr. de Jong’s openness to the identification of a threshold value over which proof of source of funds would be required, and did not identify suspicious transaction reporting as a trigger for further activity.<sup>179</sup> Her evidence, however, was generally consistent with that of Mr. de Jong in that she also understood that, while Mr. de Jong clearly expected BCLC to do more than it was already doing, he did not have specific measures in mind that he expected BCLC to implement.<sup>180</sup>

[F]rom my perspective, it would have meant that based on a determination of some of the risk elements which could be a level of cash, a level could be a trigger for risk assessment. It would depend on a number of risk factors. And I mentioned before it could be that you would increase your questioning around source of funds depending on – it could be a player’s behaviour that might – what you need to do in the context of operations is provide some kind of direction or procedures for the people who are at the cash cage who would know what to do when they encounter different types of transactions, and that would typically be based on risk and some parameters that identify what would be potential risk. So, it could be a dollar value. It could be a number of suspicious cash transactions, depending on what that was. That had not been totally defined at that point. But my understanding is that GPEB and BCLC after that meeting would have left that meeting and then defined what those risk parameters might be.

176 Evidence of M. de Jong, Transcript, April 23, 2021, pp 88–90, 139–40, 145–46, 149.

177 Ibid, p 152.

178 Evidence of C. Wenezeki-Yolland, Transcript, April 27, 2021, pp 66–67.

179 Ibid.

180 Ibid.

...

It was very clear from my perspective that the minister expected more customer due diligence to be taken, even if he wasn't specific at the time about what that was, and it was very clear in my mind as well that that is what was intended.

I have no reason to question the sincerity of Ms. Wenezenki-Yolland's evidence that she understood Mr. de Jong was open to the identification of a threshold value over which proof of the source of funds would be required. Based on Mr. de Jong's evidence, however, that understanding does not appear to be consistent with the minister's state of mind at the time he sent this letter to BCLC.

## **BCLC Reaction and Efforts to Clarify Directions**

Mr. de Jong's letter was addressed to Mr. Smith, who was then chair of the board of BCLC. Mr. Smith gave evidence that the meaning of the letter was discussed at some length within BCLC and that there were two competing points of view in those discussions.<sup>181</sup> One of these points of view was that the minister's letter reinforced BCLC's "risk-based" approach to evaluating patrons' source of wealth and source of funds and sought an extension of this approach.<sup>182</sup> The other interpretation of the minister's letter, according to Mr. Smith, was that the minister was directing BCLC to be much more prescriptive and that any patron buying-in with cash, regardless of amount, should be required to disclose their source of funds.<sup>183</sup> Mr. Smith's assessment was that a shift to a prescriptive approach would have required a considerable change to BCLC's business model.<sup>184</sup> Mr. Smith's belief, based on his past experience with Mr. de Jong, was that if Mr. de Jong wanted BCLC to abandon a risk-based approach for a prescriptive one, he would have said so directly.<sup>185</sup> However, the board wanted further clarity from Mr. de Jong and directed Mr. Smith to write a letter to Mr. de Jong seeking additional information about Mr. de Jong's expectations.<sup>186</sup> Mr. Lightbody, who was present at the meeting, also recalled that Mr. Smith was directed to seek clarification from Mr. de Jong.<sup>187</sup>

The minutes of the meeting of the board of directors of October 29, 2015, reflect that Mr. de Jong's letter was discussed by the board but cast a different light on the nature of the discussion and the direction given to Mr. Smith.<sup>188</sup> The relevant entry from the minutes reads as follows:<sup>189</sup>

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181 Evidence of B. Smith, Transcript, February 4, 2021, p 73.

182 Ibid.

183 Ibid.

184 Ibid, p 74.

185 Ibid, pp 73–74.

186 Ibid, p 74.

187 Evidence of J. Lightbody, Transcript, January 29, 2021, pp 37–38.

188 Exhibit 513, BCLC Minutes of the Meeting of the Board of Directors (October 29, 2015), p 7.

189 Ibid.

Bud Smith reviewed issues arising from a recent directive received from the Minister. Discussion followed as to the most appropriate board response, given management estimates the effect of the direction for BCLC, if fully implemented, would be hundreds of millions of dollars. The Board directed that the Chair seek a meeting with the Minister to review implications of the directive.

This is a very brief summary of what seems likely to have been a fairly lengthy conversation and should be read with the understanding that it almost certainly does not fully capture all of the nuance of the discussion. However, it does seem to clearly indicate that, perhaps in addition to confusion about the meaning of the letter, the board was concerned about the financial implications of Mr. de Jong's direction and interested in ensuring that these implications were brought to the attention of Mr. de Jong. When asked about this aspect of the minutes of the meeting, Mr. Lightbody confirmed that BCLC was interested in ensuring that the minister understood the revenue implications of his direction but maintained that there was also uncertainty as to its meaning.<sup>190</sup>

### **Draft Letter from Mr. Smith to Mr. de Jong**

While a draft letter was produced by Mr. Kroeker with input from Mr. Lightbody, Mr. Desmarais, and other members of BCLC's senior management team, it was not sent to Mr. de Jong.<sup>191</sup> Given that this letter appears to be an initial draft forwarded to Mr. Smith for review, caution should be exercised in drawing conclusions from its contents. No version of this letter was ever sent, and there is no evidence that Mr. Smith approved of or agreed with its contents and no evidence of the instructions given to Mr. Kroeker or others involved in its drafting before it was prepared. Still, it bears mentioning that the draft provided to Mr. Smith is more than a simple enquiry as to the meaning of Mr. de Jong's direction and seems to be consistent with the discussion and direction as reflected in the meeting minutes reproduced above.

The draft letter responds to all three of the directions included in Mr. de Jong's letter. With respect to the first two, it provides information about measures already in place and progress on additional efforts related to these directions.<sup>192</sup> Comments related to the third direction begin with a similar review of customer due diligence measures already in place and go on to describe enhancements to BCLC's cash alternative offerings then awaiting approval by GPEB.<sup>193</sup>

The commentary on the third direction does not include a query as to the meaning of Mr. de Jong's direction with respect to evaluation of source of wealth and source

<sup>190</sup> Evidence of J. Lightbody, Transcript, January 29, 2021, pp 36–38.

<sup>191</sup> Exhibit 538, Email to Bud Smith from Jim Lightbody, re Letter to Minister Re AML (October 24, 2015), with attachment, p 1; Evidence of B. Smith, Transcript, February 4, 2021, pp 75–76.

<sup>192</sup> Exhibit 538, Email to Bud Smith from Jim Lightbody, re Letter to Minister Re AML (October 24, 2015), with attachment, p 2.

<sup>193</sup> Ibid, pp 2–3.

of funds, as suggested by Mr. Smith. Rather, unlike the discussion of the first two directions, the commentary in response to the third direction continues with an argument against the adoption of more prescriptive source-of-funds measures.<sup>194</sup> The draft letter asserts that “the current processes in place provide strong anti-money laundering controls” that would be strengthened with an automated system to be brought online the following year. It advises that requiring source-of-funds and source-of-wealth evaluations for every transaction, or even every transaction of \$10,000 or more, would result in a substantial disruption to BCLC’s business.<sup>195</sup> The letter concludes by providing “context” to the concern expressed in Mr. de Jong’s letter regarding the prevalence of large cash transaction reports generated by British Columbia casinos. This context included advice that casinos were responsible for only 1 percent of large cash transaction reports submitted to FINTRAC across Canada and an indication that “the number of large cash transactions at casinos is representative of [BCLC’s] increased focus on training and systems to meet the requirements set out by FINTRAC.”<sup>196</sup>

As indicated above, the importance of this draft letter should not be overemphasized. It was not sent, and there is no evidence that Mr. Smith approved of its contents. Nor is there evidence of the directions that led to its creation. However, it was prepared by and in consultation with BCLC’s senior management and does provide some indication that the initial reaction of some within BCLC to the minister’s letter of October 1, 2015, was not just confusion as to the meaning of the direction, but concern that one possible interpretation of the direction, if applied, could result in a substantial loss of revenue for BCLC. That the CEO and several other senior executives contributed to its creation suggests that the views expressed in the letter were of some prominence within BCLC’s senior management. I do not suggest, at this stage, that there was necessarily anything inappropriate about this reaction. As noted by Mr. Lightbody, it is the role of BCLC to advise the responsible minister of the revenue implications of potential policy changes.<sup>197</sup> Whether the manner in which this advice was provided in this context was appropriate is best considered in the context of all of the evidence and will be addressed in Chapter 14.

### **Mr. Smith’s Meeting with Mr. de Jong**

The reason that the draft letter discussed above was never finalized or sent was that Mr. Smith had a chance meeting with Mr. de Jong and was able to seek clarification of the direction issued by Mr. de Jong in person.<sup>198</sup> Mr. Smith provided the following account of this conversation in his oral evidence:<sup>199</sup>

I asked the minister, I said look – I made reference to this letter and I said, there’s two points of view even within our own executive about what

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194 Ibid, pp 4–5.

195 Ibid, p 4.

196 Ibid, p 5.

197 Evidence of J. Lightbody, Transcript, January 29, 2021, pp 37–38.

198 Evidence of B. Smith, Transcript, February 4, 2021, pp 75–76.

199 Ibid, p 76.

that means, and I want to know from you ... do you want us to basically [question] everyone who comes in the door with cash, to stand them aside and question them about the source of their money, or is this about us being more deliberate and more fulsomely doing what we've been trying to do up till now on a risk-based approach; do you want to go away from the risk-based approach to a dollar-specific approach? And he said, I do not want you to go to a dollar-specific approach; I want you to continue with your risk-based approach, but I want there to be more action to try to get ... a better handle on what's going on.

Mr. de Jong did not deny that this conversation may have taken place but did not recall it.<sup>200</sup> He also did not recall becoming aware of competing interpretations of his letter at this time.<sup>201</sup> However, Mr. Smith's account is consistent with Mr. de Jong's evidence about the intention underlying his direction and I accept that the conversation between Mr. de Jong and Mr. Smith took place and that Mr. Smith's account of this conversation is accurate. Mr. Smith reported this clarification to the board and to Mr. Lightbody.<sup>202</sup>

## **Subsequent Correspondence to BCLC from Government**

Correspondence between government and BCLC on matters related to money laundering and proceeds of crime in the province's casinos did not conclude with Mr. de Jong's letter of October 1, 2015. Subsequent to this letter – as had been his practice previously, as well as that of his predecessors – Mr. de Jong continued to send annual mandate letters to BCLC, which touched on its anti-money laundering efforts, alongside other matters. These mandate letters are relevant to the question of Mr. de Jong's intention in sending his letter of October 1, 2015, as they represented an opportunity to expand upon or clarify the direction issued in that correspondence. In his evidence, Mr. de Jong specifically urged that the October 2015 letter be read alongside the mandate letter that followed.<sup>203</sup>

In addition to these mandate letters from Mr. de Jong, Mr. Mazure carried on a correspondence with Mr. Lightbody on matters related to BCLC's anti-money laundering efforts for approximately two years following Mr. de Jong's October 2015 letter. It is evident that Mr. de Jong had no role in preparing these letters and does not seem to have been aware of this correspondence. As such, they should not be viewed as offering any insight into the meaning of the October 2015 letter or Mr. de Jong's intention in sending it. However, they remain relevant to the broader issue of the response to the October 2015 letter, as Mr. de Jong specifically invoked in his letter "the General Manager's letter of August 7 ... and any subsequent actions or standards that

<sup>200</sup> Evidence of M. de Jong, Transcript, April 23, 2021, pp 91–93.

<sup>201</sup> Ibid, pp 90–91.

<sup>202</sup> Evidence of B. Smith, Transcript, February 4, 2021, p 76.

<sup>203</sup> Evidence of M. de Jong, Transcript, April 23, 2021, pp 151–52.

may follow.” Accordingly, while Mr. Mazure’s letters do not amount to directions to BCLC under the *Gaming Control Act*, Mr. de Jong’s letter expressed his expectation that BCLC would be guided by communications from Mr. Mazure.

## **2016–17 and 2017–18 BCLC Mandate Letters**

Following his letter of October 1, 2015, and prior to the conclusion of his tenure as finance minister and minister responsible for gaming in 2017, Mr. de Jong issued two mandate letters to BCLC, one for the 2016–17 fiscal year and one for the 2017–18 fiscal year.<sup>204</sup>

In both mandate letters, Mr. de Jong reiterated the directions issued in his October 2015 letter. In the 2016–17 mandate letter, Mr. de Jong wrote, in part:<sup>205</sup>

BCLC will provide a quarterly report to the Minister of Finance on the implementation of the government’s Anti-Money Laundering (AML) Strategy and mitigation of related illegal activities. This will include, but not be limited to:

- a) Activities undertaken to ensure the Corporation’s compliance regime is focused on preserving the integrity and reputation of BC’s gaming industry in the public interest;
- b) Participation in the development of, and providing funding to support, an enhanced coordinated enforcement approach with the Gaming Policy and Enforcement Branch, the RCMP and local police to mitigate the risk of criminal activities in the gaming industry;
- c) The implementation of anti-money laundering compliance best practices with appropriate consideration of evaluating the source of wealth and source of funds prior to cash acceptance within a risk based framework;
- d) Providing input to the Ministry of Finance in the development of a public information and education strategy and action plan for the government’s review and approval.

This letter mirrors, but does not expand upon, the directions issued in Mr. de Jong’s October 2015 letter. This is notable, as there is evidence that, at one point, there was an intention to use this mandate letter to provide further clarity regarding the minister’s expectations with respect to evaluation of the source of funds. An email from a GPEB staff member to Mr. Meilleur dated November 19, 2015, indicated that this was the case.

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204 Exhibit 892, Mandate Letter to BCLC for the 2016–2017 Fiscal Year (January 29, 2016); Exhibit 893, Mandate Letter to BCLC for the 2017–2018 Fiscal Year (December 2016).

205 Exhibit 892, Mandate Letter to BCLC for the 2016–2017 Fiscal Year (January 29, 2016), p 3.

This email read in part:<sup>206</sup>

In a meeting with Bud Smith yesterday, Minister committed to clarify through the mandate letter, that the evaluation of source of funds prior to cash acceptance, does not imply that they need to check every \$20 bill that comes in the door. That a pragmatic, risk based approach should be taken in appropriate consideration of evaluating the source of funds.

It is clear from the mandate letter that the clarification promised to Mr. Smith was not provided, at least in this letter.

BCLC's anti-money laundering measures were also addressed in Mr. de Jong's subsequent mandate letter for the 2017–18 fiscal year. The language used in that letter differed from that used in the 2016–17 letter but was largely consistent with both the October 2015 letter and the 2016–17 mandate letter.<sup>207</sup> This letter also did not provide clarification regarding Mr. de Jong's expectations with respect to the evaluation of the source of funds used in transactions in the province's casinos.<sup>208</sup>

## Correspondence Between Mr. Mazure and Mr. Lightbody

### *Mr. Mazure's Letters*

Subsequent to his letter of August 7, 2015, and Mr. de Jong's letter of October 1, 2015, Mr. Mazure wrote to Mr. Lightbody on multiple occasions on the subject of BCLC's anti-money laundering regime.<sup>209</sup> In these letters, including those dated January 15, 2016,<sup>210</sup> July 14, 2016,<sup>211</sup> and May 8, 2017,<sup>212</sup> Mr. Mazure repeatedly expressed his concern over the prevalence of suspicious cash transactions in the province's casinos and emphasized the importance of taking action to evaluate the source of funds used in casino transactions.

In the January 15, 2016, letter, Mr. Mazure wrote:<sup>213</sup>

I appreciate the efforts of ... BCLC in tracking and reporting suspicious cash transactions (SCTs). However, I continue to be concerned by the prevalence of SCTs at British Columbia casinos. Further to the letter from the Minister of Finance addressed to Mr. Bud Smith on October 1, 2015, I expect BCLC to implement AML best practices with appropriate consideration of evaluating

<sup>206</sup> Exhibit 903, Email exchange between Brittney Speed and Len Meilleur, re AML Strategy Language – draft BCLC mandate letter (November 19, 2015).

<sup>207</sup> Exhibit 893, Mandate Letter to BCLC for the 2017–2018 Fiscal Year (December 2016).

<sup>208</sup> Ibid.

<sup>209</sup> Exhibit 505, Lightbody #1, exhibits 54, 55, 57.

<sup>210</sup> Ibid, exhibit 54.

<sup>211</sup> Ibid, exhibit 55.

<sup>212</sup> Ibid, exhibit 57.

<sup>213</sup> Ibid, exhibit 54.

the source of wealth and source of funds prior to cash acceptance as well as robust [customer due diligence] policies and [know your customer] requirements. These processes and policies should be based on a sound risk based framework that considers SCTs as one element of the framework.

Approximately six months later, in the July 14, 2016, letter, Mr. Mazure offered more specific suggestions as to the type of measures BCLC could put in place to evaluate the source of funds:<sup>214</sup>

To ensure the Province is taking the steps necessary to eliminate the proceeds of crime from B.C. gaming facilities and to support the [anti-money laundering] strategy and the integrity of gaming in B.C., BCLC should contemplate not accepting funds where the source of those funds cannot be determined or verified, within a risk-based framework. This approach could include, for example, a source of funds questionnaire and a threshold amount over which BCLC would require service providers to refuse to accept unsourced funds, or a maximum number of instances where unsourced funds would be accepted from a patron before refusal.

While I will refrain from commenting on the potential effectiveness of these reforms at this stage, I pause to note that Mr. Mazure’s suggestion of “a threshold amount over which BCLC would require service providers to refuse to accept unsourced funds” is at odds with Mr. de Jong’s evidence that this strategy is the sort of prescriptive measure he did *not* want BCLC to implement.<sup>215</sup> This underscores that the lack of clarity as to precisely what was expected of BCLC at this time was not limited to BCLC itself, but also existed within GPEB and government.

Finally, in the May 8, 2017, letter, Mr. Mazure acknowledged significant reductions in suspicious transactions, but continued to express concern regarding both the volume of suspicious cash received by the province’s casinos and the circumstances in which it continued to be accepted:<sup>216</sup>

The Gaming Policy and Enforcement Branch (GPEB) has noted a downward trend in the total dollar value of cash entering B.C. gambling facilities through suspicious transactions. According to GPEB’s data, suspicious cash transactions, which are based on reports provided to GPEB by service providers in accordance with section 86 of the *Gaming Control Act*, have declined from approximately \$177 million in 2014 to \$132 million in 2015 and to \$72 million in 2016. This is a significant reduction and reflects the actions taken to date by BCLC to reduce suspicious cash. However, \$72 million is still a significant amount of suspicious cash.

GPEB remains concerned by both the large volume of unsourced cash that continues to enter B.C. gambling facilities and the circumstances

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214 Ibid, exhibit 55.

215 Evidence of M. de Jong, Transcript, April 23, 2021, pp 88–90, 139–40, 145–46, 149.

216 Exhibit 505, Lightbody #1, exhibit 57.

under which the cash was accepted as detailed in the section 86 reports. The following information was taken from section 86 reports during December 2016:

- Approximately \$2.3 million of the \$3.8 million accepted were \$20 bills, often bundled in elastic bands;
- 13 incidents in which cash was observed to be delivered to patrons by a third party; and,
- Of 124 suspicious cash transactions, from December 2016, service providers refused the transaction on only four occasions.

The letter went on to also raise concerns about the money laundering risk associated with *non-cash* transactions, particularly those involving bank drafts, and emphasized the importance of customer due diligence for PGF account holders.

In his evidence before the Commission, Mr. Mazure provided further insight into his purpose in authoring these letters. He testified that his letters were not intended to be general manager’s directions to BCLC under the *Gaming Control Act*.<sup>217</sup> Mr. Mazure was not trying to direct BCLC and understood that he did not have the authority to do so without the consent of the responsible minister.<sup>218</sup> He explained that he had been urged by Mr. Meilleur to begin pressing BCLC on evaluating the source of funds used in suspicious transactions<sup>219</sup> and that he was trying to convey to Mr. Lightbody that BCLC needed to take further action to do so.<sup>220</sup> Mr. Mazure did not intend to advise BCLC of precisely how they should assess risk with respect to the source of funds, but sought to convey that there was a need to lower its risk tolerance:<sup>221</sup>

I wasn’t being specific here about the risk approach you take, but what I was trying to convey is you need to draw the line a little lower. We’re still seeing suspicious cash, so you need to take another slice out of, you know, the next tier of patrons that come closest to that criteria, if I can use that terminology. And that’s what we were looking for.

In addition to this correspondence, Mr. Mazure testified that he spoke regularly with Mr. Lightbody by telephone,<sup>222</sup> which was consistent with Mr. Lightbody’s evidence.<sup>223</sup> Accordingly, the correspondence referred to above should not be viewed as the entirety of the interactions between the leaders of the two organizations. Mr. Mazure recalled discussing a number of possible options for evaluating source of funds in those conversations, including “a cap on the amount of cash a person could bring into

217 Exhibit 541, Mazure #1, para 159.

218 Evidence of J. Mazure, Transcript, February 5, 2021, pp 207–8.

219 Exhibit 541, Mazure #1, paras 157–58.

220 Ibid, paras 158, 173; Evidence of J. Mazure, Transcript, February 5, 2021, p 219.

221 Evidence of J. Mazure, Transcript, February 5, 2021, p 219.

222 Exhibit 541, Mazure #1, para 154.

223 Evidence of J. Lightbody, Transcript, January 29, 2021, p 123.

a casino, a threshold beyond which a person would be required to provide proof of the source of their funds (e.g., a source-of-funds declaration), and several transactions above a threshold after which proof of source of funds would be required.”<sup>224</sup>

Mr. Mazure gave evidence that he continued to write these letters because BCLC never implemented measures that were satisfactory to him.<sup>225</sup> He did not recall whether he had advised Mr. de Jong that BCLC was not taking satisfactory action in response to Mr. Mazure’s recommendations.<sup>226</sup> He believed, however, that it had been made clear to Mr. de Jong that BCLC was not taking appropriate action in response to Mr. de Jong’s direction of October 1, 2015, pointing to the subsequent mandate letters as evidence.<sup>227</sup> The evidence of Ms. Wenezenki-Yolland corroborates that Mr. Mazure made some effort to bring these concerns to Mr. de Jong’s attention. Ms. Wenezenki-Yolland gave evidence that Mr. Mazure communicated his concerns to her as well as to the minister in a “pre-briefing” and briefing on October 12 and 13, 2016, respectively, at which both she and Mr. Mazure advised the minister of their concerns about BCLC’s actions in this regard.<sup>228</sup> Mr. de Jong’s evidence, however, was that he was unaware of any concern that BCLC was not taking appropriate action, that he understood that BCLC was compliant with the direction issued in his letter of October 1, 2015, and that BCLC was successfully reducing suspicious cash in the province’s casinos.<sup>229</sup> This is difficult to reconcile with the evidence of Mr. Mazure and Ms. Wenezenki-Yolland, as they make clear that Mr. de Jong was made aware of what they viewed to be shortcomings in BCLC’s efforts.

### **Mr. Lightbody’s Responses**

Mr. Lightbody provided regular responses to Mr. Mazure’s letters. In these responses, among other topics, Mr. Lightbody repeatedly answered Mr. Mazure’s pleas for greater action to examine the source of funds used in suspicious transactions by advising that BCLC was *already* taking action to evaluate the source of funds. In a letter dated August 3, 2016, for example, Mr. Lightbody advised:<sup>230</sup>

I appreciate your suggestion that BCLC ensure its new proposals are conducted within a risk based anti-money laundering framework, and specifically that on a risk basis source of wealth and source of funds inquiries should form part of that framework. I can confirm that source of wealth and source of funds inquiries are in fact incorporated into the BCLC anti-money laundering program and will apply to the proposals when implemented along with all the other program elements aimed at countering money laundering.

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224 Exhibit 541, Mazure #1, paras 162, 191.

225 Evidence of J. Mazure, Transcript, February 5, 2021, p 132; Transcript, February 11, 2021, p 188.

226 Evidence of J. Mazure, Transcript, February 5, 2021, p 132.

227 Ibid, pp 133–34.

228 Exhibit 922, Wenezenki-Yolland #1, paras 160, 175–80.

229 Evidence of M. de Jong, Transcript, April 23, 2021, pp 141, 156, 162–64.

230 Exhibit 505, Lightbody #1, exhibit 56.

Similarly, in a letter dated May 12, 2017, written in response to Mr. Mazure’s letter of May 8, 2017, Mr. Lightbody wrote:<sup>231</sup>

In your correspondence, you make inquiries about source of funds. BCLC’s anti-money laundering program incorporates both source of funds and source of wealth determinations.

...

You express concerns about instances where casino customers present \$20 dollar denomination bank notes wrapped in elastic bands, and I agree that caution is needed in these circumstances. When this type of circumstance occurs, as part of BCLC’s customer due diligence procedures, BCLC makes inquiries around the source of funds and other factors relevant to the transaction. In more than one case, BCLC determined that the \$20 bank notes originated from a registered money services business (MSB). Upon further inquiries, BCLC determined that MSBs often issue \$20 bank notes because that denomination makes up the vast majority of Canadian currency in circulation. Further, BCLC has learned it is fairly standard practice for an MSB to bundle large numbers of bank notes, of any denomination, with elastic bands as that is simply the most practical way for them to handle the money. As a result of inquiries, and despite initially appearing suspicious, follow-up inquiries in some cases have pointed to nothing untoward. Having said that I can assure you we will remain vigilant on this front and welcome any additional information or support GPEB can provide.

Mr. Lightbody described the message he sought to convey in his correspondence with Mr. Mazure as follows:<sup>232</sup>

I note that throughout these communications with Mr. Mazure, I tried to consistently convey the priority given by BCLC to AML measures and to the source of funds of patrons in particular. I sought to communicate that BCLC took a risk-based approach to AML, including source of funds, consistent with AML best-practices. This risk-based approach drove the measures pursued by BCLC, such as our investments in Know your Customer and risk-rating our customers, which in turn led to putting Extreme and High Risk players on sourced cash conditions or barring them from play.

Mr. Lightbody also repeatedly emphasized in his evidence BCLC’s adherence to a “risk-based” approach in evaluating the source of funds used in casino transactions.<sup>233</sup> As a result of this adherence, and the repeated references to “risk-based” practices in

<sup>231</sup> Ibid, exhibit 58.

<sup>232</sup> Ibid, para 193.

<sup>233</sup> Evidence of J. Lightbody, Transcript, January 28, 2021, p 45–46, 60–63 and Transcript, January 29, 2021, pp 8, 10, 20–22, 25–27, 29, 31–32, 35, 61, 63, 97–99, 120–21; Exhibit 505, Lightbody #1, paras 87, 150, 193.

Mr. Mazure's letters, Mr. Lightbody understood that Mr. Mazure was not asking that BCLC implement a "general source of funds policy" or assess the source of funds in every suspicious cash transaction.<sup>234</sup> Rather, Mr. Lightbody's evidence was that he did not understand Mr. Mazure's letters to require a significant shift in BCLC's approach to evaluation of the source of funds at all, as he understood that Mr. Mazure wanted BCLC to carry on with the efforts it was already making.<sup>235</sup>

I took this to say continue what you're doing, which was to focus on identifying source of wealth and funds with your customer due diligence as integral components of your client's risk assessments, which we were doing, and I appreciated him understanding that.

Later in his evidence, Mr. Lightbody clarified that this did not mean that he understood that Mr. Mazure wanted BCLC's efforts to evaluate the source of funds to remain static and unchanged, but rather that those efforts should continue to develop along the trajectory already being followed.<sup>236</sup>

### ***GPEB's Understanding of BCLC's Source-of-Funds Measures***

On the face of these letters, it is difficult to reconcile Mr. Mazure's requests regarding evaluation of the source of funds with Mr. Lightbody's responses. Over the span of nearly two years Mr. Mazure repeatedly asked Mr. Lightbody to ensure that BCLC was evaluating the source of funds used in suspicious transactions. In response, Mr. Lightbody repeatedly advised Mr. Mazure that BCLC was already doing so. While the evidence of both Mr. Mazure and Mr. Lightbody was that these two individuals spoke regularly on the telephone,<sup>237</sup> in my view, it is evident from these letters that they, as the leaders of GPEB and BCLC, were speaking past one another at this time and that something was severely lacking in the communication between these two individuals and in the relationship between the two organizations.

In my view, the sources of this apparent lack of connection were GPEB's limited understanding of what, precisely, BCLC was doing with respect to the evaluation of the source of funds and BCLC's resistance to implementing source-of-funds requirements more broadly or more quickly than it was. At the time of his oral evidence, Mr. Mazure had difficulty recalling precisely what he knew of BCLC's efforts to evaluate the source of funds at the time he was writing to Mr. Lightbody.<sup>238</sup> He acknowledged, however, that he would not have known about BCLC's program in detail and would have relied on Mr. Meilleur's knowledge in this regard.<sup>239</sup> While this reliance on his subordinate is not unreasonable for a person in Mr. Mazure's position, there is

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234 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 40–41 and Transcript, January 29, 2021, pp 10, 120–21.

235 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 40–41.

236 Evidence of J. Lightbody, Transcript, January 29, 2021, pp 11–12.

237 Evidence of J. Lightbody, Transcript, January 29, 2021, p 123; Exhibit 541, Mazure #1, para 154.

238 Evidence of J. Mazure, Transcript, February 5, 2021, pp 220–22.

239 Ibid, pp 201–5, 220–21, 227–28; Evidence of J. Mazure, Transcript, February 11, 2021, p 183.

evidence that the level of knowledge within GPEB generally about BCLC's source-of-funds program was also limited.

A January 25, 2017, email from GPEB senior policy analyst Jeff Henderson to both Mr. Mazure and Mr. Meilleur regarding a briefing document produced by BCLC, identified the limits of GPEB's knowledge of BCLC's source of funds initiatives:<sup>240</sup>

The attached document just tells us the trends in reporting with FINTRAC as compared to high limit table drops and then briefly explains why BCLC thinks there has been some positive trending. This info is somewhat helpful, but it's pretty high-level in terms of steps BCLC is taking regarding unsourced cash.

I know that they use a risk assessment tool for categorizing patrons as low / med / high / extreme risk and have certain actions they take with respect to some high risk patrons. This document mentions the source of funds directive requiring patron[s] to provide source of funds (i.e. ATM slip or bank receipt) or they can't buy in, as well as source of funds interviews requiring [service providers] to interview patrons requiring source of funds. What I don't know is what triggers them to take these specific steps with certain high risk patrons and what steps they take depending on responses to interview questions.

This email is consistent with Ms. Wenezenki-Yolland's evidence that, in January 2017, GPEB was "trying to gain a better understanding of the workings of BCLC's existing source of cash protocols."<sup>241</sup>

The limited knowledge about BCLC's source-of-funds initiatives revealed by Mr. Mazure's evidence and by this email, sent approximately a year and a half after Mr. Mazure had begun to ask BCLC to take further action, suggests that Mr. Mazure's recommendations were not based on knowledge of or concern about specific deficiencies in what BCLC was doing. Rather, it appears that Mr. Mazure and GPEB believed that BCLC's efforts were insufficient simply because the volume of suspicious cash accepted by casinos remained high. To be clear, I do not suggest that this is an illegitimate basis for concern. The goal of both government and GPEB at the time was to reduce the amount of suspicious cash accepted by casinos. It stands to reason that, if levels of suspicious cash remained above acceptable levels, further action was required.

However, in understanding the correspondence between Mr. Mazure and Mr. Lightbody, it is relevant that Mr. Mazure and GPEB had limited information about what BCLC was already doing to address this issue. When Mr. Mazure gave evidence that he did not believe that BCLC complied with the directions of the minister or took adequate action in response to his letters, what he was really saying is that he was not seeing the

240 Exhibit 583, Email chain, re BCLC Briefing Note (January 22–January 26, 2017), with attachment, pp 2–3.

241 Exhibit 922, Wenezenki-Yolland #1, para 204.

results that he had hoped for. He was not in a position to directly evaluate the actions taken by BCLC, because he did not have the necessary understanding of what those actions were.

In my view, while the results achieved by BCLC's efforts are a fair basis for the evaluation of those efforts, it is also necessary to examine the actions actually taken by BCLC. These actions are discussed below.

## **BCLC Anti-Money Laundering Enhancements Following Mr. de Jong's Letter of October 1, 2015**

Following Mr. de Jong's letter of October 1, 2015, and during the period in which Mr. Mazure and Mr. Lightbody exchanged the letters discussed above, BCLC made multiple enhancements to its efforts to combat money laundering in the province's casinos. These enhancements had the effect of reducing the volume of suspicious cash accepted in British Columbia casinos.

Many of the most significant changes were focused on evaluation of the source of funds used in large and suspicious cash transactions conducted by some of the patrons gaming at the highest levels. Because evaluation of the source of funds was a central focus of both Mr. Mazure's letters and the Commission's hearings, the discussion that follows will concentrate on these changes. I recognize, however, that the enhancements to BCLC's anti-money laundering regime during this time period were not limited to source-of-funds initiatives.<sup>242</sup> Other relevant measures include the expansion of BCLC's anti-money laundering unit in 2016;<sup>243</sup> the development, proposal, and implementation of new cash alternatives;<sup>244</sup> information-sharing with and training of law enforcement;<sup>245</sup> and the expansion of existing information-sharing agreements and development of new information-sharing agreements with law enforcement and provincial government agencies,<sup>246</sup> among other measures. I accept that these were positive measures that evidence BCLC's dedication to addressing the risk of money laundering. However, because they are not the source of significant controversy, the following discussion will focus on measures directed specifically at understanding the sources of suspicious cash and reducing suspicious transactions.

### **Growth and Development of Cash Conditions Program**

By the time of Mr. de Jong's letter of October 1, 2015, BCLC had already established and begun implementation of its formal cash conditions program. By this time, a

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242 Exhibit 148, Tottenham #1, exhibit 12.

243 Exhibit 78, Beeksma #1, para 84; Evidence of S. Lee, Transcript, October 27, 2020, p 100; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 196-97; Exhibit 505, Lightbody #1, para 85; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 71-72.

244 Exhibit 490, Kroeker #1, paras 93, 139-44 and exhibits 60-66; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 104-6, 111-12; Exhibit 587, Meilleur #1, paras 40-46 and exhibits I-M.

245 Exhibit 148, Tottenham #1, exhibit 12.

246 Exhibit 490, Kroeker #1, paras 176-78; Exhibit 522, Desmarais #1, para 26 and exhibit 7.

formal protocol for the program had been approved, and approximately 36 patrons,<sup>247</sup> including some of the province’s most prolific gamblers, had been placed on conditions that prevented them from buying-in with unsourced cash, among other restrictions.<sup>248</sup> While this is a relatively small number, it was at least a move in the right direction.

The program continued to expand and evolve following receipt of Mr. de Jong’s letter. Shortly after taking on his new position with BCLC, Mr. Kroeker approved a supplementary protocol introducing more stringent measures specifically aimed at suspicious cash.<sup>249</sup> Mr. Kroeker approved this supplementary protocol on October 21, 2015,<sup>250</sup> three weeks after the date of Mr. de Jong’s letter. By the end of 2015, the number of patrons on cash conditions had increased to 43, followed by an additional 61 patrons in 2016.<sup>251</sup> A further 107, 209, and 179 patrons were placed on cash conditions in 2017, 2018, and 2019 respectively.<sup>252</sup> I note, however, that in January 2018, following a recommendation made in a report prepared by Dr. Peter German, proof of the source of funds was required for all transactions of \$10,000 or more in cash and other bearer monetary instruments. This meant that the practical impact of the imposition of cash conditions following January 2018 was limited to requiring affected patrons to provide proof of the source of funds used in transactions below \$10,000.

Unlike the initial 36 patrons subjected to conditions by September 2015, the measures imposed on these later patrons were not necessarily the result of information obtained from law enforcement. In accordance with the supplemental protocol approved by Mr. Kroeker, conditions could be and were imposed in response to suspicious activity alone.<sup>253</sup> The typical process was described by former BCLC investigator Michael Hiller, who confirmed that there continued to be large cash buy-ins in Lower Mainland casinos during this time period, but that BCLC’s anti-money laundering team could and, in many cases, did take action after becoming aware that a player was engaged in such activity:<sup>254</sup>

**Q** In the face of source of cash restrictions being implemented and – initially on a few players and then more, did there ... continue to be a volume of large cash buy-ins that were occurring at Lower Mainland casinos?

247 Exhibit 490, Kroeker #1, exhibit 39.

248 Exhibit 148, Tottenham #1, paras 87–88 and exhibit 8; Exhibit 522, Desmarais #1, para 49 and exhibit 25; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 185–87; Evidence of S. Beeksma, Transcript, October 26, 2020, p 152–54; Exhibit 1031, BCLC Investigations Protocol for Educating, Warning, Sanctioning or Barring Patrons (April 16, 2015); Evidence of B. Desmarais, Transcript, February 2, 2021, p 106; Exhibit 490, Kroeker #1, paras 96–101.

249 Exhibit 86, BCLC Protocols; Evidence of R. Alderson, Transcript, September 10, 2021, pp 62–65; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 152–53.

250 Exhibit 86, BCLC Protocols, p 3.

251 Exhibit 482, Cuglietta #1, exhibit A.

252 Ibid; Exhibit 490, Kroeker #1, exhibit 39.

253 Evidence of S. Beeksma, Transcript, October 26, 2020, p 150; Exhibit 148, Tottenham #1, paras 140, 160–61; Exhibit 490, Kroeker #1, paras 100–1; Evidence of M. Hiller, Transcript, November 9, 2020, pp 64–65.

254 Evidence of M. Hiller, Transcript, November 9, 2020, pp 64–65.

- A Yes. Any player that didn't have conditions. And they were more likely to be brand new players that just arrived from China that we were not aware of previously therefore there were no conditions set in iTrak. They were allowed to buy in with ... large amounts of cash until such time as maybe one, two or three incidents occurred and we were able to document the suspicious nature of those transactions. And then the AML team would then become aware of that and put conditions on those players as well.

Daryl Tottenham, currently BCLC's manager of anti-money laundering programs, explained the progression of the cash conditions program. He indicated that, once BCLC had addressed the patrons connected to the E-Pirate investigation, it began to focus on additional patrons based on the value of their cash buy-ins, initially targeting those with the largest cash buy-ins:<sup>255</sup>

Starting in early 2016, BCLC's AML Unit began focusing on the highest value cash patrons not currently on sourced cash conditions and considering placing them on conditions, which quickly resulted in 40–50 additional people being placed on sourced cash conditions. The AML Unit then moved down to considering placing patrons buying in over \$100,000 on sourced cash conditions.

The AML Unit continued to lower the cash buy-in threshold at which it would consider sourced cash conditions for a patron. By the time of the German recommendations in 2018, BCLC was already considering sourced cash conditions for patrons buying in for \$30,000 to \$40,000. My goal was to reach \$25,000 as the buy-in threshold for considering sourced cash conditions.

In his oral evidence, Mr. Tottenham emphasized that the continued growth and expansion of the program was planned and that BCLC's objective was to increase the number of players on cash conditions by targeting those buying-in with cash at the highest levels:<sup>256</sup>

[U]ltimately our goal, and certainly my personal goal in this endeavour, was to get to a point where – we have 1,000 high-risk patrons in our system, and that's defined by FINTRAC legislation. My goal was to eventually get to a point where literally all our biggest players, like in the top 1,000, would be on sourced-cash conditions. And it would take a while to get there because it's a building process, but ultimately that was the goal.

This evidence suggests that even as Mr. Mazure was repeatedly asking BCLC to “do more” to address suspicious transactions in the province's casinos, “doing more” was already a part of BCLC's plans. Based on Mr. Tottenham's evidence, the intention from the early stages of the cash conditions program had been that the program would

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255 Exhibit 148, Tottenham #1, paras 160–61.

256 Evidence of D. Tottenham, Transcript, November 5, 2020, pp 3–4.

grow and expand to encompass greater and greater numbers of players. This does not necessarily mean that Mr. Mazure was wrong to seek additional action or that BCLC's efforts were necessarily adequate. As will be discussed in Chapter 14, he was not and they were not. The incremental nature of BCLC's approach, and the fact that it contemplated a patron buying-in with hundreds of thousands of dollars of suspicious cash before triggering a source-of-cash review, reveals an unreasonably high risk tolerance. I return to these matters later in this Report. However, the evidence regarding the steps, connected to source of funds, that BCLC was taking illustrates how the limits of GPEB's knowledge of precisely what BCLC was doing may have led to the dissonance observed in the correspondence between Mr. Mazure and Mr. Lightbody.

## Casino Patron Interviews

As is made clear in the original and supplementary protocols developed by BCLC to formalize the cash conditions program, conducting interviews of patrons connected to suspicious transactions was integral to that program. A formal process for interviewing patrons was instituted in 2015 at the advent of the cash conditions program, the purpose of which was, at least in part, to determine the source of funds used in suspicious transactions in the province's casinos.<sup>257</sup> As with other aspects of the cash conditions program, patron interviews were accelerated following Mr. Kroeker's arrival at BCLC in the latter part of 2015.<sup>258</sup>

Several BCLC staff members, including Mr. Beeksma and Mr. Lee, gave evidence of how these interviews are conducted and the information BCLC has learned from them. Mr. Lee has conducted many of these interviews because he is fluent in Mandarin, the language spoken by most of the patrons interviewed.<sup>259</sup> Mr. Tottenham manages the program and receives a summary of each interview following its completion.<sup>260</sup>

These patron interviews are typically triggered by patron behaviour, such as evidence that patrons had obtained funds from cash facilitators.<sup>261</sup> Prior to an interview, investigators review the patron's history and prepare an interview plan.<sup>262</sup> Interviews are conducted by two BCLC investigators in a private setting at a casino.<sup>263</sup> As of September 2015, service provider personnel were not present for patron interviews.<sup>264</sup> Interviews are not recorded, but a summary of each interview is prepared by the responsible investigators, who

257 Evidence of S. Beeksma, Transcript, October 26, 2020, p 150; Exhibit 148, Tottenham #1, paras 89, 140; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 200-1.

258 Evidence of S. Beeksma, Transcript, October 26, 2020, p 151.

259 Exhibit 78, Beeksma #1, para 74.

260 Exhibit 148, Tottenham #1, para 145; Exhibit 87, S. Lee #1, para 61.

261 Exhibit 148, Tottenham #1, para 140.

262 Exhibit 87, S. Lee #1, para 61.

263 Ibid.

264 Evidence of D. Tottenham, Transcript, November 10, 2020, pp 189-90 and Transcript, November 4, 2020, pp 201-2; Exhibit 530, Affidavit #1 of Patrick Ennis, made on January 22, 2021 [Ennis #1], paras 68-70.

would also make recommendations for action, such as placing the interviewed patron on sourced-cash conditions.<sup>265</sup> A large volume of these summaries are in evidence before me.<sup>266</sup> Mr. Tottenham, as the manager responsible, reviews these recommendations and decides on the appropriate course of action.<sup>267</sup> Due to the sensitivity of the information contained in these summaries – and the potential risk to the patrons if the information was disseminated – the summaries are carefully protected by BCLC and not shared with service providers.<sup>268</sup> The interview summaries are also not disclosed to law enforcement, but where information relevant to law enforcement was disclosed, a synopsis is provided.<sup>269</sup>

### **May 2016 Direction to Service Providers**

While service providers were excluded from patron interviews from September 2015 onward, beginning in May 2016, BCLC sought their assistance with a different mechanism for identifying the source of funds used in suspicious buy-ins.<sup>270</sup> At that time, BCLC provided service providers with a list of 34 patrons who had collectively been responsible for approximately 570 suspicious transaction reports and \$10 million in cash buy-ins in the span of two months.<sup>271</sup>

Along with this list of patrons, BCLC provided service providers with a list of questions to be posed to these patrons at the time of any cash buy-in and directed service providers to provide BCLC with the responses provided by the patrons.<sup>272</sup> Service providers were asked only to document the patrons' answers and forward them to BCLC.<sup>273</sup> They were not asked to verify responses and the answers to these questions were not to influence whether a transaction would be reported as “unusual.”<sup>274</sup> There was no expectation that buy-ins would be refused if the responses to these questions were not satisfactory or, it would seem, even implausible.<sup>275</sup>

Several completed questionnaires revealing these responses were entered into evidence during the Commission's hearings. These questionnaires, while not necessarily a representative sample, reveal that, in some instances, the responses provided by some of these patrons were, in the words of Mr. Beeksma, “not very helpful.”<sup>276</sup> These documents indicate that responses to questions regarding the source of cash used in

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265 Exhibit 148, Tottenham #1, para 145.

266 Exhibit 149, Affidavit #2 of Daryl Tottenham, sworn on October 30, 2020 [Tottenham #2]; Exhibit 78, Beeksma #1, exhibits R-Z, AA-BB.

267 Exhibit 148, Tottenham #1, para 145.

268 Evidence of R. Alderson, Transcript, September 10, 2021, pp 9–10; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 203–4.

269 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 203–4.

270 Evidence of D. Tottenham, Transcript, November 10, 2020, pp 6–12; Exhibit 148, Tottenham #1, para 147 and exhibit 49.

271 Exhibit 148, Tottenham #1, para 147 and exhibit 49.

272 Ibid; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 11–12.

273 Evidence of D. Tottenham, Transcript, November 10, 2020, pp 6–12.

274 Ibid, pp 11–16.

275 Ibid, p 14.

276 Evidence of S. Beeksma, Transcript, October 26, 2020, p 109.

buy-ins by these patrons included “from home savings,” “it is my money,” “China stock market,” “from investing,” “his own money,” and “own savings.”<sup>277</sup>

Questions about the value of these responses were raised during the examinations of Mr. Beeksma and Mr. Tottenham.<sup>278</sup> While it seems obvious that the responses such as those set out above provide virtually no value in identifying the source of funds to which they relate, Mr. Tottenham explained the intended purpose of these questionnaires and how the information obtained was used by BCLC:<sup>279</sup>

**Q:** Would BCLC just accept this type of explanation, or did BCLC take steps to evaluate the plausibility or otherwise of the patron’s explanation?

**A:** I think that is illustrated when in 2016 in about June, July, when we were doing the [source of funds] under the [suspicious transaction report] reduction program, that ... our core goal was to acquire information from where ... the patrons said they were getting their cash from, do an assessment and then applying logic and common sense and all other factors that we could and make a determination. I think that was the basis of that program, that’s how we approached it and that’s what we did. Sometimes it was very, very evident the information we were getting was not solid, and we immediately moved to put them on sourced-cash conditions. Other times the information we were getting made sense. We continued to monitor those reports that we were getting as a result of that program, and ultimately, then, took an action once we felt it was necessary and required.

The absence of useful information about the source of cash used by these patrons did not immediately prevent them from using that cash to gamble in the province’s casinos. The responses do seem, however, to have been used to assess whether the patrons should be permitted to make future buy-ins using similarly unsourced cash. I return to this topic in Chapter 14, where I consider the adequacy of this measure along with the other steps taken by BCLC.

## **Refusal of Cash Buy-Ins: October 7, 2016, Directive**

Later in 2016, BCLC took a further step to address suspicious transactions by issuing a directive to service providers that included reference to an “expectation” that cash buy-ins connected to “suspicious behaviour” would be refused by the casino and steps taken to ensure the funds would not subsequently be accepted at another casino.<sup>280</sup>

<sup>277</sup> Exhibit 85, A collection of 18 interview forms – Interview Format for Identified HRP Patrons.

<sup>278</sup> Evidence of S. Beeksma, Transcript, October 26, 2020, pp 108–10; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 13–16.

<sup>279</sup> Evidence of D. Tottenham, Transcript, November 10, 2020, pp 140–41.

<sup>280</sup> Exhibit 148, Tottenham #1, exhibit 4.

This directive included the following passage:<sup>281</sup>

It is the expectation of BCLC (as per the BCLC [anti–money laundering] on line training course)<sup>282</sup> that when a patron is observed conducting a cash buy-in and suspicious behaviour is observed by staff, that buy-in should be refused and a[n unusual financial transaction] file should be created to document the attempted buy-in.

Mr. Tottenham expanded upon this expectation in an affidavit sworn for the purpose of giving evidence to the Commission:<sup>283</sup>

In 2016, the AML [anti–money laundering] Unit also implemented a process to require Service Provider surveillance staff to review video surveillance prior to acceptance of suspicious cash buy-ins in small denominations. This was an attempt to try and determine the source of the funds the patron was presenting prior to buy-in. The AML Unit did not impose a threshold at which this process would be triggered, in the event that might deter Service Providers from looking at all the circumstances regardless of the amount of buy-in; rather, Service Providers were directed to use their judgment based on their experience when receiving a large cash buy-in with small bills.

For clarity, this video review is not done “live.” Rather, when a patron attends the cage with a large cash buy-in, the cage [staff] must call surveillance immediately and pause the buy-in process pending surveillance review. Surveillance must then review available video footage to attempt to follow the patron backwards.

If it is observed that the patron acquired the funds under suspicious circumstances, such as by cash drop-off in the parking lot, the transaction must be refused. In addition, an entry must be made on iTrak indicating further large cash buy-ins from that patron must also be refused until the AML Unit has interviewed the patron. This is to ensure that the patron does not attend another BCLC casino and attempt to buy-in with the same cash. If the patron refuses to come in for an interview, they will be banned pending investigation from all BCLC casinos. An Unusual Financial Transaction (“UFT”) report ... would then be created by the Service Provider to document the incident for further investigation by the AML Unit and for potential [suspicious transaction] reporting.

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281 Ibid.

282 Related content was included in BCLC’s anti–money laundering online training course by October 2014, at which time the online training course indicated, “If a player arrives at the gaming facility with a large sum of cash and there are concerns about the circumstances leading up to the transaction, you must take enhanced measures and ask the source of their funds. If not satisfied with the response provided, you may choose to refuse the transaction”: Exhibit 1045, Affidavit #3 of Cathy Cuglietta, made on August 31, 2021; Exhibit 530, Ennis #1, exhibit A.

283 Ibid, paras 40–42; see also Evidence of R. Kroeker, Transcript, January 26, 2021, pp 68–69; Exhibit 490, Kroeker #1, para 90; Evidence of P. Ennis, Transcript, February 4, 2021, pp 33, 35–36.

While this directive on its face may appear to contemplate that all transactions reported by the service provider as suspicious be refused, it is clear this was neither the expectation nor the practice.

## **Impact of BCLC Source-of-Funds Measures**

It is impossible to identify the precise impact of each of the measures discussed above on large and suspicious cash transactions in the province’s gaming facilities. However, it is clear from the evidence before the Commission that large and suspicious cash transactions began to drop significantly, in both total number and value, beginning shortly after the introduction of BCLC’s cash conditions program and that they continued to decline steadily in the years that followed. It is also clear, however, that while such transactions declined progressively in the years that followed, the number and value of such transactions remained substantial until 2018.

### ***Impact on Large and Suspicious Transactions***

In his letter of May 8, 2017, Mr. Mazure acknowledged that the cumulative value of suspicious cash transactions reported to GPEB by service providers had declined by over \$100 million between 2014 and 2016.<sup>284</sup> The belief that BCLC’s cash conditions program had led to a significant, incremental decline in large and suspicious cash transactions was widely shared by witnesses involved in the province’s gaming industry during this time period, including those affiliated with BCLC,<sup>285</sup> GPEB,<sup>286</sup> service providers,<sup>287</sup> and government.<sup>288</sup>

That conclusion is supported by data provided by BCLC regarding large cash transaction reports and suspicious transaction reports made to FINTRAC during this time period. These data indicate that the number of both types of reports for the highest value transactions declined following the introduction of the cash conditions program.<sup>289</sup> For suspicious cash transaction reports, these data, as reflected in Table 11.1 below, indicate that even as the total number of reports initially increased, the highest value reports declined significantly.<sup>290</sup> Over time, as the program expanded

284 Exhibit 505, Lightbody #1, exhibit 57.

285 Evidence of D. Tottenham, Transcript, November 4, 2020, p 191; Evidence of M. Hiller, Transcript, November 9, 2020, p 64; Exhibit 78, Beeksma #1, para 77; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 81–82, 147–48; Exhibit 87, S. Lee #1, paras 63, 73; Evidence of S. Lee, Transcript, October 27, 2020, pp 61–64; Exhibit 148, Tottenham #1, para 160; Exhibit 490, Kroeker #1, paras 107, 109–11 and exhibits 36–38; Evidence of R. Kroeker, Transcript, January 25, 2021, p 122 and Transcript, January 26, 2021, p 99; Exhibit 505, Lightbody #1, para 96; Evidence of J. Lightbody, Transcript, January 29, 2021, p 64; Exhibit 522, Desmarais #1, paras 55, 108, and exhibits 31, 79; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 94–95; Evidence of R. Alderson, Transcript, September 9, 2021, pp 141–42.

286 Exhibit 144, Ackles #3, para 59; Evidence of K. Ackles, Transcript, November 2, 2020, pp 34–36, 104–5, 143–45.

287 Evidence of P. Ennis, Transcript, February 3, 2021, p 103 and Transcript, February 4, 2021, pp 20–21.

288 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 130–31.

289 Exhibit 482, Cuglietta #1, exhibit A.

290 Ibid.

to encompass a greater number of individuals playing at lower levels,<sup>291</sup> the total number of reports began to decline as well.<sup>292</sup>

**Table 11.1: Number of Suspicious Transaction Reports (STRs), 2014–2017**

<b>Time Period</b>	<b>Total Number of STRs</b>	<b>STRs \$50,001–\$100,000</b>	<b>STRs over \$100,000</b>
Jan–Jun 2014	733	207	270
Jul–Dec 2014	898	286	325
Jan–Jun 2015	954	312	319
Jul–Dec 2015	783	212	208
Jan–Jun 2016	1,008	165	115
Jul–Dec 2016	641	92	46
Jan–June 2017	618	71	44
Jul–Dec 2017	427	87	32

Source: Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020, exhibit A.

This decline is also reflected in the total value of transactions reported as suspicious transactions, which declined significantly after 2014, the last full year before the formal cash conditions program was implemented.<sup>293</sup>

**Table 11.2: Value of Suspicious Transaction Reports (STRs), 2014–2017**

<b>Year</b>	<b>Total Value of STRs<sup>294</sup></b>
2014	\$195,282,332
2015	\$183,841,853
2016	\$79,458,118
2017	\$45,300,463

Source: Exhibit 482, Affidavit #2 of Cathy Cuglietta, sworn on March 8, 2021, exhibit A.

Similar, but less pronounced, trends can be observed in BCLC’s large cash transaction reporting, which include all cash transactions of \$10,000 or more, regardless of whether they are identified as suspicious. Given that BCLC’s cash conditions program focused on the most suspicious transactions and highest risk patrons, it is unsurprising that the impact of these efforts would be most evident from suspicious transaction reporting

<sup>291</sup> Exhibit 148, Tottenham #1, paras 160–61.

<sup>292</sup> Exhibit 482, Cuglietta #1, exhibit A.

<sup>293</sup> Exhibit 784, Affidavit #2 of Cathy Cuglietta, sworn on March 8, 2021 [Cuglietta #2], exhibit A. Note: “Cathy Cuglietta” and “Caterina Cuglietta” refer to the same witness.

<sup>294</sup> These figures include e-gaming and “external request” suspicious transaction reports.

data. As was the case for suspicious transactions, large cash transaction reporting data, as reflected in Table 11.3 below, indicate that even as the total number of large cash transaction reports initially increased, the highest value reports declined significantly:<sup>295</sup>

**Table 11.3: Number of Large Cash Transaction Reports (LCTRs), 2014–2017**

<b>Time Period</b>	<b>Total LCTRs</b>	<b>LCTRs \$50,001– \$100,000</b>	<b>LCTRs over \$100,000</b>
Jan–Jun 2014	17,400	1,226	1,013
Jul–Dec 2014	17,320	1,176	868
Jan–Jun 2015	17,739	1208	793
Jul–Dec 2015	17,917	907	669
Jan–Jun 2016	19,479	796	470
Jul–Dec 2016	18,117	313	192
Jan–Jun 2017	18,142	221	67
Jul–Dec 2017	18,477	231	72

*Source:* Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020, exhibit A

As with suspicious transaction reporting, the impact of BCLC’s efforts is also evident in the cumulative value of transactions reported as large cash transactions between 2014 and 2017:<sup>296</sup>

**Table 11.4: Value of Large Cash Transaction Reports (LCTRs), 2014–2017**

<b>Year</b>	<b>Total Value of LCTRs</b>
2014	\$1,184,603,543
2015	\$968,145,428
2016	\$739,620,654
2017	\$514,171,075

*Source:* Exhibit 482, Affidavit #2 of Cathy Cuglietta, sworn on March 8, 2021, exhibit A.

Again, it is not possible to identify with precision the extent to which these declines in large and suspicious transactions were the result of each – or any – of the measures discussed above. It is possible that these declines, to some extent, were the result of dynamics entirely outside the control of actors in this province’s gaming industry. Mr. Lightbody, Mr. Desmarais, and Mr. Kroeker, for example, all candidly acknowledged that these declines – and those that followed in subsequent years – took place, at least in part, during a period of time in which table games play by Chinese nationals was in

<sup>295</sup> Exhibit 482, Cuglietta #1, exhibit A.

<sup>296</sup> Exhibit 784, Cuglietta #2, exhibit A.

decline globally.<sup>297</sup> It seems likely that the effects of global trends like this one would have had some impact on this province's gaming industry.

While it is not possible to determine precisely the impact the measures introduced by BCLC had on large and suspicious transactions, based on the evidence before me, I am satisfied that these measures did contribute to the reductions in these transactions identified above. This is so for several reasons. First, there is an inescapable logic that, in an environment in which casino patrons are frequently buying-in with extremely large quantities of suspicious cash, a requirement that prohibits some of those patrons from doing so will reduce the frequency and cumulative value of such transactions. Second, there is a clear correlation in time between the expansion of the cash conditions program and the decline of suspicious transactions. The decline in suspicious transactions commenced at precisely the time that the formal cash conditions program was introduced and continued in the years that followed, apace with the expansion of the program. Third, the decline in suspicious transactions is concentrated among those transactions targeted by BCLC at different stages of the program. The data set out above reveal that initially, the decline in suspicious transactions (as well as large cash transactions) was observed predominantly in transactions of \$100,000 or more. Given Mr. Tottenham's evidence that the program began by focusing on patrons engaged in the highest value transactions (following those identified by the RCMP as being connected to the E-Pirate investigation), this suggests that these declines were concentrated among those patrons who were the focus of BCLC's efforts. As time passed and the program expanded to patrons engaged in lower levels of play, suspicious transactions at lower levels began to decline as well, again supporting the conclusion that the cash conditions program was a significant driver of this decline. Finally, as discussed below, while BCLC's overall table games revenue declined during this period, it was far outpaced by the decline in suspicious transactions. Between 2014 and 2017, BCLC's overall table games revenue declined by approximately 7 percent. During this same period, total suspicious transactions fell by approximately 36 percent, the value of such transactions fell by approximately 77 percent, and the number of STRs of \$100,000 or more fell by approximately 87 percent, suggesting that something during this time period was affecting suspicious transactions – and particularly the largest suspicious transactions – in a manner distinct from table games generally. Of course, ultimately, the link between the decline in suspicious transactions and the cash conditions program established by the data alone is correlational, not causal, but for the reasons outlined above, I am satisfied that the program did play a part in this decline.

The apparent impacts of the measures discussed above were not felt equally among Lower Mainland casinos. The data in evidence before me indicate that, prior to the implementation of the cash conditions program, the number of large and suspicious transaction reports generated by the River Rock Casino – and the value of the transactions giving rise to those reports – was substantially greater than those generated

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<sup>297</sup> Evidence of R. Kroeker, Transcript, January 26, 2021, p 121; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 64–65; Evidence of B. Desmarais, Transcript, February 2, 2021, p 94; Exhibit 490, Kroeker #1, para 230.

by other casinos in the region, including other casinos operated by Great Canadian as well as those operated by other service providers.<sup>298</sup> Consequently, when large and suspicious transactions began to decline following the introduction of BCLC’s cash conditions program, these declines were most pronounced at the River Rock.<sup>299</sup> As was the case for the province’s casinos generally, these declines are observable in the value and number of suspicious transactions and the value of large cash transactions, while the total number of large cash transactions remained relatively flat.<sup>300</sup>

### ***Impact on Casino Revenue and Relationships with Service Providers***

The cash conditions program and other measures imposed by BCLC to evaluate the source of funds used in casino transactions and reduce suspicious transactions at this time was also correlated to changes in revenue and, relatedly, relationships between BCLC and service providers, particularly Great Canadian.

Again, as was the case with reporting, it is difficult to attribute all of this decline to the implementation of BCLC’s cash conditions program. However, financial data before the Commission, including data provided by BCLC and found in BCLC’s annual reports, does indicate a correlation in time between these changes and a decline in casino table game revenue. A range of witnesses from both BCLC<sup>301</sup> and Great Canadian<sup>302</sup> attributed this decline to the introduction of the cash conditions program.

Table 11.5, compiled from data obtained from BCLC, sets out annual revenue for BCLC as a whole, as well as that derived from casino gaming and table games specifically beginning in 2014 (the last year prior to the implementation of the formal cash conditions program) and ending in 2017 (the last year prior to the implementation of new source-of-funds measures in response to Dr. German’s recommendation):

**Table 11.5: Annual BCLC Revenue, 2014–2017**

<b>Year</b>	<b>BCLC Total Gaming Revenue</b>	<b>BCLC Casino Revenue</b>	<b>BCLC Casino Table Games Revenue</b>
2014	\$2,199,888,811.50	\$1,715,659,976.61	\$552,298,271.88
2015	\$2,320,955,600.66	\$1,753,783,201.60	\$547,846,607.14
2016	\$2,374,235,661.38	\$1,799,626,701.64	\$519,231,380.60
2017	\$2,465,003,394.96	\$1,877,201,427.69	\$512,476,847.13

Source: Exhibit 785, Affidavit #1 of Richard Block, affirmed on March 9, 2021, exhibit A.

298 Exhibit 482, Cuglietta #1, exhibit A.

299 Ibid.

300 Ibid.

301 Exhibit 148, Tottenham #1, para 162; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 192–93 and Transcript, November 10, 2020, pp 103–9; Exhibit 490, Kroeker #1, paras 108–9; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 122–23.

302 Evidence of P. Ennis, Transcript, February 3, 2021, pp 103–4; Evidence of T. Doyle, Transcript, February 10, 2021, pp 97–98; Exhibit 559, Affidavit #1 of Walter Soo, made on February 1, 2021 [Soo #1], para 92.

Data the Commission obtained from BCLC also provide insight into trends in revenue at the five major Lower Mainland casinos as these measures were implemented. Revenue data for these five facilities (rounded to the nearest dollar) for the same years are set out in Table 11.6 below:

**Table 11.6: Annual Revenue for Major Lower Mainland Casinos, 2014–2017**

<b>Year</b>	<b>Hard Rock / Boulevard</b>	<b>Grand Villa</b>	<b>Starlight</b>	<b>River Rock</b>	<b>Parq / Edgewater</b>
2014	\$123,410,821	\$193,491,767	\$105,389,182	\$416,917,884	\$140,715,164
2015	\$133,105,863	\$204,073,275	\$116,887,610	\$375,795,284	\$159,551,177
2016	\$149,332,256	\$202,752,704	\$124,745,678	\$339,895,294	\$165,909,895
2017	\$158,941,195	\$215,377,969	\$127,355,250	\$331,910,492	\$175,189,007

Source: Exhibit 785, Affidavit #1 of Richard Block, affirmed on March 9, 2021, exhibit A.

These data demonstrate that while table games revenue generated by BCLC declined each year as the cash conditions program expanded prior to 2018, this decline was not substantial enough to prevent BCLC’s overall revenue, or even its revenue from casino gaming, from increasing every year. Further, the revenue data also demonstrate the extent to which the decline in revenue disproportionately impacted the River Rock Casino. Three of the five major Lower Mainland casinos experienced growth in revenue in each of these years, while a fourth experienced growth in all but one. Only the River Rock saw revenue decline in each of these years.

Given the foregoing, it is perhaps not surprising that concern about these measures emanated largely, though not exclusively, from Great Canadian, which operates the River Rock. Mr. Lightbody, for example, gave evidence of an exchange he had with the former CEO of Great Canadian regarding concerns about interactions between BCLC investigators and VIP players at the River Rock as the cash conditions program was being rolled out.<sup>303</sup> Other witnesses gave evidence about concerns expressed by Great Canadian employees regarding the implementation of this program and, in particular, the risks posed to the relationship between Great Canadian and its VIP players.<sup>304</sup> As indicated above, Great Canadian was not the exclusive source of these concerns. There is one example in evidence of a representative of the Parq Vancouver casino raising concerns about the impact of these measures.<sup>305</sup> I did not hear evidence of representatives of Gateway Casinos & Entertainment Limited expressing concern about the cash conditions program or related measures at this time.

<sup>303</sup> Exhibit 505, Lightbody #1, para 95 and exhibit 30; Evidence of J. Lightbody, Transcript, January 29, 2021, p 127.

<sup>304</sup> Evidence of B. Desmarais, Transcript, February 1, 2021, pp 143–44; Exhibit 530, Ennis #1, para 71; Evidence of P. Ennis, Transcript, February 3, 2021, pp 104–10; Evidence of D. Tottenham, Transcript, November 5, 2020, pp 6–8 and Transcript, November 10, 2020, pp 94–96; Exhibit 148, Tottenham #1, paras 83, 227.

<sup>305</sup> Exhibit 505, Lightbody #1, para 94 and exhibit 29; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 141–42 and Transcript, February 2, 2021, pp 109–11.

While Great Canadian clearly had some reservations about the cash conditions program and the impact of that program on its relationship with some of its most valuable patrons, there is no evidence before the Commission that Great Canadian, or any other gaming service provider, took any steps designed to intentionally frustrate BCLC's efforts in this regard. Several witnesses gave evidence indicating that, despite any reservations about these measures and their impact on revenue or relationships with patrons, service providers were largely compliant in implementing the program.<sup>306</sup>

### **BCLC's Actions Following Mr. de Jong's Letter of October 1, 2015, and Subsequent Letters from Mr. Mazure**

The totality of BCLC's efforts to respond to suspicious transactions in the province's casinos in this and other relevant time periods will be assessed in Chapter 14 of this Report. However, having discussed the letter written by Mr. de Jong in October 2015, the letters written by Mr. Mazure between 2015 and 2017, and the actions taken by BCLC following Mr. de Jong's letter and during the time that Mr. Lightbody was corresponding with Mr. Mazure, some comment on the nature of BCLC's response is warranted at this stage. While it is clear that BCLC did take action that had the effect of reducing the prevalence of suspicious cash in the province's casinos, when viewed in the light of the direction received from the sitting minister responsible for gaming and the advice and recommendations received from the general manager of GPEB, it is clear that BCLC's action was wanting.

I recognize that the directions included in Mr. de Jong's letter lacked specifics. Based on his evidence, it seems that this was by design. Mr. de Jong made clear in his testimony that, in his view, there was a need "to go beyond what was taking place presently" and that the "status quo level of scrutiny" was not adequate, but that he was hesitant to prescribe precisely what further steps should be taken.<sup>307</sup> Given the nature of his direction, it is not possible to point to a precise measure that BCLC was directed, but failed, to implement.

I do not accept, however, that this limited specificity translates into limited expectations. In my view, the magnitude of the efforts required in response to this direction must be considered in the context of its nature and source. In his evidence, Mr. de Jong indicated that, aside from annual mandate letters, the letter of October 1, 2015, was the *only* direction he issued to BCLC during the entirety of his tenure as minister responsible for gaming.<sup>308</sup> That Mr. de Jong, a senior cabinet minister responsible for ultimate oversight of the gaming industry and the representative of BCLC's sole shareholder, saw fit to write directly to the chair of BCLC's board raising concerns about a specific area of its operations should have immediately impressed

306 Exhibit 490, Kroeker #1, paras 96, 108; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 134, 144; Exhibit 530, Ennis #1, para 71; Evidence of P. Ennis, Transcript, February 3, 2021, p 110; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 94–96 and Transcript, November 4, 2020, pp 190–91.

307 Evidence of M. de Jong, Transcript, April 23, 2021, p 88.

308 Ibid, p 169.

upon BCLC that it was not meeting the expectations of the minister and that decisive corrective action was required. That Mr. de Jong found it necessary to write such a letter, outside of the normal cycle of mandate letters, only *once* during his tenure should have further impressed upon BCLC the extent to which its efforts were falling short and the need for urgency in rectifying those shortcomings.

This interpretation is consistent with Mr. de Jong’s evidence of his own expectations. As indicated above, Mr. de Jong testified that his expectation was that *any* transaction that generated a “suspicious cash transaction report” should have “trigger[ed] some additional investigation or activity.”<sup>309</sup> I acknowledge that there is no evidence before me that Mr. de Jong actually communicated this expectation to BCLC, but in my view, he should not have had to. The fact that he felt the need to issue a direction to BCLC of the sort that he did ought to have made clear the magnitude, if not precisely the kind, of actions that were necessary.

The nature of the response called for in response to Mr. de Jong’s letter was reinforced repeatedly by Mr. Mazure. As discussed above, Mr. de Jong, in his October 2015 letter, explicitly directed BCLC to take guidance from Mr. Mazure’s letter of August 7, 2015, and from “subsequent actions or standards.” Mr. de Jong reiterated in his evidence that the purpose of this letter was, in part, to “urge upon the Lottery Corporation ... this notion of working with ... GPEB ... to settle upon processes.”<sup>310</sup>

In the approximate year and a half that followed, Mr. Mazure repeatedly reiterated to Mr. Lightbody that the actions taken by BCLC following Mr. de Jong’s letter were not meeting his expectations. Despite Mr. de Jong’s direction that BCLC take guidance from precisely this sort of communication from GPEB, Mr. Lightbody consistently responded by insisting that the measures BCLC had already put in place were adequate. While Mr. Mazure’s letters did not always include recommendations for specific actions that BCLC should take, in his July 2016 letter, Mr. Mazure offered two examples of the types of measures he thought BCLC should implement. These included “a source of funds questionnaire and a threshold amount over which BCLC would require service providers to refuse to accept unsourced funds, or a maximum number of instances where unsourced funds would be accepted from a patron before refusal.”<sup>311</sup>

BCLC would have known at this time that it had not implemented measures of the sort referred to in this letter. This letter should have made BCLC aware that it was not meeting the expectations of Mr. Mazure and was at risk of failing to comply with Mr. de Jong’s direction regarding future “actions or standards” from GPEB. Instead of meaningfully engaging in dialogue with GPEB about these actions, however, Mr. Lightbody instead wrote to Mr. Mazure a few weeks later, again asserting that the measures already in place were adequate:<sup>312</sup>

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309 Ibid, p 152.

310 Ibid.

311 Exhibit 505, Lightbody #1, exhibit 55.

312 Ibid, exhibit 56.

I appreciate your suggestion that BCLC ensure its new proposals are conducted within a risk based anti–money laundering framework, and specifically that on a risk basis source of wealth and source of funds inquiries should form part of that framework. I can confirm that source of wealth and source of funds inquiries are in fact incorporated into the BCLC anti–money laundering program and will apply to the proposals when implemented along with all the other program elements aimed at countering money laundering.

Mr. Mazure alluded to his examples of source-of-funds initiatives again in his letter of May 8, 2017,<sup>313</sup> which was met with a similar response in Mr. Lightbody’s letter of May 12, 2017.<sup>314</sup>

Based on all the evidence, I conclude that the actions taken by BCLC in response to Mr. de Jong’s letter of October 1, 2015, and Mr. Mazure’s letters that followed, were wanting. I acknowledge that Mr. de Jong’s letter lacked specifics, and his evidence before the Commission indicated some level of satisfaction with the results achieved after it was sent.<sup>315</sup> While Mr. de Jong may have been encouraged by the decline in suspicious transactions observed in 2016 and 2017, vast quantities of suspicious cash continued to be accepted in British Columbia casinos in these years. Casinos accepted this cash even as BCLC resisted taking the further action urged upon it by Mr. Mazure, despite the clear direction from Mr. de Jong that BCLC be guided by his communications. Given Mr. de Jong’s letter, Mr. Mazure’s subsequent correspondence, and the continued rate at which suspicious transactions were being accepted in the province’s casinos, it should have been clear to BCLC that far more decisive action was required.

## Great Canadian’s Efforts to Address Cash Facilitation

Since at least 2014, Great Canadian had been monitoring the activities of Mr. Jin’s cash facilitation network with a view to assisting BCLC and law enforcement in addressing that activity.<sup>316</sup> By early 2016, Great Canadian understood that law enforcement had linked Mr. Jin’s cash facilitation network to criminal activity and decided that there was a need to stop those activities despite the potential impact it would have on revenue.<sup>317</sup>

On May 30, 2016, Mr. Ennis sent an email to Great Canadian staff directing them to refuse any cash provided to casino patrons by Mr. Jin or his associates.<sup>318</sup> Mr. Ennis testified that he issued the directive after learning that Mr. Jin and his associates were

<sup>313</sup> Ibid, exhibit 57.

<sup>314</sup> Ibid, exhibit 58.

<sup>315</sup> Evidence of M. de Jong, Transcript, April 23, 2021, pp 156–57

<sup>316</sup> Exhibit 530, Ennis #1, para 57 and exhibit O.

<sup>317</sup> Evidence of P. Ennis, Transcript, February 3, 2021, pp 147–48; Evidence of T. Doyle, February 10, 2021, pp 14–16.

<sup>318</sup> Exhibit 530, Ennis #1, para 63 and exhibit R.

linked to possible criminal activity and that “the only responsible thing for us to do was ... to start refusing [the cash].”<sup>319</sup> He stated:

[I]n April when I was promoted to executive director, I felt that it was incumbent on me to take some action because nobody else was. I mean, we kept reporting this stuff hoping the police would have an intervention and that this activity would cease at our casino. It didn’t, so I stepped in and intervened.

...

I had a meeting with obviously our operations lead, Terrance Doyle, who was the [chief operating officer], and he was on side with the recommendation as well. Obviously, it would have the potential to impact revenue. He did not push back on my recommendation and told me I should go ahead with it.<sup>320</sup>

Likewise, Mr. Doyle testified that he “wanted nothing to do” with people that they knew had criminal affiliations and “made it very clear ... that we should not be dealing with these customers if we knew they had any type of nefarious intentions.”<sup>321</sup>

I see the directive issued by Mr. Ennis as the type of proactive step that could – and should – have been taken by BCLC and others in the gaming industry to stem the flow of suspicious cash into BC casinos much earlier. Despite the potential impact on revenue, a principled decision was finally made to stop taking cash associated with criminal activity. In my view, the ease with which Great Canadian implemented this simple measure demonstrates that the failure to address the huge volume of suspicious cash laundered through BC casinos from 2012 to 2015 was largely a failure of will.

I return to this issue in Chapter 14.

## **2016 Chip Swap**

Beginning in 2014, BCLC investigators became aware of multiple incidents in which patrons would buy-in for large amounts at the River Rock Casino and leave without playing, taking the casino chips with them.<sup>322</sup> By April 2015, the River Rock’s “chip liability” – the amount of chips that cannot be accounted for and have likely been

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319 Evidence of P. Ennis, Transcript, February 3, 2021, p 148–49.

320 Ibid, pp 147–48

321 Evidence of T. Doyle, Transcript, February 10, 2021, pp 15–16.

322 Exhibit 522, Desmarais #1, para 97.

taken off site by patrons – had grown to approximately \$12 million.<sup>323</sup> A chip liability at this level, well above the River Rock’s norm of \$1–2 million,<sup>324</sup> was a concern to both Great Canadian and to BCLC.<sup>325</sup> Great Canadian’s concern was due in part to the financial implications of an elevated chip liability,<sup>326</sup> but it is clear that both organizations were also concerned about the associated money laundering risks, including the risk that the chips could be used as criminal currency or “stored value instruments.”<sup>327</sup> Mr. Desmarais described the nature of the risk posed by the chip liability in an email to Mr. Alderson dated July 14, 2015:<sup>328</sup>

I somewhat disagree that BCLC’s exposure in this matter is simply reputational. I believe there is a bigger issue and that is we and the [service provider] are responsible for millions of dollars of what could be criminal stored value instruments which strikes at the heart of our corporate social responsibilities as well as what some might perceive as [a money laundering] enablement issue. I agree there is no direct evidence that an unauthorized casino is operating with [River Rock Casino] chips, that was a theory advanced as a potential reason why such large liability exists; that is infinitely more palatable (and treatable) than the alternative, and that is the chips are being used as a [stored value instrument] for criminal purposes. I acknowledge chip use would be the first time I am aware of in this manner (I have investigated precious gems, bearer bonds, gold, etc. in the past) but chips, in my view, are the ideal instrument for this purpose.

In order to address the risk that the chips might be used for criminal purposes, BCLC and Great Canadian planned a “chip swap” to be carried out on September 8, 2015.<sup>329</sup> The planned chip swap involved providing notice to patrons that all River Rock \$5,000 chips were being recalled by the casino. Patrons in possession of \$5,000 chips would be able to return those chips by a specified date, following which they would be rendered

323 Exhibit 490, Kroeker #1, paras 70–71; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 109–10; Exhibit 522, Desmarais #1, para 98.

324 Exhibit 490, Kroeker #1, paras 70–71; Evidence of R. Kroeker, Transcript, January 25, 2021, p 110.

325 Exhibit 490, Kroeker #1, para 69; Evidence of R. Kroeker, Transcript, January 25, 2021, p 109; Exhibit 522, Desmarais #1, para 99.

326 Exhibit 490, Kroeker #1, para 69; Evidence of R. Kroeker, Transcript, January 25, 2021, p 109.

327 Evidence of R. Kroeker, Transcript, January 25, 2021, p 109; Exhibit 522, Desmarais #1, para 99 and exhibit 76; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 148–51.

328 Exhibit 522, Desmarais #1, exhibit 76.

329 Exhibit 74, Overview Report: 2016 River Rock Casino Chip Swap [OR: Chip Swap], paras 9–10 and Appendix A, January 8, 2016 BCLC Information Note: River Rock Casino Chip Swap.

valueless. At the same time, the River Rock would issue new \$5,000 chips, which would be the only valid chips at that value after the date on which the old chips became valueless.<sup>330</sup>

Given the suspicion that many of the missing chips had been removed from the casino for illegitimate purposes, the chip swap was viewed as an investigative opportunity, in addition to a solution to the chip liability.<sup>331</sup> Accordingly, returns of outstanding chips were permitted only for a short period of time to prevent patrons with large amounts of chips from returning them gradually in small quantities to avoid detection, and arrangements were made for BCLC investigators to interview those patrons returning chips in order to ascertain where the chips had come from.<sup>332</sup> Where the casino had no record of the chips having been obtained legitimately, they would not be honoured.<sup>333</sup>

On September 7, 2015, BCLC received notice from GPEB that police had requested that the chip swap not be carried out on the following day as planned.<sup>334</sup> This request from law enforcement was the result of a conversation between Mr. Meilleur and a Vancouver Police Department inspector who was involved in the E-Pirate investigation.<sup>335</sup> Mr. Meilleur had advised the officer of the chip swap, ultimately leading to the request that it not proceed.<sup>336</sup>

The chip swap was eventually rescheduled and carried out on January 18, 2016.<sup>337</sup> By this time, the River Rock chip liability had fallen considerably to under \$5 million, suggesting that the delay had permitted the return of a substantial amount of the outstanding chips in small increments.<sup>338</sup> Mr. Desmarais described the delay in the execution of the chip swap and the lost opportunity to interview those who would

330 Evidence of R. Kroeker, Transcript, January 25, 2021, pp 110–11; Exhibit 490, Kroeker #1, paras 72–73; Exhibit 74, OR: Chip Swap, Appendix A, January 8, 2016 BCLC Information Note: River Rock Casino Chip Swap, and Appendix G, July 2015 email, re RRCR Chip Swap.

331 Exhibit 490, Kroeker #1, para 72; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 110–11; Exhibit 522, Desmarais #1, para 106.

332 Evidence of R. Kroeker, Transcript, January 25, 2021, pp 110–11; Exhibit 522, Desmarais #1, paras 101–2; Exhibit 74, OR: Chip Swap, Appendix A, January 8, 2016 BCLC Information Note: River Rock Casino Chip Swap.

333 Exhibit 490, Kroeker #1, para 72.

334 Ibid, paras 75; Exhibit 522, Desmarais #1, para 104 and exhibit 77; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 151–52; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 109–10; Evidence of D. Tottenham, Transcript, November 4, 2020, p 184; Exhibit 505, Lightbody #1, para 164.

335 Exhibit 587, Meilleur #1, paras 100–1; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 109–10.

336 Evidence of L. Meilleur, Transcript, February 12, 2021, pp 109–10.

337 Exhibit 74, OR: Chip Swap, paras 2 and 10.

338 Ibid, para 12 and Appendix A, January 8, 2016 BCLC Information Note: River Rock Casino Chip Swap; Exhibit 490, Kroeker #1, para 77; Evidence of R. Kroeker, Transcript, January 26, 2021, p 97; Exhibit 522, Desmarais #1, para 105.

otherwise have been forced to return large quantities of chips on short notice as the loss of an “extraordinary investigative opportunity.”<sup>339</sup>

It is clear from the evidence of Mr. Desmarais and other current and former BCLC staff members that the delayed chip swap was a source of disappointment for BCLC.<sup>340</sup> In their evidence, both Mr. Desmarais and Mr. Kroeker suggested that law enforcement may not have received complete or accurate information and that, if they had, they may not have requested that the chip swap be delayed, and the investigative opportunity lamented by Mr. Desmarais may not have been lost.<sup>341</sup>

It is impossible to know with certainty whether law enforcement may have taken a different view of the chip swap if provided additional or different information. If the investigative opportunity presented by the exercise was as promising as was suggested by Mr. Desmarais, BCLC’s regret over the loss of that opportunity is understandable. This does not mean, however, that the delay was not necessary or that any of the actions leading to the delay were ill-conceived. Given his awareness of the ongoing police investigation, Mr. Meilleur’s decision to advise law enforcement of the chip swap seems entirely reasonable. Ideally, Mr. Meilleur would have made his counterparts at BCLC aware of his intention to do so, and perhaps involved them in his conversations with law enforcement directly. However, given the extreme sensitivity of the investigation and the assurances Mr. Meilleur had given that he would hold the information provided by Mr. Chrustie in confidence, it may not have been open to him to do so, despite his knowledge that some BCLC employees were also aware of the investigation. It is possible that Mr. Meilleur did not provide law enforcement with a complete or entirely accurate explanation of the planned chip swap, but there is no basis to believe he did not endeavour to do so. Having raised this issue with police and having received the request of law enforcement that the chip swap be delayed, forwarding that request to BCLC was clearly the appropriate step. Similarly, having learned of this request, BCLC made the appropriate decision to delay the chip swap in accordance with the wishes of law enforcement.

I agree with the evidence of Mr. Kroeker and Mr. Desmarais that the elevated River Rock chip liability posed a money laundering related risk. BCLC and Great Canadian should be commended for planning and

339 Exhibit 522, Desmarais #1, para 106.

340 Ibid; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 96–97; Exhibit 505, Lightbody #1, para 165.

341 Evidence of R. Kroeker, Transcript, January 26, 2021, pp 188–89; Evidence of B. Desmarais, Transcript, February 2, 2021, p 59.

eventually executing the chip swap. I accept that the delay in its execution represented a lost investigative opportunity, but I am unable to find fault in the actions of anyone involved in the events leading to that decision. I accept that Mr. Meilleur acted in good faith and to the best of his abilities in respect of this matter, as did his counterparts in law enforcement and BCLC.

## 2016 Meyers Norris Penney LLP Report

Among the measures recommended to Mr. de Jong during the September 2015 briefing discussed above was a “strategic external review of BCLC reporting of suspicious and large cash transactions,” focused on “gaming service provider and BCLC processes on customer due diligence specifically on source of funds and suspicious currency transactions.”<sup>342</sup>

GPEB proceeded with this recommendation, engaging MNP to carry out a review that resulted in a report dated July 26, 2016.<sup>343</sup> The discussion that follows addresses the nature and purpose of the review, the process by which it was carried out, the results as articulated in the report, and the actions and events that followed the report.

### Purpose of the MNP Review

Mr. Mazure described the purpose of the review as being “to inform further options about how to address the issue of suspicious cash in casinos, and to further mitigate the risk of money laundering and proceeds of crime in casinos.”<sup>344</sup> While this articulation of the purpose of the review is not inaccurate, it is apparent that the review was also motivated by GPEB’s perception that BCLC was unwilling to implement adequate measures to address the issue of suspicious cash and suspicious transactions in the province’s casinos. According to Mr. Meilleur the decision to engage an external firm – despite GPEB’s internal audit capacity – was motivated by strain in the relationship between GPEB and BCLC.<sup>345</sup> BCLC played no role in setting the terms of this review and may have not received notice of GPEB’s intention to conduct it until MNP had already been engaged.<sup>346</sup>

The extent to which this review was motivated by concerns about BCLC’s action (or inaction) as opposed to that of the industry more broadly (including GPEB itself) is further confirmed in a description of the proposed review provided to Ms. Wenezenki-Yolland by Mr. Meilleur on August 31, 2015:<sup>347</sup>

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342 Exhibit 552, MOF Strategy, p 9.

343 Exhibit 73, Overview Report: Past Reports and Recommendations Related to the Gaming Sector in British Columbia [OR: Past Gaming Reports], Appendix J, MNP LLP, *British Columbia Gaming Policy Enforcement Branch: AML Report* (July 26, 2016).

344 Exhibit 541, Mazure #1, para 195.

345 Exhibit 587, Meilleur #1, para 120.

346 Ibid, exhibits UU, VV.

347 Ibid, exhibit UU.

The Province of British Columbia wishes to retain a firm to conduct an external review by examining the effectiveness of the British Columbia Lottery Corporation's (BCLC) customer due diligence framework, generally in contracted gaming facilities, and specifically with focus on one particular facility. For further clarity, the scope of this engagement will include an assessment of the overall sufficiency of the BCLC anti-money laundering customer due diligence framework, as applied to service providers, as well as a specific performance audit of the policy as it is applied to a specific facility of a specified period of time, namely four (4) years. The intent of the province in this engagement is to understand the overall sufficiency, functioning of the customer due diligence and suspicious currency transaction framework applied by BCLC in preventing money laundering activities in gaming facilities operated under the authority of the province. The proponent is expected to both consider the current state, and make recommendations as to a future state that would enhance the integrity of gaming in British Columbia through improved policy and procedures designed to prevent money laundering activities. Given that both BCLC and the province are actively engaged in audit and assurance projects in the gaming sector, this review will include an examination of whether the current audit and assurance work is effective in capturing the province's concern with regards to money laundering or other unlawful activities in gaming facilities.

Based on this description and the evidence referred to above, it is apparent that GPEB viewed BCLC as the subject of this review, and not as a partner in it. In my view, this approach posed a risk of failing to identify measures that could be taken by GPEB and government to address suspicious transactions in casinos.

It is worth noting in this discussion of the purpose of this review that there was, at least initially, some skepticism as to its utility. Ms. Wenezenki-Yolland, who gave evidence that she held a general concern during this time period that the efforts of GPEB featured an overabundance of analysis at the expense of concrete action,<sup>348</sup> expressed initial reservations of this nature about the MNP review in an email to Mr. Meilleur dated August 31, 2015.<sup>349</sup>

This should form part of a discussion with John [Mazure] on his return and would be one of the options. One consideration – of this whether to undertake more review work is whether it would actually provide any new information beyond that you have already obtained through some of the work you have already done on [anti-money laundering]. Or do we just need to take some of the actions that have already been identified. What would the best investment of our and BCLC resources? Doing more review or implementing actions?

348 Exhibit 922, Wenezenki-Yolland #1, para 117; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 120–21.

349 Exhibit 587, Meilleur #1, exhibit UU.

As GPEB ultimately proceeded with the review, it is evident that it did not take Ms. Wenezenki-Yolland up on her suggestion.

## **Nature of the Review and the Review Process**

The nature of the review conducted by MNP is articulated in the terms of reference for the review found at paragraph 1.1 of the report:<sup>350</sup>

MNP was engaged by British Columbia’s (“BC”) Gaming Policy and Enforcement Branch (“GPEB”) on September 8, 2015. MNP was directed to work directly with senior GPEB managers to:

- a. Analyze current practices in respect of source of funds, source of wealth, handling of cash, use of cash alternatives and overall Customer Due Diligence (“CDD”) in gaming facilities compared to financial institutions;
- b. Analyze best practices in the gaming sector in relation to ‘know your customer’ frameworks, particularly in respect of the regulatory framework in British Columbia, as set out in the Gaming Control Act [S.B.C. 2002, c. 14];
- c. Assess British Columbia Lottery Corporation (“BCLC’s”) Customer Due Diligence (“CDD”) regime and overall compliance with the above-noted practices;
- d. Receive information from the General Manager (as defined in the Gaming Control Act) or delegate regarding certain transactions, and assess this information in the context of compliance with a, and b above;
- e. Identify immediate near term actions to be taken in order to address any gaps and provide recommendations on longer term new solutions or enhancements to current practices; and
- f. Provide any other recommendations to address any gaps identified in the above-described analysis.

The report goes on to state that the “engagement is not an audit and did not include any control testing.”<sup>351</sup>

The focus of the review was limited to the time period of September 1, 2013, to August 31, 2015.<sup>352</sup> This is significant because, as discussed above, BCLC had only just begun

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350 Exhibit 73, OR: Past Gaming Reports, Appendix J, MNP LLP, *British Columbia Gaming Policy Enforcement Branch: AML Report* (July 26, 2016), para 1.1.

351 *Ibid*, para 1.2.

352 *Ibid*, para 3.5.

to implement its formal cash conditions program and related measures beginning in August 2015. As such, the results of the review would not reflect the impact of those measures.

The process followed in conducting this review is also set out in the report.<sup>353</sup> The activities undertaken by MNP included the review of relevant documents and data extracts, the review of relevant legislation and regulations, and interviews of BCLC and River Rock Casino employees. The report does not suggest that any GPEB employees were interviewed as part of the review but indicates that many of the interviews of BCLC and River Rock employees were conducted in conjunction with GPEB staff members,<sup>354</sup> further underscoring the distinct roles of BCLC and GPEB in this review.

## Results and Recommendations

The results of the review conducted by MNP – and the recommendations arising from those results – are set out in the July 2016 report.

Despite the focus of the review on the processes of BCLC, the report contained recommendations directed at both GPEB and BCLC.<sup>355</sup> The report in its entirety is in evidence before the Commission.<sup>356</sup> I will focus my comments on the report’s findings and recommendations in three areas – BCLC’s compliance with FINTRAC requirements, BCLC’s risk assessment and enhanced due diligence measures for high-risk patrons, and the recommendation to impose a threshold amount over which un sourced funds would be refused.

### *BCLC’s Compliance with FINTRAC Requirements*

The MNP report contained a number of conclusions and recommendations related to BCLC’s compliance with FINTRAC requirements.<sup>357</sup> While the report made clear that the review did not involve an audit of processes surrounding reporting requirements or of the accuracy or timeliness of reports submitted to FINTRAC,<sup>358</sup> it concluded that it “did not observe anything material to suggest that the compliance program in effect at BCLC and [River Rock Casino Resort was] not functionally suitable to meet obligations” under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17 (PCMLTFA)* and its regulations.<sup>359</sup> The report also concluded that BCLC’s customer due diligence process met federal regulatory requirements for standard-risk patrons,<sup>360</sup> and that processes were in place to track instances of cash transactions requiring the completion and filing of reports.<sup>361</sup>

353 Ibid, paras 3.0–3.7.

354 Ibid, paras 3.2–3.4.

355 Ibid, paras 4.1–4.14.

356 Exhibit 73, OR: Past Gaming Reports, Appendix J.

357 Ibid, paras 4.6–4.7, 4.13 and 5.30–5.47.

358 Ibid, para 5.31.

359 Ibid, para 4.6.

360 Ibid, para 4.7.

361 Ibid, para 5.32.

Despite these findings, the report noted possible shortcomings in BCLC's FINTRAC compliance regime. These included possible over-reporting of transactions associated with PGF accounts as cash transactions where those transactions did not involve cash,<sup>362</sup> failure to include required information in 0.1 percent of large cash transaction reports,<sup>363</sup> and failure to report transactions under \$50,000 that should have been reported.<sup>364</sup>

I will leave aside for the moment the third of these issues, relating to under-reporting of transactions under the threshold of \$50,000, which is tied to a larger body of evidence and is addressed later in this chapter. I do not find the first two of these issues to represent significant non-compliance with BCLC's FINTRAC reporting obligations. There is compelling evidence before the Commission that the second of these issues, relating to the absence of required information in a very small proportion of large cash transaction reports, was the result of an error in the transmission of data from BCLC to MNP and likely did not reflect actual non-compliance at all.<sup>365</sup> While I am not aware of any basis to doubt the veracity of MNP's conclusion regarding the first issue, I find that any non-compliance was minor and amounted to over-reporting and so did not deprive FINTRAC of any information it should have received. I also find that there is no realistic prospect that any such non-compliance had any meaningful impact on the risk of money laundering or acceptance of proceeds of crime in the province's casinos.

### ***Conclusions and Recommendations Related to BCLC's Risk Assessment and Enhanced Due Diligence Measures***

The conclusions and recommendations set out in the MNP report suggest that BCLC's assessment of risk related to money laundering and the enhanced due diligence measures it applied to "high risk patrons" were of central interest to the reviewers and that the reviewers found these aspects of BCLC's anti-money laundering regime to be lacking in some respects. This is demonstrated in the following three paragraphs drawn from the "Summary of Findings / Recommendations" section of the report:<sup>366</sup>

BCLC's CDD process meets Federal regulatory requirements for standard risk patrons. However, the process could be enhanced from both a risk management and revenue generation perspective with modifications and additional resources to meet Enhanced Due Diligence ("EDD") expectations for high risk patrons. This may include confirmation or verification of key customer data including: source of wealth; source of cash; and occupation by the Service Provider or BCLC for higher risk patrons. The gathering of

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362 Ibid, para 5.32.

363 Ibid, para 5.34.

364 Ibid, para 5.33.

365 Exhibit 490, Kroeker #1, paras 122–23 and exhibit 50; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 124–27 and Transcript, January 26, 2021, pp 126–29; Exhibit 496, Email from Rob Kroeker, re MNP Audit Investigations and AML Response (July 19, 2016).

366 Exhibit 73, OR: Past Gaming Reports, Appendix J, MNP LLP, *British Columbia Gaming Policy Enforcement Branch: AML Report* (July 26, 2016), paras 4.7–4.9

this additional information may assist the Service Provider in providing enhanced service to high valued patrons.

BCLC should consider whether its risk assessment process adequately reflects current thinking around money laundering and terrorist financing risk. The risks associated to specific facilities should be evaluated, rather than simply drawing geographic boundaries for risk.

BCLC should review its EDD process to ensure it appropriately mitigates identified risks. Additional resources may be required to clear the current backlog and support timely completion of the EDD process as required. BCLC should also identify reliable sources of information for persons and businesses based outside of Canada.

I note that these recommendations are, in my view, generally consistent with the advice and directions that BCLC received from GPEB and Mr. de Jong emphasizing the need to take further action on customer due diligence, particularly with respect to evaluation of the source of funds used in casino transactions.

### ***Recommendation to Impose a Threshold Amount over which Unsourced Funds Would Be Refused***

Among the recommendations aimed at GPEB contained in the MNP report was the following recommendation to impose a limit on the amount of unsourced cash that could be accepted by the province's casinos:<sup>367</sup>

GPEB, at the direction of the Minister responsible for gaming, should consider issuing a directive pertaining to the rejection of funds where the source of cash cannot be determined or verified at specific thresholds. This would then provide specific guidance for BCLC to create policies and procedures for compliance by all operators.

This recommendation was discussed at length in the evidence before the Commission and is addressed in the discussion that follows relating to the reaction and response to the MNP report generally.

## **Reactions and Responses to the MNP Report**

The Commission heard evidence from a number of witnesses about BCLC's response to the MNP report. I heard evidence of concerns from within BCLC,<sup>368</sup> for example, that conclusions about BCLC's compliance with FINTRAC requirements were the

<sup>367</sup> Ibid, para 5.52.

<sup>368</sup> Exhibit 490, Kroeker #1, para 196; Exhibit 922, Wenezenki-Yolland #1, para 164; Evidence of J. Mazure, Transcript, February 11, 2021, p 211; Exhibit 587, Meilleur #1, paras 131–35; Exhibit 541, Mazure #1, paras 196–98.

result of errors in data transmission;<sup>369</sup> that the report was based on dated information and that, as a result, its conclusions were out of date by the time of its completion;<sup>370</sup> and that BCLC was not provided with an adequate opportunity to respond to the report before it was finalized, as had initially been contemplated.<sup>371</sup>

Some witnesses from outside of BCLC appeared to suggest that its criticism of the review and resulting report was evidence that BCLC did not have a genuine desire to address money laundering in the province's casino.<sup>372</sup>

In my view, there was nothing inappropriate about BCLC voicing concerns about the MNP report, provided those concerns were genuine and expressed in good faith. Given the manner in which the report was commissioned, the time frame analyzed, and its focus on minor anomalies, one of which may have resulted from a data transmission issue, I have no reason to doubt that this was the case. I note that Ms. Wenezenki-Yolland, while generally supportive of the recommendations found in the report, shared some of BCLC's concerns about the foundation of some of its findings.<sup>373</sup>

That some of BCLC's concerns may have been justified does not mean that the report was of no value, however. The concerns expressed by BCLC focused on the process undertaken in conducting the review and on the findings made by the reviewers regarding the state of BCLC's anti-money laundering regime. Based on Mr. Kroeker's evidence, it appears that despite these concerns, BCLC acted on the recommendations made in the report.<sup>374</sup> BCLC's response plan to the report, pointed to by Mr. Kroeker in his evidence, indicates that all of the recommendations directed at BCLC were completed, with the exception of those dependent on direction from the GPEB and/or the responsible minister.<sup>375</sup> This evidence was corroborated to some degree by that of Ms. Wenezenki-Yolland, who agreed that BCLC accepted and implemented nearly all of the report's recommendations.<sup>376</sup>

The one exception to BCLC's adherence to the recommendations found in the report, according to the evidence of Ms. Wenezenki-Yolland, was the recommendation that a threshold value be established above which transactions using unsourced funds would be refused.<sup>377</sup> Ms. Wenezenki-Yolland described this recommendation as "the

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369 Ibid; Exhibit 490, Kroeker #1, paras 122–23 and exhibit 50; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 124–27 and Transcript, January 26, 2021, pp 126–29; Exhibit 496, Email from Rob Kroeker, re MNP Audit Investigations and AML Response (July 19, 2016); Exhibit 505, Lightbody #1, para 222.

370 Evidence of R. Kroeker, Transcript, January 25, 2021, pp 129–30.

371 Exhibit 505, Lightbody #1, para 220.

372 Evidence of J. Mazure, Transcript, February 5, 2021, pp 138–39 and Transcript, February 11, 2021, pp 207–9, 211; Exhibit 587, Meilleur #1, paras 131–35; Exhibit 541, Mazure #1, paras 196–98.

373 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 70–73, 78; Exhibit 922, Wenezenki-Yolland #1, paras 165, 168.

374 Exhibit 490, Kroeker #1, para 124, exhibit 51.

375 Ibid.

376 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 137.

377 Ibid.

one area where [GPEB and BCLC] did not seem to be able to find common ground.”<sup>378</sup> This recommendation closely resembles a similar measure that was put in place approximately 18 months later in response to a recommendation made as part of a review conducted by Dr. German, which I discuss in Chapter 12.

In his evidence, Mr. Kroeker assigned responsibility for the absence of action on this recommendation to GPEB, to whom the recommendation was directed:<sup>379</sup>

The 2016 MNP Report had recommended that GPEB use its statutory powers to issue a directive limiting the amount of cash a casino could accept from a customer at any one time. Although I had reservations about some of the MNP Report’s methodology and some of the resulting conclusions, I agreed that a cash cap could be an effective AML measure. MNP did not comment on what level the cap should be set at, but rather recommended that GPEB set the limit. BCLC anticipated a directive from GPEB setting the limit, which it would then implement as soon as practicable thereafter.

No directive from GPEB setting a limit on cash transactions was forthcoming.

Leaving aside the semantic question of whether the measure recommended by the MNP report is accurately described as a “cash cap,” Mr. Kroeker’s comments are accurate in that the recommendation was directed to GPEB and that no directive to BCLC in this regard was forthcoming. Both Mr. Mazure and Ms. Wenezenki-Yolland suggested in their evidence that this recommendation may have been misdirected, as it was not within the authority of GPEB to issue such a directive.<sup>380</sup> Based on the report itself, however, it is clear that GPEB was to take this action “at the direction of the Minister.” As such, it seems that the reviewers had an accurate view of GPEB’s authority and understood that such a direction would require ministerial approval. While I accept that GPEB did not have the unilateral authority to issue the direction recommended by MNP, the recommendation did not contemplate a unilateral direction. Rather, it called for GPEB to seek a direction from the minister. GPEB never sought such a direction, though it did attempt to seek a direction identifying a somewhat similar measure as one of several options early the following year, as I discuss below.<sup>381</sup> I note as well that there is no evidence that GPEB made any effort to communicate to BCLC the belief that this recommendation was misdirected and that BCLC should implement this recommendation itself.

While I do not agree with the view that this recommendation was misdirected, I also do not accept the notion that BCLC was eager to implement the recommendation and was simply waiting with passive bewilderment as to why no directive was forthcoming

<sup>378</sup> Ibid.

<sup>379</sup> Exhibit 490, Kroeker #1, paras 196–97.

<sup>380</sup> Evidence of J. Mazure, Transcript, February 5, 2021, pp 136–37 and Transcript, February 11, 2021, p 209; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 71–72; Exhibit 922, Wenezenki-Yolland #1, para 168.

<sup>381</sup> Exhibit 556, MOF Briefing Document, Minister’s Direction to Manage Source of Funds in BC Gambling Facilities (February 2017) [Briefing Document: Minister’s Direction].

from GPEB. I accept Ms. Wenezenki-Yolland's evidence that BCLC was resistant to the implementation of this measure and took the position that the anti-money laundering measures already in place were adequate.<sup>382</sup> This is consistent with the tenor of Mr. Lightbody's correspondence with Mr. Mazure, with BCLC's initial reaction to Mr. de Jong's letter of October 1, 2015, and with a draft briefing document prepared by GPEB for Mr. de Jong in early 2017, which described BCLC's position on this measure as follows:<sup>383</sup>

BCLC has expressed particular concern with a potential directive requiring the refusal of unsourced cash exceeding certain thresholds, citing a potential conflict with the PCMLTFA and FINTRAC Guidelines which may result in service providers seeking compensation from government for financial impacts.

While this document reflects GPEB's interpretation of BCLC's position, it is consistent with the view found in BCLC's response plan, attached as an exhibit to Mr. Kroeker's affidavit.<sup>384</sup> The response plan includes the following comments on this proposal:<sup>385</sup>

Subsections 9.6(1) and (2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, as well as FinTRAC Guideline 4, section 6 and FinTRAC's Guidance on the Risk-Based Approach to Combatting Money Laundering and Terrorist Financing, require BCLC to implement a risk-based compliance regime. A directive issued under the provincial *Gaming Control Act* to BCLC or service providers requiring a prescriptive compliance approach in the form recommended here may give rise to a direct conflict of laws as between federal and provincial requirements. BCLC would need clarification from the federal regulator and provincial regulator as to which requirement was to be given paramountcy. [Provincial] requirements are not aligned with or conflict with federal law.

Primary responsibility for responding to this recommendation lay with GPEB. The report assigned responsibility for implementing the recommendation to GPEB and, for the reasons outlined above, I do not accept that this was the result of a misunderstanding of GPEB's roles and responsibilities. While I reserve for later in this Report the question of whether a measure of the sort recommended should have been implemented, the fact that it was not implemented until January 2018 following a similar recommendation from an entirely separate report is primarily the result of a lack of action on the part of GPEB. This does not mean, however, that BCLC bears no responsibility for inaction on this recommendation. It is clear that, had BCLC accepted the wisdom of this recommendation, it could have implemented it in the absence of

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382 Exhibit 922, Wenezenki-Yolland #1, paras 177, 179; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 78–79, 137; see also Evidence of J. Mazure, Transcript, February 5, 2021, pp 136–37 and Transcript, February 11, 2021, p 209.

383 Exhibit 556, Briefing Document: Minister's Direction, p 7.

384 Exhibit 490, Kroeker #1, exhibit 51.

385 Ibid.

a direction. While I have no reason to doubt that BCLC would have implemented this recommendation if directed to do so, the evidence before me indicates that BCLC was opposed to measures of this sort and was not reluctant to voice its opposition. This opposition complicated GPEB's efforts with respect to this recommendation and likely delayed its implementation.<sup>386</sup>

### **BCLC Voluntary Self-Declaration of Non-Compliance / \$50,000 Reporting Threshold**

In January 2016, BCLC submitted a “voluntary self-declaration of non-compliance” to FINTRAC.<sup>387</sup> The purpose of the self-declaration was to notify FINTRAC of under-reporting of suspicious transactions arising from a misunderstanding of reporting requirements on the part of Great Canadian surveillance staff members.<sup>388</sup> Specifically, according to the self-declaration, surveillance staff at the River Rock Casino were under the misapprehension that:

1. They were not required to screen any cash buy-ins under \$50,000 as suspicious; and
2. That any large buy-ins in larger denominations such as \$50 or \$100 bills were not regarded as suspicious if the patron had a documented source of wealth or was historically a high limit player.

The impact of these misapprehensions was that transactions falling within these categories were not reported to BCLC as “unusual financial transactions” and, in turn, were not considered by BCLC for reporting to FINTRAC as “suspicious transactions.”

In its self-declaration of non-compliance, BCLC advised that it conducted a review of all large cash transaction reports from the River Rock Casino between the period of March 1 and October 31, 2015.<sup>389</sup> Through that review, BCLC discovered 185 transactions that should have been reported to FINTRAC as suspicious transactions but were not. BCLC then submitted reports for those transactions.<sup>390</sup>

386 Exhibit 541, Mazure #1, paras 196–98; Evidence of J. Mazure, Transcript, February 5, 2021, pp 138–39 and Transcript, February 11, 2021, pp 207–9.

387 Exhibit 75, Overview Report: 2016 BCLC Voluntary Self-Declaration of Non-Compliance, para 4 and Appendix A, BCLC Voluntary Self-Declaration of Non-Compliance.

388 Ibid, para 5 and Appendix A, BCLC Voluntary Self-Declaration of Non-Compliance.

389 Ibid, para 6.

390 Ibid.

Although the underreporting arising from the River Rock Casino’s surveillance staff misunderstanding of the requirements for reporting as suspicious transactions under \$50,000 and those involving denominations such as \$50 and \$100 bills was not initially identified to FINTRAC until 2015,<sup>391</sup> it is clear from the evidence before the Commission that this under-reporting pre-dated BCLC’s self-declaration by several years.<sup>392</sup>

As early as September 2011, Mr. Alderson, then a BCLC casino investigator assigned to the River Rock, raised concerns with his superiors (Mr. Friesen and Mr. Karlovcec) about the failure of service providers to report transactions under \$50,000 as suspicious.<sup>393</sup> In an email dated September 23, 2011, Mr. Alderson raised these concerns while also suggesting that this non-reporting may have been the result of an unspecified agreement:<sup>394</sup>

We have had some recent files where we have patrons buy in for \$49,960.00 and \$49,980 in [\$20s] and we have found out through further investigation.

[River Rock Casino is] not reporting these as suspicious and Steve and I feel it is too much of a coincidence and the players must have been informed.

We also find that an individual player that may have combined buy ins over a 24 [hour] period exceeding \$50K in buy ins in [\$20s] are also not deemed suspicious as only the “individual buy in” is being looked at.

Steve is looking at the [suspicious transaction reports] we have done recently to get some ITRAK file numbers.

We believe this is a totally cynical attempt by the site to avoid reporting buy ins as suspicious *I know that a \$50K buy in limit was agreed upon* but if you look at the [anti-money laundering] training (there is a scenario for \$30K in [\$20s]) I am concerned that the outside auditor will find us noncompliant. [Emphasis added.]

391 Ibid, para 1.

392 Ibid, Appendix J, September 23, 2011 Emails Between Ross Alderson and Gord Friesen; Appendix K, February 2012 Emails Between BCLC and GPEB staff; Evidence of G. Friesen, Transcript, October 28, 2020, pp 77–81; Evidence of R. Alderson, Transcript, September 9, 2021, pp 23–28.

393 Ibid, Appendix J, September 23, 2011 Emails Between Ross Alderson and Gord Friesen; Evidence of R. Alderson, Transcript, September 9, 2021, pp 23–28.

394 Exhibit 75, Overview Report: 2016 BCLC Voluntary Self-Declaration of Non-Compliance, para 4 and Appendix J, September 23, 2011, Emails Between Ross Alderson and Gord Friesen.

Mr. Friesen’s response suggests that even before receiving Mr. Alderson’s email, he was familiar with the existence of a \$50,000 threshold for reporting.<sup>395</sup>

This is not written in our Policy, so an auditor will not find us non-compliant. This is an [anti–money laundering] strategy. The problem we face is that if we believe [the River Rock Casino is] not reporting because “someone” has instructed the cage not to report these incidents, I don’t think you are going to get too many confessions. What I would do is research how many patrons this pertains to (which are probably a select few) and have surveillance put a “watch” on their buy ins. Discuss this with staff at your next scheduled meeting and air your concerns, i.e. [general manager], cage manager, etc. and determine their response. *As indicated the \$50,000 threshold was just a simple determination made at River Rock because of the volume of transactions.* You can alter this at will. There may well be suspicious transactions involving small denominations of bills much less than 50K. [Emphasis added.]

In his evidence before the Commission, Mr. Alderson claimed that it was common knowledge among service providers and BCLC investigators stationed at the River Rock and that service providers were not filing suspicious transaction reports for amounts under \$50,000.<sup>396</sup> I note that, while Mr. Alderson referred to service providers generally in his evidence, it seems clear that this was an issue with respect to the River Rock Casino only, and there is no basis to suggest that any similar reporting threshold was in place in any other casino. Mr. Alderson testified that he did not know whether BCLC had endorsed this threshold, but that he believed it to be inappropriate.<sup>397</sup> Mr. Alderson could not recall whether he had taken any steps to modify the threshold as Mr. Friesen had invited him to do, but testified that he believed it was inappropriate for Mr. Friesen to place this responsibility on someone in Mr. Alderson’s position.<sup>398</sup>

In his evidence, Mr. Friesen denied that BCLC had ever agreed to a \$50,000 threshold for reporting by the River Rock Casino.<sup>399</sup> Rather, he suggested that the threshold was the result of a direction from GPEB that it did not want to receive reports pursuant to section 86 of the *Gaming Control*

395 Ibid.

396 Evidence of R. Alderson, Transcript, September 9, 2021, pp 24–25.

397 Ibid, pp 25–27.

398 Ibid, pp 27–28, 159–60.

399 Evidence of G. Friesen, Transcript, October 28, 2020, pp 77–80.

*Act* for amounts less than \$50,000 and that this direction was erroneously applied by River Rock staff to suspicious transaction reporting.<sup>400</sup>

Based on the evidence of Mr. Dickson and Mr. Ennis, it appears that Mr. Friesen correctly identified the source of the threshold applied by the River Rock but is mistaken as to some of the details. Both Mr. Dickson and Mr. Ennis testified that Mr. Dickson requested that the River Rock apply a threshold to its reporting to GPEB, but that the threshold *required* the reporting of *all* buy-ins of \$50,000 or more in \$20 bills to GPEB.<sup>401</sup> Accordingly, Mr. Dickson did not request or direct that transactions *under* \$50,000 not be reported, but rather that some transactions above this threshold *always* be reported, regardless of whether there were other suspicious indicators.<sup>402</sup>

Based on the evidence before me, I accept that the application of a threshold precluding the reporting of transactions under \$50,000 as suspicious was the result of a misunderstanding arising from Mr. Dickson's request that *all* transactions *over* \$50,000 be reported. It is clear from his evidence that Mr. Ennis clearly understood Mr. Dickson's direction and I do not doubt that he endeavoured to transmit these instructions to Great Canadian staff under his supervision. Nevertheless, some seem to have misinterpreted this instruction such that they understood they were not to report transactions below this threshold as suspicious. Accordingly, it seems that this practice did not originate within BCLC.

Based on the evidence of Mr. Alderson and Mr. Friesen and the record of correspondence between them, it is clear that, by 2011, BCLC had knowledge that the River Rock was under-reporting transactions under \$50,000. Mr. Friesen appears to have left the matter to Mr. Alderson to correct but apparently did not follow up to ensure something had been done. It is unclear precisely what Mr. Alderson did in response to his exchange with Mr. Friesen, but it is clear that any actions he took were insufficient to bring an end to the practice. Given the seeming indifference to this practice on the part of BCLC personnel, and the fact that the practice persisted with their knowledge until 2015, I find that BCLC failed to take adequate steps to respond to this under-reporting, resulting in its continuation for several years.

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400 Ibid, p 80.

401 Evidence of D. Dickson, Transcript, January 22, 2021, p 19; Evidence of P. Ennis, Transcript, February 3, pp 93–94.

402 Evidence of D. Dickson, Transcript, January 22, 2021, pp 15–20; Evidence of P. Ennis, Transcript, February 3, pp 93–94, 136–37.

While BCLC should have responded more decisively to the information available to it in 2011, I am unable to conclude that this omission materially contributed to money laundering in the province’s casinos. The transactions not reported as suspicious continued to be reported as large cash transactions<sup>403</sup> and, as such, remained available to FINTRAC. The failure to report did, however, deprive FINTRAC of some information with respect to these transactions. While this practice was clearly non-compliant and unacceptable, the record does not allow me to determine whether these omissions had a meaningful impact on FINTRAC’s insight into or efforts with respect to the province’s casino sector.

## February 2017 Attempt to Seek Ministerial Directive

By January 2017, both Mr. Mazure and Ms. Wenezenki-Yolland continued to have concerns about the sufficiency of the measures implemented by BCLC to address suspicious transactions in the province’s casinos.<sup>404</sup> While Ms. Wenezenki-Yolland acknowledged that BCLC had continued to make progress since the MNP report, Mr. Mazure remained concerned about the volume of suspicious transactions being accepted by casinos.<sup>405</sup> Ms. Wenezenki-Yolland advised Mr. Mazure that she would support him in bringing forward a recommendation to Mr. de Jong for a ministerial directive.<sup>406</sup>

GPEB prepared a draft briefing document proposing a ministerial directive.<sup>407</sup> The document indicated, as reproduced above, that BCLC was opposed to implementation of a measure requiring that transactions exceeding a certain threshold be refused if the funds used in those transactions were unsourced.<sup>408</sup>

The draft briefing document was entered into evidence in the Commission’s proceedings<sup>409</sup> and offers insight into the nature of the direction sought by GPEB. The proposed direction included all of the following measures (but also indicated that any could be issued as “a stand-alone directive”):<sup>410</sup>

- A. Require BCLC to complete source of funds interviews for *all transactions* when [large cash transaction reports] must be filed with FINTRAC (i.e., \$10,000 [or] higher). BCLC investigators to review ... interview responses. If source of funds cannot be verified by investigators, BCLC

403 Evidence of T. Doyle, Transcript, February 10, 2021, p 5.

404 Evidence of J. Mazure, Transcript, February 5, 2021, pp 143–45; Exhibit 922, Wenezenki-Yolland #1, paras 194–96 and 202–4; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 86.

405 Exhibit 922, Wenezenki-Yolland #1, paras 199, 202.

406 Ibid, para 202.

407 Ibid, para 205; Exhibit 556, Briefing Document: Minister’s Direction.

408 Exhibit 556, Briefing Document: Minister’s Direction; Exhibit 922, Wenezenki-Yolland #1, para 205.

409 Exhibit 556, Briefing Document: Minister’s Direction.

410 Ibid, pp 9–10.

must issue source of funds directive for patron (i.e. patron may not buy-in with unsourced cash). [Emphasis in original.]

- B. Require BCLC to verify source of funds for all deposits of new money (does not include re-deposits) into PGF accounts exceeding \$10,000, ensuring that funds are coming from account with regulated financial institution held by patron. For example, no unsourced bank drafts to be accepted.
- C. Require BCLC to clarify that rule related to re-depositing into PGF accounts is the same for chips and cash (i.e., only verified wins and only after continuous play).
- D. Require BCLC investigators to work with GPEB investigators, sharing all information on patron investigations with respect to suspicious cash transactions, source of funds.
- E. Ban all patrons that have links to organized crime.
- F. Require auditing of all active PGF accounts by tier 1 audit firm to:
  - Review all PGF deposits to ensure appropriate source of funds information has been obtained; and
  - Review patron information to ensure that appropriate CDD has been conducted for all account holders and that level of play is consistent with occupation / employment and source of wealth is consistent with level of play.

This request for a direction was never presented to Mr. de Jong. Ms. Wenezenki-Yolland sought and obtained the support of the deputy minister to bring the request forward to Mr. de Jong, but before this could happen, Ms. Wenezenki-Yolland learned that the government would not be considering further policy initiatives before the upcoming provincial election.<sup>411</sup> Ms. Wenezenki-Yolland made further efforts to obtain an opportunity to seek the proposed direction from the minister but was unsuccessful, and no directive was sought from the minister prior to the election and resulting change in government.<sup>412</sup>

While Mr. Mazure was not able to bring his ongoing concerns about suspicious transactions forward to the responsible minister at this time, he would soon have another opportunity to do so, following the provincial election and the appointment of a new responsible minister, David Eby. While Mr. Mazure did not seek from the new minister the directive he had hoped to propose to Mr. de Jong, the briefing that he and Mr. Meilleur provided to Mr. Eby ultimately played a role in inspiring meaningful action to address the elevated levels of suspicious cash transactions that continued in the province's casinos. I discuss these events in Chapter 12.

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<sup>411</sup> Exhibit 922, Wenezenki-Yolland #1, paras 206–7.

<sup>412</sup> Ibid, para 209.

## Chapter 12

### Gaming Narrative: 2017–Present

#### Results of 2017 Provincial Election and Appointment of Minister David Eby

British Columbia's 41<sup>st</sup> General Election was held on May 9, 2017.<sup>1</sup> The BC Liberal Party, which formed government prior to the election, won 43 seats in the Legislature, more than any other party, but one seat short of a majority.<sup>2</sup> The BC New Democratic Party won 41 seats and the BC Green Party won three.<sup>3</sup> After the incumbent Liberal government failed to retain the confidence of the Legislative Assembly,<sup>4</sup> the BC New Democratic Party formed government under new Premier John Horgan with the support of the BC Green Party.<sup>5</sup> David Eby, who had previously served as the opposition critic for gaming, among other roles, was appointed attorney general and minister responsible for gaming.<sup>6</sup> Mr. Eby was also assigned responsibility for the Liquor Distribution Branch and the Insurance Corporation of British Columbia.<sup>7</sup>

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1 Legislative Assembly of British Columbia, Elections BC, *Report of the Chief Electoral Officer: Provincial General Election*, (May 9, 2017) (Chair: Dr. Keith Archer), p 2, Online: <https://elections.bc.ca/docs/rpt/2017-General-Election-Report.pdf>.

2 Ibid, p 74.

3 Ibid.

4 Legislative Assembly of British Columbia, Discover Your Legislature, *2017 – The First Minority Government Since 1952*, online: <https://www.leg.bc.ca/dyl/Pages/2017-First-Minority-Government-Since-1952.aspx>.

5 Geordon Omand, “B.C. NDP Forms Government for the First Time since 2001,” CTV News (July 18, 2017), online: <https://bc.ctvnews.ca/b-c-ndp-forms-government-for-first-time-since-2001-1.3506830>.

6 Evidence of D. Eby, Transcript, April 26, 2021, pp 226–27.

7 Ibid.

## Post-Election Briefings of Mr. Eby

Following his appointment, Mr. Eby received briefings related to his role as minister responsible for gaming from both the British Columbia Lottery Corporation (BCLC) and the Gaming Policy and Enforcement Branch (GPEB).

### July 2017 Briefing by BCLC

BCLC provided Mr. Eby with an initial briefing at the end of July 2017.<sup>8</sup> In addition to Mr. Eby, those present for the briefing included Bud Smith, then the BCLC board chair;<sup>9</sup> John Mazure, general manager of GPEB;<sup>10</sup> Deputy Attorney General Richard Fyfe;<sup>11</sup> a ministerial assistant from Mr. Eby's office;<sup>12</sup> and several senior-level BCLC staff members, including Jim Lightbody, BCLC's chief executive officer, and Robert Kroeker, BCLC's vice-president of legal, compliance and security and chief compliance officer.<sup>13</sup>

Mr. Eby's recollection was that Mr. Lightbody and Mr. Smith took primary responsibility for presenting during the briefing.<sup>14</sup> Mr. Fyfe understood that the briefing was intended to be a high-level presentation to orient Mr. Eby and Mr. Fyfe to BCLC's role in the province's gaming industry.<sup>15</sup> Mr. Eby's description of the briefing was consistent with the purpose identified by Mr. Fyfe:<sup>16</sup>

[A]s a new minister responsible for a file, typically you get something called 30/60/90, which is important decisions or issues that are coming up in the following 30, 60 or 90 days. That was part of this presentation from BCLC. In addition, it's typical – I had responsibility for a number of Crown and Crown-like agencies – to also get presentations on major business initiatives, challenges, opportunities, new programs that were being introduced or current programs they were particularly proud of so that as minister I could be informed and speak with some level of intelligence about the organization, and that was the nature of this briefing.

A slide deck used in the course of the briefing, which Mr. Lightbody confirmed accurately reflected the topics discussed,<sup>17</sup> was entered into evidence as an exhibit

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8 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 59–60.

9 Evidence of J. Lightbody, Transcript, January 29, 2021, p 42; Evidence of D. Eby, Transcript, April 26, 2021, p 29.

10 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 59–60; Evidence of D. Eby, Transcript, April 26, 2021, p 29.

11 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 59–60.

12 Evidence of D. Eby, Transcript, April 26, 2021, p 29; Evidence of R. Fyfe, Transcript, April 29, 2021, p 59–60.

13 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 59–60; Evidence of J. Lightbody, Transcript, January 29, 2021, p 42; Evidence of D. Eby, Transcript, April 26, 2021, p 29.

14 Evidence of D. Eby, Transcript, April 26, 2021, pp 29–30.

15 Ibid, p 60.

16 Evidence of D. Eby, Transcript, April 26, 2021, p 30.

17 Evidence of J. Lightbody, Transcript, January 29, 2021, p 42.

during the Commission’s proceedings.<sup>18</sup> This slide deck suggests that the topics covered during the briefing included BCLC’s “role, vision and strategy;” priority areas for investment; player health; the development of the Parq Vancouver casino; the potential for new gaming facilities in Victoria, Delta, and North Vancouver; a new headquarters for BCLC; the BCLC’s financial situation; and other topics.<sup>19</sup> This slide deck is consistent with the evidence of Mr. Fyfe and Mr. Eby that the briefing provided a very general introduction to BCLC and its role in the province’s gaming industry.<sup>20</sup>

### ***Discussion of BCLC Anti–Money Laundering Program***

While clearly not the sole focus of the July 2017 briefing, BCLC’s anti–money laundering program was one of the topics addressed in this briefing of Mr. Eby.<sup>21</sup> Mr. Eby described the message he received from the briefing on this subject as being “[t]hat BCLC had a North American-leading anti–money laundering program” and “that [the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)] was approving of BCLC’s activities.”<sup>22</sup> Mr. Eby testified that he did not leave the briefing with the impression that BCLC had any level of concern about suspicious cash entering the province’s casinos or the potential that casinos could be used to launder the proceeds of crime.<sup>23</sup>

This message is consistent with the contents of the slide deck used in this briefing. The slide deck highlighted the absence of deficiencies found during a July 2016 FINTRAC audit of BCLC’s compliance program, noted that FINTRAC had identified the program as “a leader in the sector,” and suggested that the formation of the Joint Illegal Gaming Investigation Team (JIGIT) was the product of reports of illegal gambling houses to the RCMP by BCLC in 2014.<sup>24</sup> The slide deck does not refer to the volume of suspicious cash that had entered casinos over the previous decade; the E-Pirate investigation; the direction issued to BCLC by former minister responsible for gaming, Michael de Jong, on October 1, 2015; or the subsequent advice and recommendations from Mr. Mazure regarding source-of-funds inquiries or BCLC’s cash conditions program. The slide deck also does not reference the volume of suspicious cash accepted by the province’s casinos being a significant factor leading to the formation of JIGIT, or the view of BCLC, as evidenced by Mr. Lightbody’s August 24, 2015, letter to Mr. de Jong,<sup>25</sup> that there was a need for greater law enforcement engagement on the issue of suspicious cash. By any measure, BCLC’s initial briefing of the new minister painted a misleading picture.

18 Exhibit 514, BCLC Briefing (July 31, 2017); Exhibit 905, BCLC Briefing (July 31, 2017).

19 Exhibit 914, Internal Memo to Len Meilleur from Parminder Basi, re COMM–8939 BCLC Directive Impact on Cash Buy–Ins and New Money PGF Deposits (August 9, 2017); Exhibit 905, BCLC Briefing (July 31, 2017).

20 Evidence of R. Fyfe, Transcript, April 29, 2021, p 60; Evidence of D. Eby, Transcript, April 26, 2021, p 30.

21 Evidence of D. Eby, Transcript, April 26, 2021, pp 31–33, 233–34; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 72, 75; Exhibit 905, BCLC Briefing (July 31, 2017); Exhibit 909, BCLC Briefing Note for David Eby, re Status update on JIGIT (July 27, 2017).

22 Evidence of D. Eby, Transcript, April 26, 2021, p 31.

23 Ibid.

24 Exhibit 905, BCLC Briefing (July 31, 2017).

25 Exhibit 505, Affidavit #1 of Jim Lightbody, sworn on January 25, 2021 [Lightbody #1], exhibit 49.

## August 2017 GPEB Briefing

Mr. Eby described receiving a significantly different message from GPEB in a briefing that occurred in August 2017, only a few weeks after his briefing by BCLC.<sup>26</sup> Mr. Eby's recollection was that the attendees of the August 2017 meeting included Mr. Mazure, GPEB executive director of compliance Len Meilleur, and a GPEB analyst<sup>27</sup> and that the briefing was led primarily by Mr. Meilleur.<sup>28</sup> It is clear from the evidence of Ken Ackles, who was GPEB's manager of investigations at that time, that he was in attendance as well.<sup>29</sup> No one from BCLC was present for the briefing.<sup>30</sup> In his evidence, Mr. Eby described the message he took away from this briefing:<sup>31</sup>

The broad theme that I recall coming away from that meeting with was that there was a very serious and ongoing money laundering issue in BC casinos, that there was a very significant criminal investigation into proceeds of crime being brought into BC casinos, that the Gaming Policy [and] Enforcement Branch was profoundly concerned about money laundering in BC casinos and that they wanted government to take significant actions to address the issue.

Mr. Eby recalled finding the information provided by GPEB credible. He left the briefing very concerned that bulk cash being accepted in the province's casinos was closely connected to illicit activities.<sup>32</sup> The briefing also provided Mr. Eby with clarity as to how large cash buy-ins in casinos could be connected to money laundering even where the funds were ultimately lost – which he had not understood during his time as opposition gaming critic.<sup>33</sup>

Mr. Eby also testified that it was apparent from this briefing that the perspectives of BCLC and GPEB were not aligned on this issue.<sup>34</sup> This was evident to Mr. Eby from the contrast between the two briefings, and because it was also clearly communicated by the representatives of GPEB.<sup>35</sup> According to Mr. Eby:<sup>36</sup>

[T]he thrust of the presentation and the discussion which was more in the nature of a discussion than sort of a walk through a PowerPoint was that GPEB felt that their concerns about anti-money laundering and money

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26 Evidence of D. Eby, Transcript, April 26, 2021, p 34.

27 Ibid, p 38.

28 Ibid, p 142.

29 Evidence of K. Ackles, Transcript, November 2, 2020, p 146.

30 Evidence of D. Eby, Transcript, April 26, 2021, p 38.

31 Ibid, p 35.

32 Ibid, pp 36–37.

33 Ibid, pp 36–37.

34 Evidence of D. Eby, Transcript, April 26, 2021, p 36.

35 Exhibit 906, Provincial AML Strategy by John Mazure and Len Meilleur (August 2017) [AML Strategy 2017]; Exhibit 907, Provincial AML Strategy (Part II) by John Mazure and Len Meilleur [AML Strategy Part II].

36 Evidence of D. Eby, Transcript, April 26, 2021, p 41.

laundering – the potential of money laundering in casinos were not adequately being heard by the BC Lottery Corporation and that they were at odds about how – what type of action was necessary. So the core of it being that GPEB wanted more severe restrictions and that the BC Lottery Corporation did not.

It is apparent from the evidence of Mr. Eby and other evidence<sup>37</sup> before me that GPEB emphasized in this briefing its perspective that BCLC was not taking sufficient action to address suspicious transactions. It does not appear, however, that the briefing provided the minister with a detailed description of the actions that BCLC was taking to address suspicious transactions and the risk of money laundering in casinos at this time. Mr. Eby recalled being left with the impression that BCLC was meeting FINTRAC requirements, but nothing more.<sup>38</sup> He learned nothing during this briefing of the industry’s three-phase anti-money laundering strategy; of the Meyers Norris Penney LLP (MNP) report recommendation that GPEB, at the direction of the minister, implement a policy requiring refusal of unsourced cash; or of BCLC’s cash conditions program and its impact on the industry.<sup>39</sup> Mr. Eby agreed during his testimony that the failure to include this information rendered the briefing incomplete and inaccurate and that he later learned that BCLC was, in fact, more active in addressing suspicious cash than was suggested by GPEB during this briefing.<sup>40</sup> I agree that the failure of GPEB to outline for Mr. Eby the steps that BCLC was taking left the minister with an incomplete understanding of what the BC Lottery Corporation was doing and the progress that had been made to date. In doing so, GPEB likely compromised the minister’s ability to make an informed assessment of what further action was required.

### ***Possible Actions Identified in GPEB Briefing***

In addition to describing GPEB’s perspective as to the nature and extent of the problem posed by suspicious cash transactions, the briefing also included several proposals for addressing this problem.<sup>41</sup> These included the following “possible actions” listed in the final slide of the slide deck used in the briefing:<sup>42</sup>

1. Direction to clarify roles and responsibilities of GPEB and BCLC;
2. Amend GCA [*Gaming Control Act*] s. 97 offence provisions so that they apply to BCLC;
3. Implement more rigorous Know Your Customer (KYC) / Source of Funds (SOF) standards;

37 Exhibit 906, AML Strategy 2017; Exhibit 907, AML Strategy Part II.

38 Evidence of D. Eby, Transcript, April 26, 2021, pp 149, 151.

39 Ibid, p 149.

40 Ibid, pp 153–56.

41 Exhibit 907, AML Strategy Part II, pp 8–9; Evidence of D. Eby, Transcript, April 26, 2021, pp 42–43.

42 Exhibit 907, AML Strategy Part II, p 9.

4. GPEB audit of casino service provider training; and
5. Implementation of Transaction Assessment Team (TAT).

While one or more of these “possible actions” might have required a ministerial direction,<sup>43</sup> it appears that GPEB did not present to or seek from Mr. Eby the direction that Mr. Mazure attempted to seek from Mr. de Jong prior to the 2017 provincial election.<sup>44</sup> While Mr. Mazure could not recall whether he proposed to Mr. Eby the directive initially intended for Mr. de Jong,<sup>45</sup> Mr. Eby’s evidence was that he did not see the briefing note prepared for Mr. de Jong<sup>46</sup> and did not recall receiving a briefing note from GPEB on source-of-funds measures.<sup>47</sup> Similarly, Mr. Fyfe had no recollection of Mr. Mazure ever raising the prospect of a ministerial directive.<sup>48</sup> Given the apparent urgency with which Mr. Mazure viewed this issue prior to the change in government and the evidence of Cheryl Wenezenki-Yolland, who served as associate deputy minister of finance under Mr. de Jong, regarding Mr. Mazure’s concern and disappointment upon learning that it would not be possible to present the proposal to Mr. de Jong, it is difficult to comprehend why the proposed directive was omitted from the initial briefing of Mr. Eby.

Mr. Eby did not direct that any of the possible actions identified in the GPEB briefing be implemented.<sup>49</sup> He explained that he was persuaded of the existence of the problem described by GPEB and the need for immediate action,<sup>50</sup> but that he had little capacity to independently assess the impacts or potential consequences of any of specific policy options:<sup>51</sup>

I didn’t understand or know what the best action would be to actually stop the activity. I understood there was an ongoing police investigation. I understood that the BC Lottery Corporation from their perspective had things under control but the Gaming Policy [and] Enforcement Branch disagreed with that. I didn’t know the impacts or consequences of any of these particular policy recommendations, and this was just one of my files.

So I was ... quite surprised by what was happening allegedly in BC casinos, and ... rather than grappling about oh, is the best approach [improved] KYC or SOF ... I left the briefing saying oh, my gosh ... I need to talk to my Deputy Attorney General; I need to get some advice about how best to move forward here because the correct route is not clear to me.

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43 Evidence of D. Eby, Transcript, April 26, 2021, p 55; Evidence of J. Mazure, Transcript, February 5, 2021, pp 145–47.

44 Evidence of R. Fyfe, Transcript, April 29, 2021, p 14; Evidence of D. Eby, Transcript, April 26, 2021, p 55.

45 Evidence of J. Mazure, Transcript, February 5, 2021, pp 145–47.

46 Evidence of D. Eby, Transcript, April 26, 2021, p 55.

47 Ibid, p 55.

48 Evidence of R. Fyfe, Transcript, April 29, 2021, p 14.

49 Evidence of D. Eby, Transcript, April 26, 2021, pp 43–45.

50 Ibid, pp 36–37, 43–45.

51 Ibid, pp 44–45.

As described below, Mr. Eby would soon go on to seek this advice in the form of a review conducted by Peter German, which commenced in September 2017.<sup>52</sup>

## Commencement of Dr. German’s First Review

Mr. Eby explained that his motivation to undertake what would become Dr. German’s first review arose from his serious concerns about suspicious cash and money laundering arising from the GPEB briefing.<sup>53</sup> However, given the significant gap between the views of BCLC and GPEB, Mr. Eby was reluctant to rely on either agency and decided to look outside of the two organizations for guidance.<sup>54</sup> Once the decision to proceed with an independent review was made, terms of reference were prepared and Dr. German was identified as the person who would conduct the review.<sup>55</sup> Mr. Eby explained that, while they had no pre-existing relationship, he was enthusiastic about this choice because of Dr. German’s policing experience, his lack of political affiliations or close ties to the gaming industry, and because he is a lawyer and had authored a book about money laundering.<sup>56</sup>

The nature and purpose of the review were identified in the terms of reference developed by the Ministry of the Attorney General and agreed to by Dr. German on October 7, 2017.<sup>57</sup> The terms of reference described Dr. German’s task as follows:<sup>58</sup>

The Minister requires an independent expert to inquire into whether there is an unaddressed, or inadequately addressed, issue of money laundering in Lower Mainland casinos, and if there is, the nature and extent of this issue, and the history of the issue.

If an issue is identified, the Minister requires advice on:

1. What connection, if any, the issue has with other areas of BC’s economy, laws or policies that require government, law enforcement, statutory or regulatory attention;
2. What connection, if any, the issue has with other crimes; and
3. What steps within existing laws, or what new laws, are required to address the issue.

<sup>52</sup> Evidence of P. German, Transcript, April 12, 2021, p 86; Evidence of D. Eby, Transcript, April 26, 2021, pp 65–66, 178–79.

<sup>53</sup> Evidence of D. Eby, Transcript, April 26, 2021, pp 65–66; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 99–100.

<sup>54</sup> Evidence of D. Eby, Transcript, April 26, 2021, pp 65, 178–79.

<sup>55</sup> Evidence of D. Eby, Transcript, April 26, 2021, pp 67–71, 179–80; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 26–30.

<sup>56</sup> Evidence of D. Eby, Transcript, April 26, 2021, pp 68–71, 179–80.

<sup>57</sup> Exhibit 940, Letter from Richard Fyfe to Peter German, re Terms of Reference – Money Laundering Review (October 4, 2017 and signed October 7, 2017) [Fyfe Letter October 2017]; Evidence of R. Fyfe, Transcript, April 29, 2021, p 28.

<sup>58</sup> Exhibit 940, Fyfe Letter October 2017, p 2.

Recommendations resulting from the review should be reported to the Attorney General as soon as they are ready; they should not be held pending submission of the final report.

In order to complete this review, the independent expert may meet with any individual or organization that will assist in addressing the areas of review, but must meet at a minimum with the following groups:

1. The Gaming Policy and Enforcement Branch;
2. The BC Lottery Corporation;
3. The Combined Forces Special Enforcement Unit British Columbia Joint Illegal Gaming Investigation Team;
4. The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC);
5. Service Providers of any facilities identified during the review; and
6. Where possible, employee organizations at identified facilities.

Mr. Eby testified that he did not give Dr. German any instructions aside from what was communicated in the terms of reference and did not suggest a particular narrative or focus that Dr. German should pursue in his report.<sup>59</sup> In this respect, Mr. Eby's evidence was corroborated by that of Mr. Fyfe<sup>60</sup> and of Dr. German, who testified that he was not retained to pursue any particular narrative and that Mr. Eby exerted no influence over the review and made clear from the outset of his work that the report was to be independent.<sup>61</sup>

Dr. German was appointed to conduct his review on September 28, 2017,<sup>62</sup> and proceeded to do so over the course of the following six months.<sup>63</sup> He delivered two interim recommendations to Mr. Eby on November 29, 2017,<sup>64</sup> a third interim recommendation on March 19, 2018,<sup>65</sup> and his final report on March 31, 2018.<sup>66</sup> As discussed elsewhere in this Report, Dr. German was subsequently retained to conduct a second review focused on money laundering in other sectors of the province's economy.<sup>67</sup>

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59 Evidence of D. Eby, Transcript, April 26, 2021, p 71.

60 Evidence of R. Fyfe, Transcript, April 29, 2021, p 30.

61 Evidence of P. German, Transcript, April 12, 2021, pp 75–76.

62 Exhibit 832, Peter German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia*, March 31, 2018 [*Dirty Money 1*], p 22.

63 Evidence of P. German, Transcript, April 12, 2021, p 86.

64 Exhibit 832, *Dirty Money 1*, p 247.

65 *Ibid*, p 248.

66 *Ibid*.

67 Exhibit 833, Peter German, QC, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019.

Dr. German's work is an important part of this story. It was a significant step taken by government in its effort to better understand and ultimately eliminate money laundering and proceeds of crime from the province's gaming industry. The Commission's Terms of Reference direct me to consider Dr. German's report. Indeed, this Report would be incomplete without consideration and discussion of Dr. German's conclusions. However, this Commission of Inquiry is not and was not intended to be a comprehensive review of Dr. German's work, which was completed at a different time and based on different information and through a different process than that of the Commission. As such, I will comment on the work of Dr. German only to the extent necessary to fulfill the Commission's Terms of Reference. I do not intend to pass judgment generally on Dr. German's findings or offer commentary on each and every recommendation made by Dr. German. Silence on any particular finding or recommendation should not be interpreted as approval or disapproval, but simply that, in fulfilling the Commission's Terms of Reference, I did not find it necessary to comment on that aspect of Dr. German's conclusions.

## **Responses to Media Coverage of Cash-for-Cheques Money Laundering**

On September 29, 2017, one day following Dr. German's appointment, media reporting gave rise to significant concerns regarding the risk of money laundering in the province's gaming industry.<sup>68</sup> Multiple witnesses, including Mr. Kroeker, Mr. Lightbody, and Bob Doyle, a consultant based in the New York office of Ernst & Young, described this reporting as alleging that casino patrons had been attending casinos, buying-in with large amounts of cash derived from criminal activity, and then cashing out and receiving a cheque following minimal or no play.<sup>69</sup> These allegations were of significant concern to BCLC as, according to Mr. Kroeker, this method of money laundering should have been impossible if the controls in place in casinos at the time were working properly.<sup>70</sup> A number of events, detailed below, flowed from the response to these reports, including further briefings and meetings with the minister, an extensive audit of BCLC's anti-money laundering controls, and the resignation of one of BCLC's senior anti-money laundering staff members.

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68 Exhibit 490, Affidavit #1 of Robert Kroeker, made on January 15, 2021 [Kroeker #1], para 186; Evidence of T. Doyle, Transcript, February 10, 2021, pp 47–48; Exhibit 505, Lightbody #1, para 227; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 149–50 and Transcript, January 26, 2021, p 158.

69 Exhibit 490, Kroeker #1, para 186; Evidence of T. Doyle, Transcript, February 10, 2021, pp 47–48; Exhibit 505, Lightbody #1, para 227; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 149–50 and Transcript, January 26, 2021, p 158.

70 Exhibit 490, Kroeker #1, para 186, exhibit 96; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 149–50 and Transcript, January 26, 2021, p 158.

## **Briefings and Meetings with the Minister Following Media Reporting**

### ***October 2017 BCLC Briefing***

Representatives of BCLC briefed Mr. Eby for a second time on October 23, 2017.<sup>71</sup> In addition to Mr. Eby, those present for this briefing included Mr. Kroeker, Mr. Smith, Mr. Lightbody, Mr. Fyfe, and staff from Mr. Eby's office.<sup>72</sup> Mr. Kroeker explained that the rationale for seeking this briefing was negative media coverage about money laundering in British Columbia casinos:<sup>73</sup>

In October 2017, there was increasingly negative media coverage on casinos that was rife with misinformation. This caused BCLC concern. BCLC was also concerned that it had had no opportunity to provide detailed information to Minister Eby regarding BCLC's money laundering controls in the face of adverse media reports. Minister Eby had been briefed on casino money laundering by GPEB earlier in 2017 but BCLC was excluded from that briefing. BCLC's concern was that Minister Eby was forming his views on money laundering in casinos without all pertinent information – including corrections of misinformation.

I pause to note that had BCLC, in its initial briefing, candidly explained the suspicious cash problem and the measures they had implemented to respond to the issue, the minister would have had this “pertinent” information. Unlike BCLC's initial briefing with Mr. Eby in July 2017, it seems the October 2017 briefing was focused directly on the risk of money laundering in the province's casinos, the measures BCLC had put in place to address that risk, and further steps that could be taken.<sup>74</sup> During the briefing, BCLC representatives discussed anti-money laundering roles and responsibilities within the gaming industry;<sup>75</sup> identified areas of money laundering risk;<sup>76</sup> walked Mr. Eby through BCLC's anti-money laundering controls;<sup>77</sup> explained the impact of past lack of engagement on the part of law enforcement;<sup>78</sup> and discussed options for further improving BCLC's anti-money laundering regime.<sup>79</sup> During this briefing, Mr. Smith raised with Mr. Eby the risk inherent in offering high-limit table games and offered that BCLC could eliminate that aspect of its business if it was

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71 Exhibit 490, Kroeker #1, para 180; Evidence of D. Eby, Transcript, April 26, 2021, p 47.

72 Exhibit 490, Kroeker #1, para 181; Evidence of B. Smith, Transcript, February 4, 2021, p 89; Evidence of D. Eby, Transcript, April 26, 2021, p 48.

73 Exhibit 490, Kroeker #1, para 179.

74 Ibid, paras 182–85; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 138–39, 143–44; Exhibit 505, Lightbody #1, paras 208, 209; Evidence of J. Lightbody, Transcript, January 28, 2021, p 66; Evidence of D. Eby, Transcript, April 26, 2021, p 49; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 21–22.

75 Exhibit 505, Lightbody #1, para 208.

76 Evidence of J. Lightbody, Transcript, January 28, 2021, p 66.

77 Exhibit 490, Kroeker #1, para 182.

78 Exhibit 505, Lightbody #1, para 208.

79 Ibid.

outside of government’s risk tolerance.<sup>80</sup> Mr. Eby declined Mr. Smith’s suggestion.<sup>81</sup> Mr. Eby explained in his evidence that he had received many policy proposals at this time and rather than consider each individually as they arose, he hoped that those recommendations could be centralized, evaluated, and prioritized and that he could receive recommendations as to what would be most effective from Dr. German.<sup>82</sup>

Mr. Eby described to me the message he took away from this briefing:<sup>83</sup>

The theme of the meeting that I took away was that the BC Lottery Corporation had been very concerned about proceeds of crime in casinos, that they had taken a number of actions to try to address proceeds of crime coming into casinos and money laundering and that they had done fairly extensive intelligence-related research related to patrons bringing bulk cash into casinos and that they had – some of their programs had had results in reducing suspicious cash transactions.

And that was kind of the thrust of the meeting, was, here’s what we’ve been doing, here’s what we’re concerned about. And I can’t recall specifically whether they presented some policy recommendations during that meeting, but we had also had discussions about various policy recommendations.

Asked to contrast this briefing with the one he received from BCLC in July 2017, Mr. Eby responded that he could not say that the briefings were inconsistent, but that, in his view, the information about suspicious cash not provided to him during the July briefing was a material omission from what was presented to him at that time:<sup>84</sup>

[T]he first briefing had not addressed the issue of people bringing illicit bulk cash into casinos at all and had focused on FINTRAC’s perspectives on BC Lottery Corporation’s compliance with the FINTRAC regime. So, I think that if I were to look at it critically, the two presentations were not inconsistent; however, it seemed to me that this should have been an issue that was canvassed in significant detail at the first briefing, and it was not.

I agree with Mr. Eby that the failure of BCLC to candidly set out for the minister the nature of the suspicious cash and money laundering problem facing British Columbia casinos was a material omission. While Mr. Eby may be correct that, strictly speaking, the information provided in the two briefings was not “inconsistent,” the different approaches taken by BCLC in each presented starkly inconsistent pictures of the state of the province’s gaming industry.

80 Evidence of R. Kroeker, Transcript, January 25, 2021, pp 138–39; Exhibit 490, Kroeker #1, para 182; Exhibit 505, Lightbody #1, para 209; Evidence of B. Smith, Transcript, February 4, 2021, pp 89–90; Evidence of D. Eby, Transcript, April 26, 2021, pp 59–60.

81 Evidence of D. Eby, Transcript, April 26, 2021, pp 59–60.

82 Ibid.

83 Ibid, pp 48–49.

84 Ibid, pp 49–50.

## Ernst & Young Cheque Audits

Prior to briefing Mr. Eby, BCLC commenced efforts to determine the accuracy of media reporting that suggested that patrons had been able to exchange illicit cash for cheques following minimal play. On the day that this reporting first came to light, Mr. Lightbody and Mr. Smith sought Mr. Kroeker's opinion as to whether the allegations were possible given the anti-money laundering controls in place in casinos.<sup>85</sup> In response, Mr. Kroeker advised that the reporting could be accurate only if the controls had been subverted through staff corruption.<sup>86</sup> Mr. Smith, Mr. Lightbody, and Mr. Kroeker decided that it was necessary to conduct an audit to determine whether the allegations contained in the media reporting were true, and Mr. Kroeker contacted Ernst & Young the same day to arrange such an audit.<sup>87</sup> Auditors from Ernst & Young travelled to Vancouver that weekend in order to commence work the following Monday.<sup>88</sup>

The scope and purpose of the audit conducted by Ernst & Young were described in a report prepared to detail their findings:<sup>89</sup>

BCLC requested that we analyze the following specific types of cheques issued by River Rock Casino Resort ("River Rock"): Verified Win and Return of Fund Cheques issued for \$10,000 or more, and Convenience Cheques issued for more than \$10,000, for the period of January 1, 2014 to December 31, 2016. BCLC requested that Verified Win Cheques were limited to cheques related to Table Game play only.

The purpose of our analyses was to identify instances of cheques issued to Patrons of River Rock that were not supported by the Patron's gaming activity. The Mandate Questions were specifically developed through consultations with BCLC's management and BCLC's Audit Committee. The Mandate Questions that BCLC asked us to address are as follows:

*Mandate Question 1: Verified Win, Return of Funds, and Convenience Cheques ("All Cheques")*

From the sample of cheques analyzed, were there cases observed where a Patron walked in to River Rock with cash and received a cheque without any casino play?

*Mandate Question 2: Verified Win Cheques*

From the sample of cheques analyzed, were there cases observed where a patron received a verified win cheque for an amount that is not supported

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85 Exhibit 505, Lightbody #1, para 228.

86 Ibid; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 149–50.

87 Exhibit 490, Kroeker #1, paras 187–88, exhibit 96; Evidence of R. Kroeker, Transcript, January 25, 2021, p 190.

88 Exhibit 490, Kroeker #1, para 187, exhibit 96; Evidence of R. Kroeker, Transcript, January 25, 2021, p 190.

89 Exhibit 484, Affidavit #2 of Kevin deBruyckere, sworn on October 23, 2020 [deBruyckere #2], exhibit 13.

by a Cash Tracking Form, or does not reconcile to the Cash Tracking Form provided, documenting their play for that day, regardless if the buy-in was cash or not?

*Mandate Question 3: Return of Funds Cheques*

From the sample of cheques analyzed, were there cases observed where a Patron removed funds from a Patron Gaming Fund (“PGF”) account and received a Verified Win Cheque without any casino play?

*Mandate Question 4: Return of Funds Cheques*

From the sample of cheques analyzed, were there cases observed where a PGF Patron deposited funds and subsequently received a Return of Funds Cheque with no gaming activity between the deposit and the cheque request?

*Mandate Question 5: Convenience Cheques*

From the sample of cheques analyzed, were there cases observed where a Patron received a Convenience Cheque for an amount greater than \$10,000?

In the course of the audit, which took more than 18 months and cost approximately \$500,000, Ernst & Young analyzed 2,031 cheques, including every cheque issued for more than \$10,000 at the River Rock Casino during the time period in question.<sup>90</sup> The auditors identified irregularities in 49 transactions involved 28 patrons.<sup>91</sup> These irregularities included:<sup>92</sup>

- One cheque in the amount of \$300,000 was issued to a patron who walked into River Rock with cash and received a cheque without any casino play.
- Thirty-five verified win cheques were issued to patrons for amounts not supported by a cash tracking form, or that did not reconcile to the cash tracking form provided, documenting their play for that day, regardless of whether or not the buy-in was in cash. These cheques totaled \$2,801,100, of which \$1,140,490 was unsupported.
- Nine verified win cheques totalling \$3,510,000 were issued to patrons who removed funds from patron gaming fund (PGF) accounts without any casino play.
- Five return of funds cheques issued to a patron who deposited funds into PGF accounts and subsequently received a return of funds cheque with no gaming activity between the deposit and the request for a cheque.
- Zero convenience cheques were issued for amounts greater than \$10,000.

<sup>90</sup> Exhibit 490, Kroeker #1, para 189.

<sup>91</sup> Ibid, para 190.

<sup>92</sup> Exhibit 484, deBruyckere #2, exhibit 13.

One cheque met more than one of these criteria, which accounts for the cumulative number of cheques in all categories exceeding the total number of transactions (49) identified as irregular.<sup>93</sup>

The auditors subsequently conducted an analysis of transactions and gaming activity at the River Rock by the 28 patrons involved in the 49 transactions identified as irregular.<sup>94</sup> Ernst & Young concluded that some form of mitigating action had been applied to each of these patrons. These actions included filing reports internally or to FINTRAC, imposing cash conditions on those players, designating patrons as “persons of interest” or “high-risk patrons,” or banning the patrons.<sup>95</sup>

Ernst & Young later completed a similar audit of cheques issued by the Grand Villa Casino. This audit concluded that, of 658 cheques analyzed, auditors identified irregularities in the issuance of only three cheques.<sup>96</sup> Two of these irregularities involved issuance of a cheque for an amount not supported by player tracking forms, and one involved issuance of a convenience cheque for more than \$10,000.<sup>97</sup> The unsupported amount for all three cheques totalled \$11,100.<sup>98</sup>

### ***Presentation of the River Rock Cheque Audit to the BCLC Board and Government***

On September 14, 2018, the draft results of the River Rock cheque audit were presented to the BCLC board.<sup>99</sup> Mr. Kroeker and Mr. Lightbody were both present for the board meeting, as was Doug Scott, former assistant deputy minister and general manager of GPEB, who had recently been appointed as an associate deputy minister in the Ministry of the Attorney General with responsibilities that included the gaming industry.<sup>100</sup> Neither Mr. Eby nor Mr. Fyfe were present at the meeting.<sup>101</sup>

While the audit had commenced at approximately the same time as Dr. German’s review, Dr. German’s report had been completed and presented to government nearly six months prior to the board meeting. The evidence of both Mr. Kroeker and Mr. Lightbody was that Mr. Scott expressed concern that the results of the audit may be perceived as inconsistent with Dr. German’s report, which concluded that “[f]or many years, certain Lower Mainland casinos unwittingly served as laundromats for the proceeds of organized crime.”<sup>102</sup> Both Mr. Lightbody and Mr. Kroeker agreed that,

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93 Ibid, exhibit 14.

94 Ibid, exhibit 14, p 1.

95 Ibid, exhibit 14, pp 15–19.

96 Ibid, p 1, exhibit 17; Exhibit 490, Kroeker #1, para 191.

97 Exhibit 484, deBruyckere #2, p 2, exhibit 17.

98 Ibid.

99 Exhibit 490, Kroeker #1, para 192; Evidence of R. Kroeker, Transcript, January 25, 2021, p 153.

100 Evidence of J. Lightbody, Transcript, January 28, 2021, p 95; Exhibit 490, Kroeker #1, para 192, exhibit 102; Evidence of R. Kroeker, Transcript, January 25, 2021, p 193.

101 Evidence of R. Kroeker, Transcript, January 25, 2021, pp 153–54.

102 Exhibit 832, *Dirty Money 1*, p 10.

at a subsequent board meeting on January 16, 2019, following the finalization of the report, there was some discussion as to how the report should be shared with Mr. Eby,<sup>103</sup> but they disagreed as to the character of that conversation. Whereas Mr. Kroeker understood the discussion to be focused on ensuring that the report could be shielded from public release,<sup>104</sup> Mr. Lightbody disagreed, testifying that no one at this meeting – or any other meeting – was seeking to keep the report out of the public domain.<sup>105</sup>

Mr. Scott's evidence was that he understood the Ernst & Young audit to have examined a money laundering typology different from that addressed in Dr. German's report.<sup>106</sup> As such, Mr. Scott testified that he was not concerned that the audit results contradicted Dr. German or would be problematic for government, but he was concerned that, if presented in isolation, it may be misconstrued by the media to indicate that the proceeds of crime were not being accepted in the province's casinos, which Mr. Scott did not understand to be among the findings of the audit.<sup>107</sup> Mr. Scott denied engaging in any discussion related to shielding the report from public view but did recall discussion of transferring the report to Mr. Eby under common interest privilege.<sup>108</sup> Mr. Scott recalled supporting the transfer of the report to Mr. Eby on a privileged basis, not because he was interested in preventing its public release but because he wanted to ensure that any privilege that may have existed was not waived unnecessarily.<sup>109</sup>

The report was ultimately transferred to Mr. Eby and, on February 28, 2019, Mr. Eby was briefed on the results of the audit.<sup>110</sup> Present for the briefing were Mr. Eby; Mr. Fyfe; Mr. Scott; new assistant deputy minister and general manager of GPEB, Sam MacLeod; Mr. Lightbody; Mr. Kroeker; new BCLC board chair, Peter Kappel; BCLC's director of internal audit, Gurmit Aujla; two of Mr. Eby's ministerial assistants; and two representatives of Ernst & Young, Peter Law and Bob Boyle.<sup>111</sup> Mr. Lightbody described the briefing in his evidence:<sup>112</sup>

During the February 28, 2019, meeting, EY [Ernst & Young] and BCLC made a joint presentation to the Minister. I explained that there were three main money laundering risks in casinos: “classic” money laundering, in which cash is exchanged for a cheque; the Vancouver Model, in which players spend proceeds of crime unwittingly; and low-level smurfing. I explained

103 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 95–96; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 153–154; Exhibit 490, Kroeker #1, para 193.

104 Evidence of R. Kroeker, Transcript, January 25, 2021, pp 153–54.

105 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 95–96.

106 Exhibit 557, Affidavit #1 of Douglas Scott, made on February 3, 2021 [Scott #1], para 77.

107 Ibid, paras 77–78.

108 Ibid, para 79; Evidence of D. Scott, Transcript, February 8, 2021, pp 156–57.

109 Exhibit 557, Scott #1, para 79; Evidence of D. Scott, Transcript, February 8, 2021, pp 156–57.

110 Exhibit 505, Lightbody #1, para 234; Evidence of J. Lightbody, Transcript, January 28, 2021, p 94; Exhibit 490, Kroeker #1, para 194; Evidence of R. Kroeker, Transcript, January 25, 2021, p 152.

111 Exhibit 505, Lightbody #1, para 234; Evidence of J. Lightbody, Transcript, January 28, 2021, p 94; Exhibit 490, Kroeker #1, para 194; Evidence of R. Kroeker, Transcript, January 25, 2021, p 152.

112 Exhibit 505, Lightbody #1, para 235.

that: EY’s audit would address whether BCLC’s controls for the “classic” model of money laundering were working or not; BCLC’s source of funds requirements were addressing the “Vancouver Model” risk; and that BCLC had more work to do around the “low-level smurfing” or “retail” money laundering risk. Mr. Boyle then led the Minister through the results of the EY audit. Finally, Mr. Kappel asked the Minister about next steps following the results of EY’s work.

Mr. Lightbody recalled that Mr. Eby asked a number of pointed questions about the typology addressed in the report, but when the BCLC representatives offered to conduct similar audits at other casinos, Mr. Eby agreed that it was not necessary to do so if the controls at those casinos were the same as were in place at the River Rock.<sup>113</sup>

While some of the witnesses present for this briefing had no memory of any discussion of whether and how the report should be released publicly,<sup>114</sup> Mr. Eby and Mr. Lightbody both recalled addressing the issue.<sup>115</sup> Mr. Lightbody’s evidence was that Mr. Eby advised that it was BCLC’s decision as to whether and how to release the report and that Mr. Eby did not object when Mr. Lightbody advised him of BCLC’s intention to do so.<sup>116</sup> Mr. Eby’s evidence was that when asked, he indicated his support for the public release of the report.<sup>117</sup>

In his evidence, Mr. Eby also discussed his reaction to the briefing and the audit.<sup>118</sup> Mr. Eby accepted that patrons were not systematically bringing bulk cash into casinos and converting that cash into cheques that could then be presented as casino winnings.<sup>119</sup> Mr. Eby did not see the results of the audit as being inconsistent with Dr. German’s conclusions, which he understood to focus on a different money laundering typology.<sup>120</sup> Mr. Eby was concerned, however, that the report may be perceived as an indication that BCLC and government did not understand the nature of the problem identified by Dr. German.<sup>121</sup> Mr. Eby also indicated that, while it was appropriate for BCLC to examine this issue in light of the allegations that had appeared in media reporting,<sup>122</sup> he was surprised that BCLC had engaged an external firm to conduct this audit given the limited concern that this typology had attracted previously and the cost of engaging Ernst & Young for this purpose.<sup>123</sup>

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113 Ibid, para 236.

114 Evidence of R. Fyfe, Transcript, April 29, 2021, p 43; Evidence of S. MacLeod, Transcript, April 19, 2021, p 24; Evidence of R. Kroeker, Transcript, January 25, 2021, p 155; Exhibit 490, Kroeker #1, para 194.

115 Exhibit 505, Lightbody #1, para 237; Evidence of J. Lightbody, Transcript, January 28, 2021, p 94; Evidence of D. Eby, Transcript, April 26, 2021, p 81.

116 Exhibit 505, Lightbody #1, para. 237; Evidence of J. Lightbody, Transcript, January 28, 2021, p 94.

117 Evidence of D. Eby, Transcript, April 26, 2021, p 81.

118 Ibid, pp 78–81, 106.

119 Ibid, pp 78–79.

120 Ibid, p 79.

121 Ibid, p 80.

122 Ibid, p 106.

123 Ibid, pp 80, 106.

### ***Findings Regarding the Ernst & Young Cheque Audits***

Despite the irregularities identified in the issuance of cheques at the River Rock Casino and, to a much lesser extent, at the Grand Villa Casino, the results of the audits seem to have been generally accepted by those within the gaming industry and government as indicative that the traditional cash-for-cheque money laundering typology examined was not a significant issue within the industry and that the media reporting to this effect was inaccurate.<sup>124</sup> I accept that the findings of these audits, while – in the case of River Rock – identifying several troubling anomalies, demonstrate that money laundering through a typology involving patrons buying-in with cash derived from crime and cashing out for cheques following no or minimal play was not occurring in any systematic way or at any significant level at the River Rock or Grand Villa casinos during the time periods examined.

I further find that there was concern within government – in particular, on the parts of Mr. Scott and Mr. Eby – that the results of the audit may have caused confusion among members of the public as to the nature and extent of the challenges associated with proceeds of crime and money laundering in the province’s gaming industry and BCLC’s understanding of the issue. These concerns were justifiable. By the time Ernst & Young’s River Rock audit was completed, the public had recently learned of the results of Dr. German’s review and, if not properly explained, the results of the audit may have been viewed to contradict Dr. German’s conclusions, even though they did not.

Despite these concerns, I find that there was no effort on the part of government to prevent the public release of the Ernst & Young audit. On the contrary, I accept that Mr. Eby left the decision to BCLC and voiced no objection to their expressed intention to make the report public.

There is some debate about whether there was a discussion at the January 2019 BCLC board meeting about keeping the report from public view. While Mr. Lightbody did not recall any such discussion, based on Mr. Kroeker’s evidence, which is supported by his contemporaneous notes, I accept that there was discussion at this meeting (at which neither Mr. Eby nor Mr. Fyfe were present) focused on privilege and leaving open the option for the minister to withhold the report from public view.

Mr. Kroeker’s notes also reference Mr. Scott agreeing that the report “should come over to minister[’s] office in that form [with] those measures in place.” It is important to note, however, that it appears from Mr. Kroeker’s notes that Mr. Scott was asked for his opinion only after the board had indicated a desire to ensure the report could be protected from public release and after the board had identified the assertion of some form of privilege as a means of doing so. In this regard, Mr. Kroeker’s notes are consistent with Mr. Scott’s evidence that he supported the transfer of the report under

<sup>124</sup> Exhibit 490, Kroeker #1, paras 189, 191; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 150–51, 211; Exhibit 505, Lightbody #1, exhibit 102; Evidence of R. Fyfe, Transcript, April 29, 2021, p 42; Exhibit 557, Scott #1, para 77; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 89–90; Evidence of D. Eby, Transcript, April 26, 2021, pp 78–79.

common interest privilege to avoid the waiver of privilege, as he thought it unwise to waive any privilege without legal advice, given that he was not legally trained.<sup>125</sup> It is clear from the evidence before me that any desire to shield the report from public view was driven by the board and not by Mr. Scott or government more broadly. Further, there is no evidence before the Commission to suggest that Mr. Eby at any time sought to prevent the public release of the report or was even aware that methods of doing so were considered by the BCLC board. The only evidence of Mr. Eby's engagement in this issue demonstrates that he had no objection to its public release.

## **Resignation of Ross Alderson**

A September 29, 2017, media report alleging that patrons were exchanging cash for cheques following no or minimal play in the province's casinos contained confidential information identified by BCLC as likely to have been leaked to the media from within one of BCLC, GPEB, or the RCMP.<sup>126</sup> The public release of this information was of concern to BCLC, GPEB, and government and was the beginning of a series of steps and communications that preceded the suspension and eventual resignation of Ross Alderson, then BCLC's director of anti-money laundering and investigations.

After learning of the apparently leaked information, Mr. Lightbody contacted Mr. Mazure and Mr. Fyfe to advise them of BCLC's concern that information was being leaked without authorization from within one of BCLC, GPEB, or the RCMP.<sup>127</sup>

On October 4, 2017, Mr. Lightbody and Mr. Mazure received a letter from Mr. Eby expressing concern about the impact of a possible information leak on an ongoing RCMP investigation and requesting that they reinforce within their organizations that "leaking information to journalists is grounds for immediate termination."<sup>128</sup> Mr. Lightbody conveyed this message to all BCLC staff in an email sent the same day.<sup>129</sup> Shortly afterward, Mr. Alderson was identified as the likely source of the leak. He was placed on leave on October 5, 2017, and BCLC staff were directed to have no contact with him.<sup>130</sup> Mr. Alderson was advised of the existence of BCLC's whistle-blower policy but declined to seek its protections.<sup>131</sup>

On October 16, 2017, BCLC's external counsel wrote to Mr. Fyfe advising that a BCLC employee was the source of the leak to the media and that some of the information disclosed may have been relevant to ongoing investigations into money laundering by GPEB and the RCMP.<sup>132</sup> The letter did not identify Mr. Alderson by name.<sup>133</sup> Mr. Eby

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125 Evidence of D. Scott, Transcript, February 8, 2021, p 157.

126 Exhibit 505, Lightbody #1, para 344.

127 Ibid, para 345.

128 Ibid, para 346, exhibit 178; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 15-16.

129 Exhibit 505, Lightbody #1.

130 Exhibit 148, Affidavit #1 of Daryl Tottenham, sworn on October 30, 2020 [Tottenham #1], para 223.

131 Exhibit 505, Lightbody #1, para 349; Evidence of R. Alderson, Transcript, September 10, 2021, p 35.

132 Exhibit 505, Lightbody #1, para 355, exhibits 184-85; Evidence of R. Fyfe, Transcript, April 29, 2021, p 14.

133 Exhibit 505, Lightbody #1, para 355, exhibits 184-85; Evidence of R. Fyfe, Transcript, April 29, 2021, p 14.

testified that this information gave rise to a challenging situation for government, as he understood that the BCLC employee had illegally disclosed confidential information to the media, but in doing so had prompted scrutiny of an important issue and as such may be perceived as a whistle-blower.<sup>134</sup>

In his evidence, Mr. Lightbody recalled participating in a conference call on December 14, 2017, with Mr. Eby, Mr. Fyfe, Mr. Eby's assistant Sam Godfrey, and Mr. Smith regarding Mr. Alderson's future with BCLC.<sup>135</sup> Mr. Lightbody recalled Mr. Eby asking if it was possible to prevent Mr. Alderson from speaking with the media, which Mr. Lightbody opposed due to concern about the possibility of perception that BCLC was trying to "muzzle" Mr. Alderson.<sup>136</sup> Mr. Lightbody inquired about the possibility of Mr. Alderson being transferred to GPEB or elsewhere in government.<sup>137</sup> These options were rejected, leaving only Mr. Alderson's termination or resignation as possible outcomes.<sup>138</sup> At no time did Mr. Eby or anyone else in government provide direction as to whether Mr. Alderson should or should not be terminated.<sup>139</sup>

The following day – December 15, 2017 – Mr. Lightbody participated in a meeting with Mr. Alderson.<sup>140</sup> Mr. Alderson resigned the same day.<sup>141</sup>

## Complaint Against Robert Kroeker

On February 20, 2019, GPEB received an anonymous complaint regarding Mr. Kroeker.<sup>142</sup> The complaint, in its entirety, read as follows:<sup>143</sup>

I have information that Robert Kroeker, vp compliance bclc instructed [B]al Bamra [manager, anti-money laundering intelligence for BCLC], Ross Anderson and Daryl Tottenham [manager of anti-money laundering programs for BCLC] to ease up on the bclc cash conditions on players and slow down the process of targeting suspicious buy ins[.]

This occurred at bclc Vancouver office during a meeting involved AML. this suggests pressure was put on the bclc management team to allow dirty money to flow into casinos The persons involved should be able to provide further detail if handled with the utmost confidentiality particularly as

<sup>134</sup> Evidence of D. Eby, Transcript, April 26, 2021, p 83.

<sup>135</sup> Exhibit 505, Lightbody #1, para 357.

<sup>136</sup> Ibid, para 257.

<sup>137</sup> Ibid, para 357.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 17–18; Evidence of D. Eby, Transcript, April 26, 2021, p 84.

<sup>140</sup> Exhibit 505, Lightbody #1, paras 359–60.

<sup>141</sup> Ibid.

<sup>142</sup> Exhibit 504, Affidavit #1 of Cary Skrine, made on January 15, 2021 [Skrine #1], para 86; Evidence of C. Skrine, Transcript, January 27, 2021, p 83.

<sup>143</sup> Exhibit 504, Skrine #1, exhibit S.

Bamra and Tottenham are still gaming workers employed by Bclc. Please treat seriously.

The complaint was transmitted by email from an account bearing the name “Ela Amit.”<sup>144</sup>

The complaint was assigned to Cary Skrine,<sup>145</sup> who was then the interim executive director of GPEB’s new enforcement division,<sup>146</sup> the creation of which is discussed later in this chapter. On February 22, 2019, Mr. Skrine contacted the anonymous complainant, encouraging the complainant to contact him so that they could speak to Mr. Skrine and assist in assessing the credibility of the complaint.<sup>147</sup> The complainant declined to meet with Mr. Skrine, following which Mr. Skrine consulted with Mr. MacLeod. Mindful of GPEB’s obligation not to commence vexatious investigations, Mr. Skrine determined that there were no grounds to commence an investigation.<sup>148</sup>

Due to the decision not to commence an investigation, no file was opened at this time with respect to this complaint.<sup>149</sup> Subsequently, a freedom of information (FOI) request from a member of the media was received by the Ministry of the Attorney General seeking records related to complaints received by GPEB alleging misconduct by BCLC executives with regards to responsibility for anti-money laundering duties or monitoring of patrons.<sup>150</sup> Because no file had been opened, the anonymous complaint about Mr. Kroeker was not identified in the ministry’s attempts to locate records, and the response to the FOI request indicated that no responsive records were located.<sup>151</sup> Mr. Alderson subsequently alerted Mr. Scott to both the existence of the anonymous complaint and the response to the FOI request.<sup>152</sup> In his correspondence with Mr. Scott – and in his evidence before the Commission – Mr. Alderson implied that there may have been a deliberate attempt to cover up the allegation against Mr. Kroeker underlying the failure to disclose the anonymous complaint in response to the FOI request.<sup>153</sup> There is no basis whatsoever in the evidence before the Commission to support this theory, and I find that the failure to disclose the complaint in response to the FOI request was simply the product of administrative oversight.

At approximately the same time that Mr. Alderson was corresponding with Mr. Scott regarding the FOI request, Mr. Skrine learned from Mr. MacLeod that Mr. Alderson had confirmed to Mr. Scott that he was the “Mr. Anderson” referred to in the anonymous complaint.<sup>154</sup> Mr. Skrine did not learn at that time that Mr. Alderson was, in fact, the

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144 Ibid.

145 Ibid, para 87, exhibit S.

146 Ibid, exhibit 18.

147 Ibid, para 88.

148 Ibid, para 90; Evidence of C. Skrine, Transcript, January 27, 2021, pp 83–84.

149 Exhibit 504, Skrine #1, paras 91–94.

150 Ibid, para 92.

151 Ibid, para 93.

152 Ibid, para 94, exhibit U.

153 Ibid; Evidence of R. Alderson, Transcript, September 9, 2021, pp 105, 111.

154 Exhibit 504, Skrine #1, para 96; Evidence of C. Skrine, Transcript, January 27, 2021, pp 86–87.

anonymous complainant,<sup>155</sup> though Mr. Alderson confirmed that he was in his evidence before the Commission.<sup>156</sup>

After learning that Mr. Alderson was the “Mr. Anderson” referred to in this complaint, Mr. Skrine decided to commence an investigation into the allegations against Mr. Kroeker<sup>157</sup> and arranged an interview with Mr. Alderson.<sup>158</sup> Mr. Skrine interviewed Mr. Alderson on July 9, 2019,<sup>159</sup> and subsequently obtained a written statement from Mr. Alderson<sup>160</sup> as well as an audio and video recorded statement.<sup>161</sup> In his written statement, Mr. Alderson indicated that, at a recurring meeting between Mr. Kroeker, Mr. Alderson, Ms. Bamra, and Mr. Tottenham, Mr. Kroeker had advised the other three that “it would be ok if we took a softer response to the conditions program.”<sup>162</sup> Mr. Alderson indicated that he was shocked by this comment, as were Mr. Tottenham and Ms. Bamra, and that he understood it to be a request “to ease off placing players on cash conditions” due to the financial impact of the cash conditions program.<sup>163</sup> Mr. Skrine’s evidence was that Mr. Alderson advised him that Ms. Bamra and Mr. Tottenham both expressed concern about the comments made by Mr. Kroeker and that Mr. Alderson advised both to make notes of the conversation.<sup>164</sup> Mr. Alderson also told Mr. Skrine that he had disclosed Mr. Kroeker’s comments to his colleague Kevin Sweeney, BCLC director of security, privacy, and compliance.<sup>165</sup>

When Mr. Skrine met with Ms. Bamra and Mr. Tottenham, they both denied that Mr. Kroeker had ever said anything of the sort alleged by Mr. Alderson.<sup>166</sup> Both advised that the only notes of these recurring meetings were the meeting minutes taken by Ms. Bamra and that neither had independent notes.<sup>167</sup> The meeting minutes were produced to Mr. Skrine and did not contain any indication that Mr. Kroeker had made the remarks alleged by Mr. Alderson or any similar remarks.<sup>168</sup> Mr. Skrine also contacted Mr. Kroeker, who denied making the remarks,<sup>169</sup> and Mr. Sweeney, who denied that Mr. Alderson had told him of any such remarks by Mr. Kroeker.<sup>170</sup>

155 Evidence of C. Skrine, Transcript, January 27, 2021, pp 86–87.

156 Evidence of R. Alderson, Transcript, September 10, 2021, pp 83–84.

157 Exhibit 504, Skrine #1, para 99.

158 Ibid, paras 100–1.

159 Ibid, para 102; Evidence of C. Skrine, Transcript, January 27, 2021, p 87.

160 Exhibit 504, Skrine #1, para 102 and exhibit Y; Evidence of C. Skrine, Transcript, January 27, 2021, p 87.

161 Exhibit 504, Skrine #1, para 103 and exhibit Z.

162 Ibid, exhibit Y.

163 Ibid.

164 Ibid, para 107.

165 Ibid, para 116.

166 Ibid, para 108.

167 Ibid, para 109.

168 Ibid.

169 Ibid, paras 117–18 and exhibits KK, LL.

170 Ibid, para 116 and exhibit JJ; Evidence of C. Skrine, Transcript, January 27, 2021, pp 99–100.

As part of his investigation, Mr. Skrine obtained Mr. Alderson's notebooks from BCLC.<sup>171</sup> Mr. Skrine gave evidence that he was able to obtain a complete collection of Mr. Alderson's notebooks, with the exception of one notebook from 2017, but that he concluded that the statement alleged to have been made by Mr. Kroeker, if made at all, would not have been made during the time period covered by the missing notebook.<sup>172</sup> In his own evidence before the Commission, Mr. Alderson testified that he had destroyed the missing notebook prior to making the complaint about Mr. Kroeker, after discovering that it remained in his possession following his resignation, and that he had neglected to advise Mr. Skrine that he had done so.<sup>173</sup> Mr. Alderson was unsure whether the notebook would have covered the time in which he alleged Mr. Kroeker had made the comments of concern.<sup>174</sup>

Mr. Skrine ultimately concluded that there was no evidence to support the allegation made by Mr. Alderson and that the allegation was unfounded.<sup>175</sup> Mr. Skrine further concluded that “[b]y all accounts, the comments attributed to Kroeker run contrary to his historical views and actions on matters of this nature while employed by BCLC.”<sup>176</sup>

Mr. Alderson, Mr. Kroeker, Ms. Bamra, and Mr. Tottenham all gave evidence before the Commission, Ms. Bamra by affidavit and the other three through a combination of affidavit and oral evidence. All four gave evidence consistent with the versions of events they provided to Mr. Skrine.

Mr. Alderson was uncertain of the date of the meeting at which the alleged comments were made, but believed that it was in early to mid-2017.<sup>177</sup> He testified that Mr. Kroeker's comments were to the effect that “it would be okay if we let things slide for a bit just to let things, you know, just delay some of the initiatives.”<sup>178</sup> Mr. Alderson recalled that the comments were made around Chinese New Year or another major event expected to bring in significant revenue.<sup>179</sup> He testified that he did not recall Mr. Kroeker making any reference to revenue and could not remember – or did not know – which initiatives Mr. Kroeker was referring to.<sup>180</sup> Mr. Alderson says he did not discuss the comments with Mr. Kroeker and did not report the comments to Mr. Kroeker's superiors or to GPEB at the time.<sup>181</sup> His evidence was that he instructed Mr. Tottenham and Ms. Bamra to disregard Mr. Kroeker's remarks, “continue on doing what they were doing,” and to

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171 Exhibit 504, Skrine #1, para 111.

172 Ibid, paras 110–15.

173 Evidence of R. Alderson, Transcript, September 10, 2021, pp 84–85, 225–27.

174 Ibid, p 227.

175 Evidence of C. Skrine, Transcript, January 27, 2021, p 100; Evidence of R. Alderson, Transcript, September 10, 2021, p 104.

176 Evidence of C. Skrine, Transcript, January 27, 2021, p 100.

177 Evidence of R. Alderson, Transcript, September 9, 2021, p 50 and Transcript, September 10, 2021, p 78.

178 Evidence of R. Alderson, Transcript, September 9, 2021, p 47.

179 Ibid.

180 Ibid, pp 47–48.

181 Ibid, pp 37–38, 49–50, 105–8.

make notes of the conversation.<sup>182</sup> Mr. Alderson acknowledged that these comments were very out of character for Mr. Kroeker and that the meeting stood out to him because of how unusual the comments were.<sup>183</sup>

As indicated above, Mr. Alderson acknowledged in his evidence that he had submitted the anonymous complaint about Mr. Kroeker to GPEB.<sup>184</sup> He explained in his evidence that he did so in reaction to a letter that he found very upsetting, which he received from BCLC following his appearance on the *W5* television program.<sup>185</sup> In his evidence, Mr. Alderson described the letter and explained his reaction to it as follows:<sup>186</sup>

[I]t alleged that what I said on that program was all lies and that that has now been corroborated by Stone Lee and Steven Beeksma, that I was dishonest. And at that time I was very well aware of comments being made by certain people, executives, and I was so disappointed at BCLC's letter. They alleged that I had contacted BCLC staff and asked them to provide confidential information with – not true. I certainly contacted staff and asked if they would acknowledge and support me, which is very, very different than asking them to release information or breach any policy of BCLC's. That's not what I asked. And that was not what was in the letter and the subsequent letter that was sent to the Attorney General. And I take real issue with that. So I was very angry after that, I received that letter, and knowing full well what Mr. Kroeker has said and what he was now denying and other comments that were made during my time there. I had tolerated it and let it go after that point. I mean, that was the primary reason I did it.

Mr. Alderson went on to elaborate on his reaction to this letter as follows:<sup>187</sup>

[I]t upset me greatly. It is still the most unsettling and upsetting letter I've ever received. They threatened to sue me, they threatened for me to pay their legal fees, and based on lies. Things that have been now corroborated in this inquiry. You know, it was quite disgusting quite frankly. And Mr. Kroeker was part of that.

Mr. Kroeker, Mr. Tottenham, and Ms. Bamra all unequivocally denied that Mr. Kroeker made the comments attributed to him by Mr. Alderson.<sup>188</sup>

Based on the evidence before me, I am satisfied that Mr. Kroeker did not make the comments attributed to him by Mr. Alderson, or any similar comments. Three of the

182 Evidence of R. Alderson, Transcript, September 9, 2021, pp 48–49 and Transcript, September 10, 2021, p 83.

183 Evidence of R. Alderson, Transcript, September 9, 2021, pp 50–51 and Transcript, September 10, 2021, pp 100–101.

184 Evidence of R. Alderson, Transcript, September 10, 2021, pp 83–84.

185 Ibid, pp 89–91.

186 Ibid, pp 89–90.

187 Ibid, pp 90–91.

188 Exhibit 148, Tottenham #1, paras 221–22; Exhibit 490, Kroeker #1, para 292; Exhibit 143, Affidavit #1 of Bal Bamra, affirmed on October 14, 2020 [Bamra #1], para 10.

four individuals said to be present for the comments deny that they were made, and despite Mr. Alderson's assertions that he instructed Mr. Tottenham and Ms. Bamra to make notes of the comments, there is no evidence that any notes confirming the comments exist, even from Mr. Alderson himself. Mr. Sweeney, who Mr. Alderson says he told of Mr. Kroeker's comments, apparently denies that Mr. Alderson did so.

While Mr. Alderson's testimony, if believed, offers some evidence that the comments were made, I reject his evidence given the significant body of contradictory evidence, his rationale for making the complaint to GPEB, and the deceptive manner in which he conducted himself in doing so. Despite his evidence that he was shocked by Mr. Kroeker's comments and that Mr. Tottenham and Ms. Bamra shared his concern, Mr. Alderson failed to report the comments to GPEB until approximately two years after they were made, even though he acknowledged that he believed he had an obligation to do so.<sup>189</sup> Mr. Alderson testified that, when he did finally report the comments to GPEB, he did so because he was angry about a letter he had received from BCLC. While Mr. Alderson claimed that he was not motivated by spite,<sup>190</sup> it is difficult to interpret his evidence otherwise.

When Mr. Alderson did submit his complaint to the regulator, he did so anonymously, using an email account bearing the pseudonym "Ela Amit" and referring in the body of the complaint to a "Ross Anderson," clearly seeking to create confusion by misspelling his own name. When contacted by Mr. Skrine, Mr. Alderson initially declined to meet, citing concerns for his safety and his job. Mr. Alderson had resigned from his position with BCLC more than a year previously. When Mr. Alderson did eventually meet with Mr. Skrine, he did not identify himself as the anonymous complainant. It is difficult to see how Mr. Alderson's concerns, if genuine, could have applied to identifying himself as the source of the complaint, but not to providing Mr. Skrine with information consistent with the complaint. I find that, rather than having been motivated by a genuine concern for his employment, Mr. Alderson elected to make his complaint anonymously to try to manipulate the investigation of the complaint by presenting his own evidence as corroboration of an independent complaint, rather than the repetition of an allegation he had made himself. Finally, Mr. Alderson further deceived Mr. Skrine by advising him that BCLC was in possession of all of his notebooks when he knew that he had destroyed his final notebook prior to meeting with Mr. Skrine.<sup>191</sup> I do not find that Mr. Alderson destroyed the notebook for the purpose of obstructing the investigation. I accept his evidence that he did so because he simply did not want it in his possession following his resignation from BCLC, but I find that he was less than forthcoming with Mr. Skrine with respect to the status and location of his notebooks.

For these reasons, I reject the evidence of Mr. Alderson in this regard, and I agree with the results of the investigation conducted by Mr. Skrine. I accept the evidence of Mr. Kroeker, Mr. Tottenham, and Ms. Bamra that no comments as alleged by Mr. Alderson were ever made by Mr. Kroeker.

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189 Evidence of R. Alderson, Transcript, September 10, 2021, p 91.

190 Ibid, p 90.

191 Evidence of R. Alderson, Transcript, September 10, 2021, pp 84–85, 88, 225–27.

## Dr. German’s Source-of-Funds Interim Recommendation

In appointing Dr. German to conduct his review, Mr. Eby had instructed Dr. German that “[r]ecommendations resulting from the review should be reported to the Attorney General as soon as they are ready; they should not be held pending submission of the final report.”<sup>192</sup> Consistent with this direction, on November 29, 2017, approximately two months into his review, Dr. German delivered two interim recommendations to government as the review was ongoing:<sup>193</sup>

1. I recommend that Gaming Service Providers (GSPs) complete a source of funds declaration for cash deposits and bearer monetary instruments which exceed the FinTRAC threshold for Large Cash Transactions of \$10,000. At a minimum, the declaration must outline a customer’s identification and provide the source of their funds, including the financial institution and account from which the cash or financial instrument was sourced. In the case of new customers, after two transactions, cash should only be accepted from the customer if the veracity of the previous answers has been confirmed and is not considered suspicious.
2. I recommend that a GPEB investigator be on shift and available to the high volume casino operators in the Lower Mainland, on a 24/7 basis. The presence of the regulator will allow for the increased vigilance required in casinos. In particular, it will assist with source of fund issues, third party cash drops, and general support for GSPs and BCLC.

These two recommendations were announced by Mr. Eby on December 5, 2017.<sup>194</sup>

GPEB’s response to the second of these recommendations will be addressed later in this Report along with the other changes made by GPEB made following the release of Dr. German’s final report. The discussion that follows will focus on the implementation and impact of the first of these two interim recommendations.

## Implementation of Dr. German’s Source-of-Funds Recommendation

Following receipt of Dr. German’s interim recommendations, BCLC moved quickly to implement the first of the two recommendations<sup>195</sup> and, in doing, so modified the proposed measures in order to strengthen the recommendation.<sup>196</sup> Mr. Lightbody

<sup>192</sup> Exhibit 940, Fyfe Letter October 2017; Evidence of D. Eby, Transcript, April 26, 2021, pp 68–71, 179–80.

<sup>193</sup> Exhibit 832, *Dirty Money 1*, p 247.

<sup>194</sup> Exhibit 505, Lightbody #1, para 258.

<sup>195</sup> Exhibit 490, Kroeker #1, para 229; Exhibit 505, Lightbody #1, paras 216–75 and exhibits 137–51.

<sup>196</sup> Exhibit 78, Affidavit #1 of Steve Beeksma, affirmed on October 22, 2020, [Beeksma #1], para 82; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 75–76; Exhibit 490, Kroeker #1, paras 227–28; Exhibit 505, Lightbody #1, para 261.

gave evidence that, shortly after BCLC received the interim recommendations, Mr. Kroeker advised him that he believed that BCLC could go further and improve upon the first measure.<sup>197</sup> Mr. Kroeker gave evidence of two enhancements to Dr. German's recommendation that he sought to implement.<sup>198</sup> First, Mr. Kroeker did not believe that it was sufficient for BCLC to seek only a declaration of the source of funds used in transactions captured by the recommendation and should take the extra step of requiring proof of the source of funds used in those transactions through a requirement that the patron produce documentation from within the previous 48 hours indicating how the patron obtained the funds.<sup>199</sup> Second, Mr. Kroeker was opposed to the exemption for new customers provided for in Dr. German's recommendation and believed that proof of the source of funds used in transactions captured by the recommendation should be required for all customers.<sup>200</sup> I note that, as I read Dr. German's recommendation, it did not truly contemplate an exemption for new customers, but instead contemplated that, after two transactions, the declarations provided by new customers would be scrutinized and that cash should only be accepted from the customer thereafter if the veracity of their previous answers could be confirmed and were not suspicious.

Mr. Kroeker also testified that BCLC decided to retain its existing cash conditions program, described at length in Chapter 11.<sup>201</sup> His evidence was that, in his view, the effect of Dr. German's recommendation was to transform BCLC's existing risk-based cash conditions program into a prescriptive requirement applicable to all transactions of \$10,000 or more.<sup>202</sup> Mr. Kroeker explained that Dr. German's recommendation was more lenient than the existing cash conditions program in the sense that the cash conditions program applied to *all* transactions involving patrons placed on conditions, regardless of amount, including transactions under \$10,000 that would not be captured by Dr. German's recommendation.<sup>203</sup> For this reason, replacing the existing cash conditions program with the measure recommended by Dr. German was beyond BCLC's risk tolerance, and BCLC retained the cash conditions program.<sup>204</sup> I do not read Dr. German's recommendation as including that the cash conditions program be eliminated and am unaware of any evidence supporting that it did.

According to Mr. Lightbody, BCLC contacted Dr. German and obtained his agreement to these modifications to his recommendation.<sup>205</sup> BCLC then contacted GPEB to discuss implementation of the recommendation and BCLC's proposed modifications.<sup>206</sup>

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197 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 75–76.

198 Exhibit 490, Kroeker #1, paras 226–28.

199 Ibid, para 228; Exhibit 78, Beeksma #1, para 82; Evidence of S. Lee, Transcript, October 27, 2020, p 41; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 75–76.

200 Exhibit 490, Kroeker #1, paras 226–27.

201 Ibid, paras 222–23.

202 Ibid, para 222.

203 Ibid, paras 224–27.

204 Ibid, paras 223–27.

205 Evidence of J. Lightbody, Transcript, January 28, 2021, p 75.

206 Ibid, p 76; Exhibit 505, Lightbody #1, para 261.

In a memorandum dated December 11, 2017, Mr. Kroeker advised Mr. Lightbody that it would be possible to implement Dr. German’s recommendation by December 18, 2017.<sup>207</sup> BCLC prepared a directive to gaming service providers to this effect.<sup>208</sup> The memorandum and directive were provided to both Dr. German and GPEB on December 12, 2017.<sup>209</sup> In response, GPEB sent BCLC several questions and comments on December 15, 2017, which BCLC answered on December 19, 2017.<sup>210</sup>

On December 27, 2017, GPEB wrote to BCLC again, confirming that most of their questions had been answered and providing several recommendations.<sup>211</sup> GPEB’s letter attached particular significance to a recommendation that patrons conducting transactions of \$10,000 or more – to which the new requirement to provide proof of the source of funds would apply – be required to sign a “source of funds declaration” form themselves.<sup>212</sup> GPEB indicated that it would be unable to support BCLC’s proposed implementation of Dr. German’s recommendation in the absence of this change to the proposal.<sup>213</sup> Mr. Lightbody responded on January 2, 2018, making it clear that he viewed the requirement of a patron’s signature as unnecessary, but that BCLC would nonetheless implement this change to its proposal.<sup>214</sup> Two days later, GPEB responded, confirming that it supported implementation of the recommendation with this measure in place, but continued to encourage BCLC to consider the other recommendations made by GPEB.<sup>215</sup> BCLC subsequently issued a directive to service providers implementing Dr. German’s recommendation, effective January 10, 2018.<sup>216</sup>

It is evident that the delay resulting from GPEB’s review and approval of BCLC’s proposal to implement Dr. German’s recommendation caused some frustration within BCLC.<sup>217</sup> In light of how quickly BCLC moved to implement this recommendation and the delay of nearly one month resulting from GPEB’s involvement, this frustration is understandable. However, given the importance of this measure, GPEB’s role in the gaming industry, and BCLC’s prior skepticism of measures of the sort recommended by Dr. German, it was entirely appropriate for GPEB to provide oversight of BCLC’s implementation of this measure and to do so in a rigorous and meaningful way. While BCLC was confident in its plan to implement the recommendation and may have preferred that GPEB simply rubber-stamp that plan, it would not have been appropriate, in my view, for GPEB to have approved the proposal without careful review and meaningful engagement with its contents. The record before me shows that

<sup>207</sup> Exhibit 505, Lightbody #1, exhibit 140.

<sup>208</sup> Exhibit 490, Kroeker #1, exhibit 126.

<sup>209</sup> Exhibit 505, Lightbody #1, exhibits 139, 140.

<sup>210</sup> Ibid, exhibits 143, 145.

<sup>211</sup> Ibid, exhibit 147.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid, exhibit 148.

<sup>215</sup> Ibid, exhibit 149.

<sup>216</sup> Ibid, exhibit 152.

<sup>217</sup> Exhibit 490, Kroeker #1, para 229; Exhibit 505, Lightbody #1, exhibit 146.

both organizations worked expeditiously to refine and implement the proposal and, while I am unable to say with certainty whether GPEB's involvement led to practical improvements in the implementation of the policy, I have no doubt that the additional level of review and oversight it provided sufficiently enhanced the process by which the recommendation was implemented, such that it was worth the resulting delay.

There were initial challenges in implementing BCLC's directive giving effect to Dr. German's first interim recommendation.<sup>218</sup> These challenges seem to have stemmed in part from difficulties in tracking buy-ins made in locations in casinos other than the cash cage.<sup>219</sup> Both BCLC and GPEB began monitoring compliance and soon resolved any significant issues.<sup>220</sup> The challenges in implementing the new directive were not isolated to any one service provider, and there is no evidence that they were the result of any resistance to or desire to obstruct implementation of the new measures. I find that all parties involved worked diligently to comply with the new directive and any shortcomings in these efforts were simply the sort of "growing pains"<sup>221</sup> one would expect in the implementation of an unfamiliar and significant new requirement in any regulated industry.

## **Impact of Dr. German's First Interim Recommendation**

There was some division in the views of witnesses who commented on the impact of Dr. German's first interim recommendation. While several witnesses gave evidence that the implementation of the recommendation had a dramatic impact on both the volume of cash entering casinos and the frequency of suspicious transactions,<sup>222</sup> others indicated that the impact was more modest and that the bulk of the reduction in large and suspicious cash transactions was the result of the cash conditions program initially implemented in 2015.<sup>223</sup>

Some insight into the impact of this measure is offered by the data produced by BCLC that was relied on previously to assess the impact of the cash conditions program. While, as discussed above, it cannot be assumed that all changes in reporting data are entirely the result of the implementation of Dr. German's recommendation, the timing of that implementation corresponds with a fairly bright line drop in large and suspicious cash transactions. The evidence of those operating in the industry of the changes that they observed following the implementation of the recommendation provides further insight into the effect of the measure.

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218 Exhibit 505, Lightbody #1, paras 279–80, 285; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 32–33, 122.

219 Exhibit 505, Lightbody #1, para 285; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 82–83.

220 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 82–83.

221 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 34–35.

222 Exhibit 78, Beeksma #1, paras 82–83; Evidence of Steven Beeksma, Transcript, October 26, 2020, p 82; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 64, 76–77; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 35, 37–38.

223 Exhibit 490, Kroeker #1, para 230; Exhibit 522, Desmarais #1, para 109 [Desmarais #1]; Evidence of Steven Beeksma, Transcript, October 26, 2020, pp 147–48; Exhibit 87, Affidavit #1 of Stone Lee, sworn on October 23, 2020 [S. Lee #1], para. 73; Evidence of S. Lee, Transcript, October 27, 2020, pp 61–62, 118–20.

## Impact on Suspicious Transactions

Table 12.1 below set out the number of suspicious transaction reports submitted to FINTRAC by BCLC following the implementation of Dr. German’s first interim recommendation in January 2018 until the end of 2019. More recent data is not available and would be of little assistance, given the closure of the province’s casinos due to the COVID-19 pandemic in March 2020. To assist in evaluating the effects of this recommendation compared to those of the cash conditions program, comparable data beginning in January 2015 are also included. Accordingly, the first part of Table 12.1 reproduces a table found earlier in this report. The new data are indicated by bold text.<sup>224</sup>

**Table 12.1: Number of Suspicious Transaction Reports (STRs), January 2014–December 2019**

<b>Time Period</b>	<b>Total STRs</b>	<b>STRs \$50,001– \$100,000</b>	<b>STRs over \$100,000</b>
Jan–Jun 2014	733	207	270
Jul–Dec 2014	898	286	325
Jan–Jun 2015	954	312	319
Jul–Dec 2015	783	212	208
Jan–Jun 2016	1,008	165	115
Jul–Dec 2016	641	92	46
Jan–Jun 2017	618	71	44
Jul–Dec 2017	427	87	32
<b>Jan–Jun 2018</b>	<b>110</b>	<b>3</b>	<b>2</b>
<b>Jul–Dec 2018</b>	<b>180</b>	<b>3</b>	<b>1</b>
<b>Jan–Jun 2019</b>	<b>106</b>	<b>2</b>	<b>6</b>
<b>Jul–Dec 2019</b>	<b>116</b>	<b>1</b>	<b>14</b>

Source: Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020, exhibit A.

Changes to the cumulative value of suspicious transactions in these years are set out in Table 12.2.<sup>225</sup> These figures include e-gaming and “external request” suspicious transaction reports, in addition to those from land-based casinos.<sup>226</sup>

<sup>224</sup> Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020 [Cuglietta #1], exhibit A.

<sup>225</sup> Exhibit 784, Affidavit #2 of Cathy Cuglietta, sworn on March 8, 2021 [Cuglietta #2], exhibit A.

<sup>226</sup> Exhibit 482, Cuglietta #1, para 6.

**Table 12.2: Value of Suspicious Transactions Reported Annually, 2014–2019**

<b>Year</b>	<b>Total Value of Transactions Reported as Suspicious</b>
2014	\$195,282,332
2015	\$183,841,853
2016	\$79,458,118
2017	\$45,300,463
<b>2018</b>	<b>\$5,520,550</b>
<b>2019</b>	<b>\$53,879,973</b>

Source: Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020, exhibit A.

The data suggest that the initial impact of the implementation of Dr. German’s first interim recommendation included a substantial reduction, to negligible levels, in suspicious transaction reporting, both in terms of the number of reports and the total value of the transactions that were the subject of those reports. While the value of such transactions for 2019 suggests a substantial rebound in such transactions in that year, it is important to note that this data is not limited to suspicious transactions conducted with cash in casinos. For example, suspicious transactions connected to e-gaming are also included in this data.<sup>227</sup> Closer scrutiny of the data available suggests that this increase was not the result of increases in cash transactions. Of the \$58,879,973 in suspicious transactions reported for 2019, over \$48 million was reported in the months of October and November alone, while the values reported over the course of the remainder of the year are generally consistent with values reported for 2018.<sup>228</sup> These significant increases in the value of suspicious transactions are not matched by similar increases in the value of large cash transactions reported in the same months. In fact, the value of suspicious transactions during these months *exceeded* the total value of large cash transactions. As such, it seems clear that an increase in large cash transactions was not the source of the increase in the value of suspicious transactions at the end of 2019.<sup>229</sup>

The data should also be considered in the context of evidence that some of those working in the gaming industry at this time were concerned that Dr. German’s recommendation had led to over-reporting, as transactions were identified as suspicious where patrons sought to avoid the source-of-funds receipting requirement,

<sup>227</sup> Exhibit 784, Cuglietta #2, exhibit A.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

but were suspected of trying to avoid FINTRAC reporting.<sup>230</sup> Mr. Kroeker described the basis for these concerns in his evidence:<sup>231</sup>

Following its implementation, I grew concerned that the [source-of-funds] Directive was leading to an increase in STRs as players tried to stay under the \$10,000 buy-in mark. BCLC interviewed these players, some of whom indicated that they were buying in just below \$10,000 because they did not want to provide the casino with their banking information or wanted to avoid the inconvenience of providing a receipt. This however made it look as though they were structuring their transactions to avoid FinTRAC thresholds, which required the transactions to be reported as suspicious.

It is not possible, based on the evidence before the Commission, to determine the extent to which suspicious transaction reports following the implementation of Dr. German's recommendation could be attributed to the phenomenon described by Mr. Kroeker. However, it seems likely, based on this evidence, that some of the reporting during this time period was the product of the measures introduced in response to Dr. German's recommendation and that the impact of those measures on transactions that would have been reported in their absence was even more pronounced than suggested by the data set out above.

I heard differing views on whether the cash conditions program or Dr. German's first interim recommendation was more instrumental in reducing large, suspicious cash transactions. The cash conditions program pursued by BCLC since 2015 made incremental progress in reducing the number and cumulative value of large, suspicious cash transactions, such that after three years there had been a significant reduction, but not elimination, of such transactions. In contrast, Dr. German's interim recommendation, which was implemented when the industry was still plagued by an unacceptable level of large, suspicious cash transactions, essentially put an immediate end to such transactions, ridding the industry of the problem of money laundering through large, suspicious cash transactions, which it had wrestled with for the better part of a decade.

## **Impact on Large Cash Transactions**

The impact of Dr. German's first interim recommendation is also observed in large cash transactions. Data for large cash transactions prior to and following implementation of this recommendation are set out in Table 12.3:<sup>232</sup>

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230 Evidence of S. Lee, Transcript, October 27, 2020, pp 119–120; Exhibit 490, Kroeker #1, para 231.

231 Exhibit 490, Kroeker #1, para 231.

232 Exhibit 482, Cuglietta #1, exhibit A.

**Table 12.3: Number of Large Cash Transaction Reports (LCTRs), 2014–2019**

<b>Time Period</b>	<b>Total LCTRs</b>	<b>LCTRs \$50,001–\$100,000</b>	<b>LCTRs over \$100,000</b>
Jan–Jun 2014	17,400	1,226	1,013
Jul–Dec 2014	17,320	1,176	868
Jan–Jun 2015	17,739	1,208	793
Jul–Dec 2015	17,917	907	669
Jan–Jun 2016	19,479	796	470
Jul–Dec 2016	18,117	313	192
Jan–Jun 2017	18,142	221	67
Jul–Dec 2017	18,477	231	72
<b>Jan–Jun 2018</b>	<b>7,307</b>	<b>48</b>	<b>9</b>
<b>Jul–Dec 2018</b>	<b>6,204</b>	<b>11</b>	<b>1</b>
<b>Jan–Jun 2019</b>	<b>4,469</b>	<b>16</b>	<b>2</b>
<b>Jul–Dec 2019</b>	<b>5,500</b>	<b>27</b>	<b>11</b>

Source: Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020, exhibit A.

Changes to the total value of large cash transactions reported during this time period are set out in Table 12.4:<sup>233</sup>

**Table 12.4: Value of Large Cash Transactions Reported Annually, 2014–2019**

<b>Year</b>	<b>Total Value of Transactions Reported as Large Cash Transactions</b>
2014	\$1,184,603,543
2015	\$968,145,428
2016	\$739,620,654
2017	\$514,171,075
<b>2018</b>	<b>\$173,836,139</b>
<b>2019</b>	<b>\$130,112,898</b>

Source: Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020, exhibit A.

<sup>233</sup> Exhibit 784, Cuglietta #2, p 4; see also Exhibit 482, Cuglietta #1, exhibit A.

## Impact on Revenue

This differential impact on large cash transactions – as opposed to suspicious transactions – hints at a possible impact on casino revenue. This impact on business, at least at the River Rock Casino,<sup>234</sup> was referred to directly in some of the evidence before the Commission. Mr. Doyle, for example, identified that Dr. German’s recommendation resulted in a decrease in Great Canadian Gaming Corporation’s gross gaming revenue from the River Rock Casino.<sup>235</sup> Similarly, Mr. Ennis recalled that Dr. German’s recommendation led to a drop-off in business at the River Rock,<sup>236</sup> particularly among patrons playing in the \$10,000 to \$25,000 range, many of whom reduced their play to below the \$10,000 source-of-funds threshold.<sup>237</sup> Mr. Lightbody recalled that the measures led to a reduction in high-limit table revenue, but that this reduction did not materially affect BCLC’s overall revenue.<sup>238</sup>

Data provided by BCLC is consistent with Mr. Lightbody’s evidence that these measures led to a decline in table games revenue, as indicated in Table 12.5:<sup>239</sup>

**Table 12.5: BCLC Annual Gaming Revenue, 2014–2019**

<b>Year</b>	<b>BCLC Total Gaming Revenue</b>	<b>BCLC Casino Revenue</b>	<b>BCLC Casino Table Games Revenue</b>
2014	\$2,199,888,811.50	\$1,715,659,976.61	\$552,298,271.88
2015	\$2,320,955,600.66	\$1,753,783,201.60	\$547,846,607.14
2016	\$2,374,235,661.38	\$1,799,626,701.64	\$519,231,380.60
2017	\$2,465,003,394.96	\$1,877,201,427.69	\$512,566,847.13
<b>2018</b>	<b>\$2,621,696,561.41</b>	<b>\$1,946,359,044.22</b>	<b>\$499,852,938.75</b>
<b>2019</b>	<b>\$2,573,202,084.79</b>	<b>\$1,908,484,756.52</b>	<b>\$457,995,689.42</b>

Source: Exhibit 785, Affidavit #1 of Richard Block, affirmed on March 9, 2021.

As discussed previously with respect to the revenue impact of the cash conditions program, it is important to bear in mind that anti-money laundering measures are only one of many factors that influence revenue, and it would be incorrect to assume that any changes in revenue can be attributed solely or primarily to the measures implemented following Dr. German’s recommendation. As an example, the implementation of Dr. German’s recommendation coincided with changes to operational services agreements with gaming service providers that resulted in the Province retaining a greater share of high-limit table game revenue, which might have caused service providers to shift their focus away from

<sup>234</sup> Exhibit 530, Affidavit #1 of Patrick Ennis, made on January 22, 2021 [Ennis #1], para 103.

<sup>235</sup> Evidence of T. Doyle, Transcript, February 10, 2021, p 61.

<sup>236</sup> Exhibit 530, Ennis #1, para 100.

<sup>237</sup> Ibid, para 1010.

<sup>238</sup> Evidence of J. Lightbody, Transcript, January 28, 2021, p 77.

<sup>239</sup> Exhibit 785, Affidavit #1 of Richard Block, affirmed on March 9, 2021 [Block #1], exhibit A.

this line of business.<sup>240</sup> Still, the revenue data set out above, together with the evidence of those operating in the industry at the time, suggest that Mr. Lightbody was correct in his assessment that implementation of Dr. German's first recommendation led to a decline in casino table games revenue.

Table 12.6 sets out annual revenue for the five major Lower Mainland casinos (rounded to the nearest dollar):<sup>241</sup>

**Table 12.6: Annual Revenue for Lower Mainland Casinos, 2014–2019**

<b>Year</b>	<b>Hard Rock / Boulevard</b>	<b>Grand Villa</b>	<b>Starlight</b>	<b>River Rock</b>	<b>Parq Vancouver / Edgewater</b>
2014	\$123,410,821	\$193,491,767	\$105,389,182	\$416,917,884	\$140,715,164
2015	\$133,105,863	\$204,073,275	\$116,887,610	\$375,795,284	\$159,551,177
2016	\$149,332,256	\$202,752,704	\$124,745,678	\$339,895,294	\$165,909,895
2017	\$158,941,195	\$215,377,969	\$127,355,250	\$331,910,492	\$175,189,007
<b>2018</b>	<b>\$138,797,528</b>	<b>\$244,656,853</b>	<b>\$128,974,815</b>	<b>\$328,288,140</b>	<b>\$203,438,990</b>
<b>2019</b>	<b>\$149,720,931</b>	<b>\$239,694,388</b>	<b>\$125,353,993</b>	<b>\$304,233,779</b>	<b>\$174,415,032</b>

Source: Exhibit 785, Affidavit #1 of Richard Block, affirmed on March 9, 2021.

The impact of Dr. German's source-of-funds recommendation is difficult to discern from this table. While it appears to corroborate the evidence of Mr. Doyle and Mr. Ennis that the new measures negatively affected River Rock Casino revenue, the data for the other four casinos suggests that there were other factors at play during this time period. Revenue for each of the Grand Villa, Starlight, and Parq Vancouver casinos increased in 2018 (the first full year of Parq's existence), before falling in 2019, while revenue for the Hard Rock fell from 2017 to 2018 before rebounding in 2019. It seems highly unlikely that these trends are attributable solely to the new source-of-funds measures and it is impossible, based on the evidence before the Commission, to determine the extent and the nature of that impact.

## **BCLC Proposals for Further Enhancements to the AML Regime**

Following receipt of Dr. German's interim recommendations, and while Dr. German's review was ongoing, BCLC proposed several additional measures intended to reduce the risk of money laundering in the province's casinos. These measures included a hard cap on the value of cash buy-ins and payouts, removal of limits on the amount

<sup>240</sup> Evidence of R. Kroeker, Transcript, January 26, 2021, pp 122–23; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 64–65, 67.

<sup>241</sup> Exhibit 785, Block #1, exhibit A.

that could be paid out by convenience cheque, elimination of minimum deposits for PGF accounts, and a ban on the acceptance of cash sourced to money services businesses.<sup>242</sup> I discuss these proposals below.

## Proposed Hard Cap on Cash Buy-Ins

Mr. Lightbody explained that, after BCLC received Dr. German’s interim recommendations, he was advised by Mr. Kroeker and Mr. Desmarais that implementation of the recommendation meant that BCLC would be moving away from a strictly “risk-based” anti-money laundering program.<sup>243</sup> According to Mr. Lightbody, this came as a surprise to Mr. Desmarais and Mr. Kroeker, who expected that Dr. German would favour risk-based approaches given his anti-money laundering expertise.<sup>244</sup> Mr. Lightbody’s evidence was that these comments prompted him to ask his two vice-presidents whether there were additional measures that BCLC could implement to mitigate concerns related to unsourced cash if it was no longer strictly adhering to a risk-based approach to anti-money laundering.<sup>245</sup> Mr. Desmarais and Mr. Kroeker advised that they had been considering a hard cap on cash buy-ins.<sup>246</sup>

In his evidence, Mr. Kroeker explained that he had begun discussing the idea of a hard cap on cash buy-ins with Mr. Desmarais the previous fall.<sup>247</sup> Mr. Kroeker’s evidence was that the public and political discourse at that time indicated to him that a strictly risk-based approach may no longer have been acceptable in British Columbia and that there may have been a need to move toward more prescriptive approaches, despite FINTRAC guidance that measures such as cash caps were not required.<sup>248</sup> Mr. Lightbody’s evidence was that this work had begun in anticipation of receiving direction from GPEB that BCLC implement a cash cap in response to a recommendation made in the report prepared by MNP, discussed in Chapter 13.<sup>249</sup>

Even before Mr. Kroeker and Mr. Desmarais raised the issue with Mr. Lightbody, efforts to examine the option of a hard cap on cash buy-ins had advanced to the point where BCLC had obtained two separate analyses of the revenue impact of imposing cash caps at different monetary values.<sup>250</sup> The first of these was an analysis prepared by consulting firm HLT Advisory, which concluded that a cash cap set at \$10,000 would have resulted in a loss in “net win” between \$34.6 million and \$87.7 million annually

242 Evidence of R. Kroeker, Transcript, January 26, 2021, p 199 and Transcript, January 25, 2021, pp 144, 148, 155; Exhibit 490, Kroeker #1, paras 146, 201, 217.

243 Exhibit 505, Lightbody #1, para 291.

244 Ibid.

245 Ibid.

246 Ibid.

247 Exhibit 490, Kroeker #1, para 198.

248 Ibid, para 198; Evidence of R. Kroeker, Transcript, January 26, 2021, p 198.

249 Evidence of J. Lightbody, Transcript, January 29, 2021, p 79.

250 Exhibit 490, Kroeker #1, paras 199–200 and exhibits 108, 109.

and a total annual income loss to BCLC of \$18.6 million to \$47.2 million.<sup>251</sup> The analysis also considered potential losses to service providers, concluding that Great Canadian Gaming Corporation would have lost \$7.8 million to \$19.9 million, Gateway Casinos & Entertainment Limited \$3.1 million to \$8.8 million, and the Parq Vancouver Casino \$3.4 million to \$8.8 million.<sup>252</sup>

BCLC also sought insight from HLT Advisory as to job losses that may have resulted from the lost business.<sup>253</sup> HLT estimated that the equivalent of approximately 50 full-time positions would be lost if a \$10,000 hard cap on cash buy-ins was implemented.<sup>254</sup> This additional information was provided in an exchange of emails between Mr. Desmarais and the managing director of HLT Advisory, Robert Scarpelli.<sup>255</sup> The exchange suggests that this analysis was sought in part to arm BCLC to argue *against* the imposition of a hard cap on cash buy-ins if proposed by GPEB. When requesting the analysis, Mr. Desmarais advised that the data was “just something to have in our back pocket during conversations with government,” while in his response, Mr. Scarpelli seemed to advise Mr. Desmarais as to how BCLC could use this information to oppose a cash cap:<sup>256</sup>

Just have to be aware that this issue is a double edge sword ... if employment loss is significant, then Minister can say that [service providers] can reduce costs to minimize impact on operations ... better argument to say staff loss is minimum and revenue loss will drop right to bottom line of [service providers] ... the return on investment argument probably better ... that is where we ended up at in our thinking.

In his evidence before the Commission, Mr. Desmarais denied that BCLC intended to use potential job losses to dissuade government from imposing a cash cap and attempted to cast these emails as a neutral attempt to gather information about the possible implications of such a measure.<sup>257</sup> I cannot reconcile these emails with Mr. Desmarais’s explanation and find that the HLT Advisory analysis – including with respect to potential job losses – was obtained at least in part in the hope that it would arm BCLC with information it could use to argue against the imposition of a hard cash cap if proposed by GPEB.

The second analysis was conducted internally by BCLC’s casino unit<sup>258</sup> and examined the financial impact of a cap set at \$20,000.<sup>259</sup> This analysis concluded that the resulting

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251 Ibid, p 825, exhibit 109.

252 Ibid.

253 Exhibit 526, Email exchange between Brad Desmarais to Robert Scarpelli, re SP Job Loss in the Event of Reduction of High Limit Rooms and/or Elimination of Cash Buy-Ins over \$10K (October 12, 2017) [Desmarais Email October 2017]; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 40–41.

254 Exhibit 526, Desmarais Email October 2017; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 40–41.

255 Exhibit 526, Desmarais Email October 2017.

256 Ibid.

257 Evidence of B. Desmarais, Transcript, February 2, 2021, pp 40–41.

258 Exhibit 490, Kroeker #1, para 199.

259 Ibid, exhibit 108.

decline in net win would likely be between \$23 million and \$42 million annually, with the most likely scenario being a decline of \$29 million.<sup>260</sup> In his evidence, Mr. Kroeker described this analysis as concluding that a cash cap set between \$20,000 and \$25,000 would almost entirely eliminate very large, concerning cash transactions “while allowing the business to operate,” whereas “an immediate move to a cash cap below \$25,000 could create a risk that one or more service providers could become insolvent.”<sup>261</sup>

Based on these analyses, BCLC concluded that \$25,000 was the appropriate value for a hard cap on cash buy-ins in the province’s casinos.<sup>262</sup> The rationale for setting the cap at this level was explained by Mr. Lightbody:<sup>263</sup>

Prior to January 17, 2018, I received advice and rationale from Mr. Kroeker and Mr. Desmarais about a \$25,000 cash cap. I was advised that 94% of cash entering casinos was in amounts under \$25,000 and it represented 77% of the dollar value of large cash transactions. A cap at \$25,000 would eliminate bulk cash over that amount and allow BCLC to focus its large cash transaction Know your Customer requirement for FinTRAC. I recall that Mr. Kroeker and Mr. Desmarais advised me that, in the course of their review, they looked at player risk levels and found that the vast majority of players buying in under \$25,000 were either low or no risk, whereas players bringing in over \$25,000 were rated as medium or high risk. A \$25,000 cash cap thus made sense. I learned that Mr. Kroeker and Mr. Desmarais had initial conversations with Service Providers about a \$25,000 cash cap, and that while they were not happy they understood the need. I also learned that Mr. Kroeker and Mr. Desmarais had discussions with FinTRAC who advised it was appropriate to do enhanced due diligence on buy ins over \$25,000.

While there is some inconsistency in the evidence as to precisely when the decision to pursue this measure was made,<sup>264</sup> it seems clear that by the first week of January 2018 at the latest, Mr. Lightbody, Mr. Kroeker, and Mr. Desmarais had agreed to move forward with it.<sup>265</sup> On January 12, 2018 – two days after the implementation of Dr. German’s interim recommendation – Mr. Lightbody raised with Mr. Scott and Mr. Fyfe the prospect of a \$25,000 cash cap and advised that further information would be forthcoming in the near future.<sup>266</sup>

Five days later, on January 17, 2018, Mr. Lightbody provided the additional information promised. He advised Mr. Fyfe and Mr. Godfrey that BCLC had decided to implement a \$25,000 hard cap on cash buy-ins and shared the rationale he had been

<sup>260</sup> Ibid.

<sup>261</sup> Ibid, para 199 and exhibit 110.

<sup>262</sup> Ibid, para 201; Evidence of R. Kroeker, Transcript, January 25, 2021, p 144.

<sup>263</sup> Exhibit 505, Lightbody #1, para 295.

<sup>264</sup> Exhibit 490, Kroeker #1, para 201; Evidence of R. Kroeker, Transcript, January 25, 2021, p 144; Exhibit 505, Lightbody #1, para 292.

<sup>265</sup> Exhibit 490, Kroeker #1, para 201; Evidence of R. Kroeker, Transcript, January 25, 2021, p 144; Exhibit 505, Lightbody #1, para 292.

<sup>266</sup> Exhibit 505, Lightbody #1, para 294.

provided by Mr. Desmarais and Mr. Kroeker.<sup>267</sup> Mr. Lightbody also advised that he had shared this intention with Mr. Mazure of GPEB and that Mr. Mazure had no concerns about the initiative.<sup>268</sup>

Later that day, Mr. Lightbody received a phone call from Mr. Fyfe about the proposal.<sup>269</sup> Mr. Lightbody's evidence was that Mr. Fyfe advised him that Mr. Eby was unhappy that the cash cap proposal had come forward while Dr. German's review was underway.<sup>270</sup> Mr. Fyfe asked Mr. Lightbody not to proceed with the proposal until he had spoken with Dr. German.<sup>271</sup> This response was concerning to Mr. Lightbody, who understood from previous conversations with Dr. German "that [Dr. German] did not want to stop BCLC from doing its work."<sup>272</sup>

Mr. Fyfe's evidence was generally consistent with that of Mr. Lightbody. He recalled discussing the cash cap proposal with Mr. Lightbody and passing the information on to Mr. Eby.<sup>273</sup> Mr. Fyfe recalls that Mr. Eby was concerned about new initiatives being implemented while Dr. German's review was ongoing and asked Mr. Fyfe to convey those concerns to Mr. Lightbody, which he did.<sup>274</sup> In his evidence, Mr. Fyfe confirmed that it was not the substance of the proposal, but rather the timing and the risk that any measures implemented at that time may have proved inconsistent with Dr. German's eventual recommendations that was of concern to Mr. Eby.<sup>275</sup> Mr. Scott was also involved in these communications. His evidence was consistent with that of Mr. Fyfe in this regard.<sup>276</sup>

Mr. Eby also gave evidence of his reaction to learning of BCLC's intention to implement a cap on cash transactions.<sup>277</sup> Mr. Eby agreed that he directed BCLC to pause implementation of the cash cap and to consult with Dr. German on the measure.<sup>278</sup> Mr. Eby explained the basis for this direction as follows:<sup>279</sup>

[M]y concern was that BCLC had not had sufficient time to evaluate his policy proposals. They were not on the radar in any of our previous discussions, they were not previous policy proposals from the BC Lottery Corporation. I didn't know all the background ... what work they'd done to bring this forward as an option compared to many of the other recommendations

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267 Ibid, para 297.

268 Ibid, para 297 and exhibit 159.

269 Ibid, para 298.

270 Ibid.

271 Ibid; Evidence of D. Scott, Transcript, February 8, 2021, pp 147-49.

272 Exhibit 505, Lightbody #1, para 298; Exhibit 515, Five pages of notes of James Lightbody, dated 1-17-18, pp 55, 56, 60, 63, 64; Exhibit 516, One page of notes of James Lightbody, dated 1-17-18, p 54; Exhibit 490, Kroeker #1, paras 202, 204; Evidence of R. Kroeker, Transcript, January 26, 2021, p 203.

273 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 32-33, 54-55.

274 Ibid.

275 Ibid, pp 37-38, 104.

276 Evidence of D. Scott, Transcript, February 8, 2021, pp 148-49, 184-85, 192-93.

277 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 71-73.

278 Ibid, p 72.

279 Ibid, pp 72-73.

that I'd had. And it was something that I'd asked Dr. German to take on, which is to evaluate all these different policy responses to the problem that we faced and to provide the best recommendations to government about how to move forward. And so, I suggested to them that ... if they thought that this was the way forward that they should present that to Dr. German and he would be advising me on that.

Consistent with Mr. Fyfe's evidence, Mr. Eby explained that the source of his concern was not the substance of the proposal, but rather BCLC's failure to engage with the process being undertaken by Dr. German:<sup>280</sup>

No, I wasn't furious that they were proposing a cash cap. I was definitely frustrated that they didn't seem to understand the process that I had set up where Dr. German would be evaluating policy recommendations and advising government on the best path forward. I thought that they should be interacting directly with Dr. German and that they should be having active conversations about the best policy route forward with the Gaming Policy [and] Enforcement Branch and any other experts that Dr. German wanted to talk to about the best way forward. My vision had been that there would be this conversation and evaluation and an iterative process between all of these different actors and Dr. German would be doing that work through his review, and so my frustration was that that didn't seem to be registering with the BC Lottery Corporation.

As requested by Mr. Eby, Mr. Lightbody contacted Dr. German to seek his views on BCLC's proposed cash cap.<sup>281</sup> Mr. Lightbody's evidence was that Dr. German advised against implementing the cash cap contemplated by BCLC, as it had not yet had an opportunity to observe the impact of the measures implemented in response to Dr. German's first interim recommendation.<sup>282</sup> Mr. Lightbody recalled that Dr. German cautioned against a prescriptive approach and indicated that he had not included a cash cap in his interim recommendations, as he was not certain that BCLC had the right cash alternatives in place.<sup>283</sup>

Dr. German also gave evidence of this discussion with Mr. Lightbody.<sup>284</sup> He recalled advising Mr. Lightbody that he was not contemplating recommending a cash cap at the time of their conversation.<sup>285</sup> Dr. German did not recall advising Mr. Lightbody that BCLC should not pursue a cash cap because it had not yet observed the impact of

280 Ibid, pp 73–74.

281 Exhibit 490, Kroeker #1, para 204; Exhibit 505, Lightbody #1, para 300; Evidence of J. Lightbody, Transcript, January 29, 2021, p 81; Evidence of M. de Jong, Transcript, April 23, 2021, pp 57–58; Evidence of P. German, Transcript, April 13, 2021, p 58.

282 Exhibit 505, Lightbody #1, para 300; Exhibit 490, Kroeker #1, para 204.

283 Exhibit 505, Lightbody #1, para 300.

284 Evidence of P. German, Transcript, April 13, 2021, pp 57–58.

285 Ibid.

Dr. German's first interim recommendation.<sup>286</sup> Following this conversation, BCLC did not move forward with the proposed cash cap.<sup>287</sup>

In his final report, Dr. German recommended against the imposition of a hard cap on cash buy-ins.<sup>288</sup> In his evidence, Dr. German explained the rationale for this recommendation as follows:<sup>289</sup>

[A]s part of the terms of reference, I was asked to come forward with interim recommendations if I saw the need for them. And it seemed to me that it was important to move fairly quickly in terms of attempting to stop the bleeding, so to speak. Stop the dirty money.

Now, the dirty money had already been slowing down ever since 2015, but it was still coming in as far as we could see. And how do you stop that? And all of these issues with casinos, it's about source of funds, it's about knowing where the money comes from. The Attorney General had invited interim recommendations and I made two interim recommendations at that time. One was with respect to obtaining a source of funds declaration for amounts over \$10,000 and there was another related to resourcing. That was the purpose for the interim recommendation. Both before that interim recommendation and after, there was always discussion about should there be a cap on the amount of money going into the casinos.

And as a result of the inquiries that I had made internationally, in the United States, in the literature, it appeared that a cash cap was not the norm in casino systems in other places because why would you put a cap on legitimate money that is being used to gamble[?] If a person has \$100,000 and they want to gamble with that \$100,000, why not? The issue is the source of funds and the source of wealth.

So, from my perspective, that made a lot of sense. Let's tighten up on where the money is coming from, where the money was generated as opposed to an arbitrary cap, whether it's – and to try to figure out what a cap would be ... almost impossible. I mean, that would just be quite arbitrary, 3,000, 10,000, 100,000. I don't know how you would come to that conclusion.

So, my view was it wasn't a common practice in the industry, internationally, and it really was an issue of source of funds. And that flows through everything we were doing[,] back to source of funds.

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286 Ibid, p 58.

287 Exhibit 505, Lightbody #1, para 303.

288 Evidence of P. German, Transcript, April 12, 2021, pp 61–63, 114 and Transcript, April 13, 2021, pp 17–18.

289 Evidence of P. German, Transcript, April 12, 2021, pp 61–63.

Mr. Lightbody’s evidence was that he was surprised by this recommendation as he expected that BCLC would be able to implement the planned hard cap on cash buy-ins once Dr. German had completed his report.<sup>290</sup>

There is no hard cash cap in place in British Columbia’s casinos today, though the requirement that flowed from Dr. German’s interim recommendation that only sourced cash will be accepted in transactions of \$10,000 or more remains in place.

## January 26, 2018, Email from Mr. Eby

Subsequent to Mr. Lightbody’s conversation with Dr. German about the prospect of a hard cap on cash buy-ins, Mr. Eby sent Mr. Lightbody an email reiterating Mr. Eby’s desire that BCLC refrain from immediately implementing any new anti–money laundering initiatives.<sup>291</sup> Instead, Mr. Eby requested that BCLC present any policy reform proposals to Dr. German, along with any suggestions about implementation, reminding Mr. Lightbody that Dr. German was empowered to make immediate recommendations to Mr. Eby.<sup>292</sup> Mr. Eby offered the following rationale for these requests:<sup>293</sup>

Absent coordination with Mr. German, my concern is that any proposal implemented by GPEB or BCLC independently from the ongoing review process could result in consequences as serious as interfering with active law enforcement investigations or could prevent necessary resources from being dedicated to higher priority initiatives identified by Mr. German.

In his evidence, Mr. Lightbody professed to having been perplexed and frustrated by this level of intervention from government.<sup>294</sup> He sought clarification from Mr. Fyfe who, according to Mr. Lightbody, advised that Mr. Eby was attempting to communicate to BCLC that he did not want new policies implemented before Dr. German’s report was released.<sup>295</sup> Mr. Lightbody testified that, while he understood Mr. Eby’s desire to wait for the results of Dr. German’s review, Dr. German had specifically advised BCLC that he did not want to interfere with BCLC’s work.<sup>296</sup> Mr. Lightbody considered cash reduction strategies to be an important part of BCLC’s work.<sup>297</sup>

Based on the evidence before me, Mr. Eby’s request that BCLC not introduce further reforms without consulting with Dr. German seems eminently sensible. Dr. German was in the process of reviewing the gaming industry’s anti–money laundering regime with the intention of making recommendations to improve on existing practices. He had already

<sup>290</sup> Exhibit 505, Lightbody #1, para 303.

<sup>291</sup> Ibid, exhibit 160.

<sup>292</sup> Ibid.

<sup>293</sup> Ibid.

<sup>294</sup> Ibid, paras 301–2.

<sup>295</sup> Ibid.

<sup>296</sup> Ibid, para 309.

<sup>297</sup> Ibid.

delivered interim recommendations and BCLC had acted swiftly to implement his first interim recommendation. Mr. Eby did not tell BCLC that a cap on cash transactions could not be implemented; he simply suggested they consult with Dr. German, who could have immediately recommended such a measure, had he thought it advisable.

## **Further AML Reforms Proposed During German Review**

BCLC subsequently proposed further changes to its anti-money laundering controls as Dr. German's review was ongoing.<sup>298</sup> These measures included capping the amount that could be paid out to a patron in cash in a 24-hour period at \$25,000, removing limits on the amount that could be paid out by convenience cheque (i.e., funds returned to patrons that were not verified winnings), and eliminating the minimum deposit of \$10,000 required to open a PGF account.<sup>299</sup> In his evidence, Mr. Kroeker explained that these measures, which included those aimed at reducing the volume of cash flowing *out* of casinos, were motivated in part by complaints from financial institutions that customers were bringing them large amounts of unverified cash and claiming the cash had been obtained from casinos.<sup>300</sup>

BCLC had previously sought to roll out some of these changes in 2016 but renewed those efforts in early 2018 as Dr. German's review was ongoing.<sup>301</sup> Based on the evidence before the Commission, it appears that the implementation of these measures was discussed in a meeting of BCLC anti-money laundering staff on January 3, 2018<sup>302</sup> and again in a meeting involving Mr. Lightbody, Mr. Desmarais, and Mr. Kroeker that took place toward the end of January 2018.<sup>303</sup> BCLC ultimately decided not to proceed with implementation of these measures at this time.<sup>304</sup>

## **August 2018 Attempt to Implement Further AML Measures**

Unlike the proposed cash cap, the cap on cash payouts, removal of limits on convenience cheques, and elimination of minimum deposits for opening PGF accounts were not addressed in Dr. German's report.<sup>305</sup> BCLC took this as an indication that it was free to proceed with implementation of these measures.<sup>306</sup> On August 1, 2018, BCLC

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298 Exhibit 148, Tottenham #1, exhibit 64.

299 Exhibit 490, Kroeker #1, para 146; Evidence of R. Kroeker, Transcript, January 26, 2021, p 199 and Transcript, January 25, 2021, p 148; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 151–52 and Transcript, November 5, 2020, pp 27–29; Exhibit 148, Tottenham #1, para 175 and exhibits 64–69.

300 Exhibit 490, Kroeker #1, para 145.

301 Ibid, para 148 and exhibit 70; Evidence of R. Kroeker, Transcript, January 25, 2021, p 148; Exhibit 148, Tottenham #1, paras 175–81.

302 Exhibit 490, Kroeker #1, para 146 and exhibit 69.

303 Exhibit 148, Tottenham #1, exhibit 64.

304 Ibid, para 148, exhibit 70; Evidence of R. Kroeker, Transcript, January 25, 2021, p 148; Exhibit 148, Tottenham #1, paras 177, 179, and exhibits 65, 69; Evidence of D. Tottenham, Transcript, November 5, 2020, p 28 and Transcript, November 10, 2020, pp 19–20, 151–52.

305 Exhibit 832, *Dirty Money 1*.

306 Evidence of D. Tottenham, Transcript, November 10, 2020, p 152; Exhibit 490, Kroeker #1, para 149.

issued a directive to service providers that these changes were to be implemented on August 7, 2018.<sup>307</sup>

The following day, Mr. Kroeker received two separate telephone calls from GPEB – one from Anna Fitzgerald, executive director of GPEB’s compliance division, and the other from Mr. MacLeod, GPEB’s general manager.<sup>308</sup> Both Ms. Fitzgerald and Mr. MacLeod requested that BCLC withdraw the directive in order to provide GPEB further time to consider the proposed measures.<sup>309</sup> BCLC withdrew the directive, delaying its implementation, as requested.<sup>310</sup>

On August 9, 2018, Mr. Lightbody received a letter from Mr. MacLeod requesting that BCLC continue to delay the proposed measures.<sup>311</sup> In this letter, Mr. MacLeod tied the request to ongoing work aimed at implementation of Dr. German’s recommendations:<sup>312</sup>

Thank you for suspending the implementation of ... British Columbia Lottery Corporation’s (BCLC) directive that updated Patron Gaming Fund (PGF) account and convenience cheque policies and procedures for Casino Service Providers on August 2, 2018 at my request.

As you are aware, government is initiating policy-related work stemming from the German Report recommendations through an internal deputy minister committee. Some of the recommendations overlap the areas where BCLC’s proposed changes are directed. In order to minimize the impact on service providers, these recommendations should be considered before the proposed changes are implemented. Government will decide how to move forward as quickly as possible with the best ways to implement them.

A robust Source of Funds process minimizes any incremental risk associated with the implementation of the proposed changes to the PGF and convenience cheque policies. As you know, the Gaming Policy and Enforcement Branch (GPEB) is currently undertaking an audit of the Source of Funds Directive. Preliminary findings from our audit, which has been supported by work undertaken by BCLC, have led to an extension of the audit timeframe. It is important to first determine the effectiveness of the Source of Funds process and whether the additional training undertaken by BCLC has increased compliance.

307 Exhibit 490, Kroeker #1, para 149; Exhibit 148, Tottenham #1, para 178 and exhibit 66.

308 Exhibit 490, Kroeker #1, paras 150–51.

309 Ibid, paras 150–151; Evidence of B. Desmarais, Transcript, February 2, 2021, p 129.

310 Exhibit 490, Kroeker #1, para 150; Exhibit 148, Tottenham #1, para 179.

311 Exhibit 490, Kroeker #1, para 152 and exhibit 75; Exhibit 505, Lightbody #1, para 311.

312 Exhibit 490, Kroeker #1, exhibit 75; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 20–22, 152–53; Exhibit 148, Tottenham #1, para 180 and exhibit 68.

I request you continue to hold implementation of this directive to Casino Service Providers until this audit work is complete and future direction has been established by the deputy minister committee.

Mr. MacLeod addressed the reasons for this request in his evidence.<sup>313</sup> He testified that he first became aware of these proposals approximately one week into his tenure as assistant deputy minister and general manager of GPEB.<sup>314</sup> Upon learning of the proposals, Mr. MacLeod was also advised at the time that Ms. Fitzgerald had reviewed the proposals and advised Mr. Kroeker generally that she did not have concerns about them but that they should not proceed until issues related to the implementation of Dr. German's first interim recommendation had been resolved.<sup>315</sup> However, GPEB's executive director of policy had not yet reviewed the proposals as Mr. MacLeod would have expected, and for this reason, Mr. MacLeod sought a delay in their implementation.<sup>316</sup> Subsequently, as indicated in his letter of August 9, Mr. MacLeod recommended that these measures be brought forward to the anti-money laundering deputy minister's committee established to consider Dr. German's recommendations.<sup>317</sup>

## **De-Risking of Money Services Businesses**

An additional anti-money laundering initiative proposed by BCLC in early 2018, as Dr. German's review was ongoing and shortly after delivery of his interim recommendations, was the "de-risking" of money services businesses (MSBs).<sup>318</sup> In the course of interviews conducted as part of the cash conditions program, BCLC had identified several MSBs that it considered to be suspicious.<sup>319</sup> This concern was elevated in 2017 when BCLC received information that the RCMP was engaged in a money laundering investigation that may have been connected to MSBs.<sup>320</sup>

As BCLC's concerns about MSBs grew,<sup>321</sup> Mr. Kroeker tasked BCLC's anti-money laundering unit with reviewing the risk posed by these businesses and developing policies and controls focused on mitigating that risk.<sup>322</sup> This review began in or around August 2017.<sup>323</sup> A few months later, in October 2017, BCLC was advised by FINTRAC that it needed to reassess the money laundering risk presented by MSBs,<sup>324</sup> underscoring the necessity of the work already underway.

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313 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 27–28, 124–27, 136.

314 Ibid.

315 Ibid, pp 27–28.

316 Ibid, pp 27–28, 124–27, 136.

317 Ibid, pp 28–29, 127.

318 Evidence of D. Tottenham, Transcript, November 10, 2020, p 208; Exhibit 490, Kroeker #1, paras 210–11; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 90–91.

319 Evidence of D. Tottenham, Transcript, November 5, 2020, pp 26–27; Exhibit 148, Tottenham #1, para 156; Exhibit 490, Kroeker #1, para 209.

320 Exhibit 490, Kroeker #1, paras 213–14.

321 Ibid, para 214.

322 Ibid, para 215.

323 Ibid.

324 Ibid, para 216 and exhibit 121.

Initially, BCLC contemplated the creation of a list of “approved” MSBs. Funds obtained from these businesses would be accepted by casinos as sourced funds.<sup>325</sup> As BCLC attempted to create this list, however, it eventually concluded that *all* MSBs were outside of its risk tolerance.<sup>326</sup> Mr. Kroeker described this evolution in thought in his affidavit:<sup>327</sup>

Initially, BCLC considered creating a list of approved MSBs that BCLC believed had sufficient money laundering controls in place. In the fall of 2017, however, it became clear that BCLC could not access sufficient information to properly vet and risk-assess MSBs on an individual basis. MSBs were not willing to reveal their compliance plans to BCLC. At that point, BCLC considered vetting [two MSBs]. Our inquiries revealed reported AML program compliance issues with [one of these MSBs] that precluded BCLC from being able to confidently accept transactions from that business, and because [the second of these MSBs] was understood to rely on [the first MSB] for international transactions that also precluded BCLC from accepting transactions from that service. As a result, BCLC concluded that all MSBs were beyond its risk tolerance and took the decision to direct service providers to not accept transactions involving funds from MSBs.

Mr. Lightbody kept government apprised of BCLC’s efforts in this regard throughout this process.<sup>328</sup> He recalled first raising this issue in a phone call with Mr. Scott and Mr. Fyfe in the fall of 2017.<sup>329</sup> On or about January 17, 2018, Mr. Lightbody advised Mr. Scott and Mr. Fyfe that BCLC had decided to stop accepting funds from all MSBs.<sup>330</sup> Mr. Lightbody did not recall any reaction from Mr. Fyfe or Mr. Scott to learning that BCLC intended to “de-risk” all MSBs and does not recall being asked to consult with Dr. German about this decision.<sup>331</sup>

Mr. Lightbody did recall that he later learned that Mr. Eby had expressed some concern about this measure being implemented while Dr. German’s review was ongoing.<sup>332</sup> Mr. Kroeker had more specific recollection about Mr. Eby’s reaction, but acknowledged he learned of this reaction third-hand from Mr. Lightbody, who in turn was told of Mr. Eby’s reaction from Mr. Fyfe.<sup>333</sup> Mr. Kroeker’s evidence, which is supported by his contemporaneous notes, was that he understood that Mr. Eby had expressed frustration that these changes had been implemented while Dr. German’s review was ongoing.<sup>334</sup> Mr. Fyfe recalled advising Mr. Eby of BCLC’s plan to de-risk

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325 Ibid, para 215; Exhibit 505, Lightbody #1, para 315 and exhibit 166.

326 Exhibit 490, Kroeker #1, para 217; Exhibit 505, Lightbody #1, para 315.

327 Exhibit 490, Kroeker #1, para 217.

328 Exhibit 505, Lightbody #1, para 317.

329 Ibid.

330 Ibid.

331 Ibid.

332 Evidence of J. Lightbody, Transcript, January 28, 2021, p 92.

333 Evidence of R. Duff, Transcript, January 25, 2021, p 55.

334 Exhibit 490, Kroeker #1, para 218.

MSBs.<sup>335</sup> He did not recall Mr. Eby having any particular reaction to this proposal, but understood that this proposal would have been part of the motivation behind Mr. Eby's January 26, 2018, email to BCLC.<sup>336</sup>

Whatever Mr. Eby's reaction, BCLC proceeded to implement a policy prohibiting casinos from accepting as sourced funds any form of payment from MSBs effective March 15, 2018.<sup>337</sup> As outlined in the directive imposing this policy, its effect was that, subsequent to its implementation, only receipts from accredited Canadian banks or credit unions were accepted as proof of the source of funds used in transactions in the province's casinos.<sup>338</sup>

## Conclusion of Dr. German's Review

Dr. German completed his review in March 2018 and transmitted his findings and recommendations to Mr. Eby by way of a report dated March 31, 2018.<sup>339</sup> Dr. German's report contained extensive findings and 48 recommendations.<sup>340</sup> As indicated above, it is not the function of this Commission to conduct a comprehensive review of Dr. German's work or to pass judgment on each of Dr. German's recommendations, and this Report does not purport to do so. The discussion of Dr. German's process, conclusions, and recommendations contained in this Report will be limited to what is necessary to fulfill the Commission's own Terms of Reference.

On June 27, 2018, approximately three months after receipt of Dr. German's report, Mr. Eby sent a letter to Mr. Scott and Mr. Fyfe providing direction regarding the implementation of the recommendations made by Dr. German.<sup>341</sup> In that letter, Mr. Eby identified six recommendations that he identified should be implemented immediately and directed the creation of a committee to oversee the remaining 42 recommendations:<sup>342</sup>

I recognize that the remaining recommendations vary in their complexity and requirement for analysis. Some recommendations require a significant undertaking across government. To ensure effective and timely implementation of the remaining recommendations, I direct that a committee be established to oversee the cross-government implementation.

This committee should be comprised of senior officials from the ministries of Attorney General, Public Safety and Solicitor General and

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335 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 40–41.

336 Ibid.

337 Exhibit 505, Lightbody #1, para 318; Exhibit 148, Tottenham #1, para 159 and exhibit 54; Exhibit 490, Kroeker #1, para 221.

338 Exhibit 148, Tottenham #1, exhibit 54.

339 Exhibit 832, *Dirty Money 1*.

340 Ibid.

341 Evidence of D. Eby, Transcript, April 26, 2021, p 239; Exhibit 918, Letter from David Eby to Richard Fyfe and Douglas Scott directing recommendations of Dr. German be implemented (June 27, 2018).

342 Evidence of D. Eby, Transcript, April 26, 2021, pp 239–40; Exhibit 918, Letter from David Eby to Richard Fyfe and Douglas Scott directing recommendations of Dr. German be implemented (June 27, 2018).

Finance, including officials from the Gaming Policy and Enforcement Branch and the British Columbia Lottery Corporation. This committee should engage with stakeholders and interested parties as appropriate, including police and federal agencies. Terms of reference for the committee should be prepared for my approval.

I expect that the committee will develop performance measures for successful implementation of these recommendations and, as substantive progress is made, the chair of the committee should provide my office with regular status reports.

Following Mr. Eby’s direction, an Anti–Money Laundering Deputy Minister’s Committee and an Anti–Money Laundering Secretariat were established within government to oversee implementation of Dr. German’s recommendations.<sup>343</sup> Following receipt of Dr. German’s second *Dirty Money* report, the mandate of these groups expanded,<sup>344</sup> and they became responsible for oversight of government’s anti–money laundering response across the province’s economy.<sup>345</sup>

As of February 22, 2021, the government had addressed 38 of the 48 recommendations made by Dr. German in his first report.<sup>346</sup> BCLC has implemented all of the recommendations made by Dr. German that it has the authority to implement independently.<sup>347</sup> Government having “addressed” a recommendation by Dr. German does not mean that the recommendation was implemented precisely as made by Dr. German. In some instances, government has decided not to implement Dr. German’s recommendations as made in his report or at all.<sup>348</sup> In these instances, government typically considered whether alternatives to the recommendation might have achieved the “spirit” of the recommendation, if not the letter, and, in at least some such cases, has consulted with Dr. German about possible alternatives identified.<sup>349</sup>

## Review of GPEB Enforcement Function

In response to Dr. German’s report, Mr. MacLeod initiated a review of GPEB’s “enforcement function.”<sup>350</sup> Mr. MacLeod’s evidence was that this review was specifically initiated in response to comments in Dr. German’s report indicating that

343 Evidence of D. Eby, Transcript, April 26, 2021, p 240; Exhibit 505, Lightbody #1, para 337; Exhibit 557, Scott #1, para 80; Evidence of D. Scott, Transcript, February 8, 2021, p 82.

344 Exhibit 505, Lightbody #1, para 339.

345 Exhibit 557, Scott #1, para 80; Evidence of D. Scott, Transcript, February 8, 2021, p 82.

346 Evidence of M. de Jong, Transcript, April 23, 2021, pp 136–37.

347 Exhibit 505, Lightbody #1 para 257.

348 Evidence of D. Eby, Transcript, April 26, 2021, pp 75–77; Exhibit 920, AML Secretariat Briefing Note for Decision of David Eby, re Analysis of Dr. Peter German’s Recommendations Related to Casino Reporting Obligations to FINTRAC (January 24, 2020); Evidence of R. Fyfe, Transcript, April 29, 2021, pp 30–31.

349 Evidence of R. Fyfe, Transcript, April 29, 2021, pp 31–32.

350 Exhibit 504, Skrine #1, para 11; Evidence of C. Skrine, Transcript, January 27, 2021, p 6; Evidence of S. MacLeod, Transcript, April 19, 2021, p 39.

GPEB lacked a proactive response to money laundering and to Dr. German’s second interim recommendation that GPEB increase its regulatory presence in the province’s casinos.<sup>351</sup> Mr. Skrine, then the regional director of GPEB’s Kelowna office,<sup>352</sup> was tasked with conducting this review.<sup>353</sup>

Mr. Skrine conducted his review over the course of approximately two months.<sup>354</sup> During the review, Mr. Skrine met with stakeholders from across the gaming industry, including GPEB investigators, executives from BCLC, compliance leads from the five major Lower Mainland casinos, and leadership from law enforcement in the jurisdictions in which those five casinos operate.<sup>355</sup> Mr. Skrine’s evidence was that those consulted unanimously supported GPEB “taking a more active role in the investigation of possible criminal events occurring within casinos and a more collaborative approach to intelligence sharing.”<sup>356</sup>

At the end of November 2018, Mr. Skrine submitted to Mr. MacLeod a proposal for an enhanced gaming enforcement response for GPEB.<sup>357</sup> This proposal recommended that GPEB take the following three actions:<sup>358</sup>

1. Establish a more proactive, real-time role in responding to suspicious transactions;
2. Establish a more proactive, real-time role in the investigation of crime in connection to the Gaming Policy and Enforcement Branch’s regulatory responsibilities that occur on casino property; and
3. Work with the Combined Forces Special Enforcement Unit – British Columbia and the Joint Illegal Gaming Investigation Team to move to a collaborative intelligence model with police.

These three recommendations were approved by Mr. MacLeod.<sup>359</sup> In his evidence, Mr. Skrine indicated that at the time of his testimony on January 27, 2021, GPEB considered the third of these recommendations to be fully implemented,<sup>360</sup> while implementation of the first two was ongoing.<sup>361</sup>

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351 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 39–40.

352 Exhibit 504, Skrine #1, para 9.

353 Ibid, para 11; Evidence of C. Skrine, Transcript, January 27, 2021, p 6; Evidence of S. MacLeod, Transcript, April 19, 2021, p 39.

354 Exhibit 504, Skrine #1, para 12.

355 Ibid, para 12.

356 Ibid, para 13 and exhibit A.

357 Ibid, para 14 and exhibit B.

358 Ibid.

359 Ibid, para 16.

360 Evidence of C. Skrine, Transcript, January 27, 2021, p 15.

361 Evidence of C. Skrine, Transcript, January 27, 2021, pp 12 and 14.

## Establishment of GPEB’s Enforcement Division

In addition to approving the recommendations arising from Mr. Skrine’s review, Mr. MacLeod also sought to enhance GPEB’s enforcement response by establishing a dedicated enforcement division within GPEB.<sup>362</sup> Practically, this involved removing GPEB’s intelligence and investigative functions from its compliance division – where they had been placed following the 2014 review conducted during Mr. Mazure’s tenure – and placing them within a new, independent division<sup>363</sup> in order to facilitate a shift “from reactive investigations to proactive investigations and responses.”<sup>364</sup>

In his affidavit, Mr. Skrine described some of the initial priorities identified as the enforcement division was established:<sup>365</sup>

In establishing the Enforcement Division, the initial focus was on employing a risk based approach to our casino deployment, identifying training needs, redefining GPEB’s enforcement purpose and objectives within our regulatory mandate, ensuring consistency in service delivery and file management, improving our intelligence capabilities and establishing strong stakeholder relationships with gaming industry partners and the police to ensure an effective multipronged approach to incidents that threaten the integrity of gaming.

Evident from this passage – and from both the fact and results of Mr. Skrine’s review – is the clear focus at this time on the role of GPEB’s investigators. As discussed previously in this Report, prior to this time, the role of GPEB’s investigators – at least with respect to suspicious transactions – was largely reactive and limited to preparation of reports based on information provided by BCLC and service providers. The discussion that follows reviews the evidence before the Commission of how the role and deployment of investigators has evolved under the new enforcement division.

## Evolution of the Role of GPEB Investigators Under the Enforcement Division

The creation of GPEB’s enforcement division appears to have been accompanied by a near-complete reinvention of GPEB’s investigations program. The associated changes included an overhaul of training for investigators,<sup>366</sup> reforms made to its file management system,<sup>367</sup> and the development of new standard operating procedures and communication protocols,<sup>368</sup> among other changes. This Report will not detail all

<sup>362</sup> Exhibit 504, Skrine #1, para 18; Evidence of C. Skrine, Transcript, January 27, 2021, p 6.

<sup>363</sup> Ibid.

<sup>364</sup> Exhibit 504, Skrine #1, para 19.

<sup>365</sup> Ibid, para 21.

<sup>366</sup> Ibid, paras 24 and 27, and exhibits F, G and H; Evidence of C. Skrine, Transcript, January 27, 2021, pp 31–33 and 49–50.

<sup>367</sup> Exhibit 504, Skrine #1, para 56, exhibit O; Evidence of C. Skrine, Transcript, January 27, 2021, pp 45–46.

<sup>368</sup> Exhibit 504, Skrine #1, para 47.

of the changes made to GPEB’s investigative and enforcement functions at this time and will instead focus on changes made in three related areas: (a) how investigators are deployed in casinos, (b) the role of investigators deployed in casinos, and (c) the Branch’s intelligence function.

### ***Deployment of GPEB Investigators in Casinos***

As discussed above, the second of Dr. German’s interim recommendations made on November 29, 2017, was that “a GPEB investigator be on shift and available to the high volume casino operators in the Lower Mainland, on a 24/7 basis.”<sup>369</sup> Like BCLC with respect to the first of Dr. German’s interim recommendations, GPEB quickly took action to implement this recommendation by hiring six new investigators and by adjusting the schedules of existing staff to improve coverage during peak hours.<sup>370</sup>

This recommendation was reiterated – but also qualified as an interim measure – in Dr. German’s final report recommendation 32:<sup>371</sup>

That the Regulator provide a 24/7 presence in the major Lower Mainland casinos, until a designated policing unit is in place.

In response to these recommendations, GPEB undertook an analysis of data, including the timing of unusual financial transaction reporting, large cash transaction reporting, PGF account openings, and reporting pursuant to section 86 of the *Gaming Control Act*, SBC 2002, c 14, to identify peak periods requiring investigator deployment in Lower Mainland casinos.<sup>372</sup>

This analysis identified a daily 14-hour “peak period” in casinos.<sup>373</sup> GPEB has added additional resources so that it is able to provide a presence in the five major Lower Mainland casinos during this 14-hour peak period, seven days a week, but has not established a 24-hour presence in the sense of having an investigator physically present in each of those casinos at every hour of every day.<sup>374</sup> Mr. MacLeod’s evidence was that GPEB is satisfied with the current level of deployment.<sup>375</sup> While Mr. MacLeod acknowledged that there is a need to constantly reassess the deployment of GPEB investigators, he did not, as of the date of his evidence on April 19, 2021, see a need for in-person presence by GPEB investigators at times of low activity in casinos.<sup>376</sup>

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<sup>369</sup> Exhibit 832, *Dirty Money 1*, p 244.

<sup>370</sup> Evidence of C. Skrine, Transcript, January 27, 2021, p 68; Exhibit 541, Affidavit #1 of John Mazure, sworn on February 4, 2021 [Mazure #1], para 211.

<sup>371</sup> Exhibit 832, German Report, p 19.

<sup>372</sup> Exhibit 504, Skrine #1, paras 22–23; Evidence of C. Skrine, Transcript, January 27, 2021, pp 68–71.

<sup>373</sup> Evidence of C. Skrine, Transcript, January 27, 2021, pp 70–71; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 43–44.

<sup>374</sup> Evidence of S. MacLeod, Transcript, April 19, 2021, pp 43–44.

<sup>375</sup> *Ibid*, pp 44–45.

<sup>376</sup> *Ibid*.

## **Role of Investigators Present in Casinos**

This expanded deployment of GPEB investigators in the province’s casinos has also been accompanied by changes in the role played by investigators when present in casinos, including with respect to suspicious transactions.<sup>377</sup> In particular, contrary to the past practices of GPEB and the understanding held by some of those previously responsible for leading the GPEB’s investigative functions, GPEB has now determined that, in some circumstances, it is appropriate for its investigators to engage with and interview casino patrons with respect to suspicious transactions.<sup>378</sup> I commend GPEB for this shift in position which was, in my view, long overdue.

Mr. Skrine gave evidence that these types of interviews will assist in determining whether a patron’s source of funds and/or wealth is legitimate and, if not, identifying the type of illicit activity through which the funds and/or wealth may have been generated.<sup>379</sup> Mr. MacLeod’s evidence was that, while there is some risk to investigator safety in interviewing patrons, it is not a significant one, given that casinos are secure environments.<sup>380</sup>

In addition to interviewing patrons, additional actions identified by Mr. Skrine and/or Mr. MacLeod that could be taken by GPEB investigators in response to suspicious transactions included alerting and providing information to law enforcement, including JIGIT,<sup>381</sup> directing service provider staff to refuse transactions,<sup>382</sup> and seizing cash while waiting for police attendance.<sup>383</sup>

This evolution in the role of GPEB investigators required administrative changes and the support of Mr. MacLeod, but did not require any legislative changes or changes to the powers or authority of GPEB investigators.<sup>384</sup> While GPEB had enhanced its deployment of investigators in casinos prior to the onset of the COVID-19 pandemic, these changes to the role of investigators had largely not been implemented by this time.<sup>385</sup> Accordingly, no evidence was available to the Commission as to the impact of this enhanced role for investigators.

## **GPEB Intelligence Function**

A third area of significant change following Mr. Skrine’s review was in GPEB’s intelligence function. In the course of his review, Mr. Skrine observed that there was

377 Evidence of C. Skrine, Transcript, January 27, 2021, pp 16–17, 23–24, 27–28, 55–56, 125–28.

378 Ibid, pp 16, 55, 127–128; Evidence of S. MacLeod, Transcript, April 19, 2021, p 45.

379 Evidence of C. Skrine, Transcript, January 27, 2021, pp 17–18, 82.

380 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 47–48; Evidence of C. Skrine, Transcript, January 27, 2021, pp 18–19, 81–82.

381 Evidence of C. Skrine, Transcript, January 27, 2021, pp 17–18, 82; Evidence of S. MacLeod, Transcript, April 19, 2021, p 47.

382 Evidence of C. Skrine, Transcript, January 27, 2021, pp 23–24, 56, 125–26; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 46–47.

383 Evidence of C. Skrine, Transcript, January 27, 2021, pp 26–27.

384 Evidence of S. MacLeod, Transcript, April 19, 2021, p 92; Evidence of C. Skrine, Transcript, January 27, 2021, pp 28–29.

385 Evidence of C. Skrine, Transcript, January 27, 2021, pp 16–17.

limited coordination between law enforcement and GPEB and, in particular, that information tended to flow in only one direction – from GPEB to law enforcement.<sup>386</sup> Mr. Skrine was concerned that this lack of collaboration could lead to a failure to detect suspicious transactions and believed that a more intelligence-led enforcement model with increased access to information from law enforcement would enable GPEB to better respond to threats.<sup>387</sup>

In February 2019, Mr. MacLeod approved the transfer of GPEB’s intelligence resources to GPEB’s existing secondment to JIGIT in order to establish a collaborative intelligence model in which GPEB’s intelligence staff would work alongside police intelligence.<sup>388</sup> The Ministry of Public Safety and Solicitor General has reviewed the proposed gaming intelligence model and approved its formation<sup>389</sup> and the model was formalized in July 2019 in a unit now known as the Gaming Intelligence Investigation Unit (GIU).<sup>390</sup> The composition and activities of GIU were described in Mr. Skrine’s evidence as follows:<sup>391</sup>

The GIU is currently a twelve-person team comprised of RCMP and GPEB personnel and is run through JIGIT. Within [GIU] there are three intelligence analysts (one RCMP and two GPEB), six investigator positions (two RCMP and four GPEB) and an Organized Crime Agency contracted employee who analyzes FINTRAC disclosures in support of Project Athena. Overall, the model has helped JIGIT and the Enforcement Division investigators prioritize investigations that relate to high risk patrons and unusual financial transactions reported to GPEB.

GPEB personnel bring forward gaming intelligence from within its role as regulator and, when a law enforcement purpose exists, share this intelligence with police, combining the information with police intelligence to produce a collaborative intelligence product.

...

This cooperative approach has resulted in several actionable intelligence reports. These reports may include profiles of individuals or activities and concerns flowing from their activities that deem them high-risk patrons.

The focus of the GIU is primarily on UFTs [unusual financial transactions] submitted by service providers. When warranted, these UFTs are used to build actionable intelligence reports. These reports are

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386 Exhibit 504, Skrine #1, para 57; Evidence of C. Skrine, Transcript, January 27, 2021, pp 15, 74–75.

387 Exhibit 504, Skrine #1, paras 57–58; Evidence of C. Skrine, Transcript, January 27, 2021, pp 15, 74–75.

388 Exhibit 504, Skrine #1, para 59; Evidence of C. Skrine, Transcript, January 27, 2021, pp 14–15 and 37.

389 Exhibit 504, Skrine #1, para 59; Evidence of C. Skrine, Transcript, January 27, 2021, pp 14–15 and 37.

390 Exhibit 504, Skrine #1, para 60.

391 Ibid, paras 60–64.

sent to JIGIT or to the Lower Mainland investigators at the GPEB Kingsway office for follow up.

As this unit remains in its infancy, I am not in a position to assess its impact or effectiveness, but it appears to show promise.

## **Current State of AML Risks and Measures in BC’s Gaming Industry**

The discussion above about enhancements to GPEB’s enforcement function, as well as the discussions that preceded it regarding actions taken in response to Dr. German’s recommendations, provide some insight into the current state of anti-money laundering measures in British Columbia’s gaming industry. The discussion that follows is intended to add to this picture by offering a more general overview of what was happening in the industry at the time of the Commission’s hearings (or perhaps more accurately, what would have been happening if the province’s casinos had not been shuttered due to the COVID-19 pandemic).

### **Current Money Laundering Risks in BC’s Gaming Industry**

Witnesses from both BCLC and GPEB gave evidence that large cash transactions no longer pose a significant money laundering risk within the province’s gaming industry.<sup>392</sup> This does not mean, however, that the risk of money laundering within the industry generally had been eliminated. Two areas of continued money laundering risk were identified by multiple witnesses: transactions under \$10,000 and bank drafts.

#### ***Cash Transactions Under \$10,000***

A number of witnesses identified cash transactions under \$10,000 as an ongoing source of money laundering risk for the gaming industry.<sup>393</sup> Both BCLC and GPEB appear to have identified this as an area of ongoing risk.<sup>394</sup> With the introduction of Dr. German’s first interim recommendation, these transactions have increased in frequency.<sup>395</sup> Some of these transactions continue to bear features associated with the

<sup>392</sup> Exhibit 78, Beeksma #1, para 89; Exhibit 148, Tottenham #1, para 165; Evidence of C. Skrine, Transcript, January 27, 2021, pp 38–39; Evidence of S. MacLeod, Transcript, April 19, 2021, p 55.

<sup>393</sup> Evidence of S. Lee, Transcript, October 27, 2020, pp 43–44, 50–52; Evidence of K. Ackles, Transcript, November 2, 2020, p 60; Evidence of D. Tottenham, Transcript, November 5, 2020, p 39; Exhibit 490, Kroeker #1, para 234; Exhibit 505, Lightbody #1, para 286; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 84–85; Evidence of C. Skrine, Transcript, January 27, 2021, p 40; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 54–55.

<sup>394</sup> Evidence of S. Lee, Transcript, October 27, 2020, pp 43–44, 50–52; Evidence of K. Ackles, Transcript, November 2, 2020, p 60; Evidence of D. Tottenham, Transcript, November 5, 2020, p 39; Exhibit 490, Kroeker #1, para 234; Exhibit 505, Lightbody #1, para 286; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 84–85; Evidence of C. Skrine, Transcript, January 27, 2021, p 40; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 54–55.

<sup>395</sup> Exhibit 144, Affidavit #3 of Ken Ackles, made on October 28, 2020 [Ackles #3], paras 59–60; Evidence of K. Ackles, Transcript, November 2, 2020, p 61; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 54–55.

proceeds of crime (such as suspicious packaging)<sup>396</sup> and in some instances continue to be reported to FINTRAC as suspicious transactions.<sup>397</sup> Because they are below the \$10,000 threshold, however, there is no requirement to provide proof of the source of cash used in these transactions.<sup>398</sup> In some instances, it appears that patrons are deliberately avoiding buy-ins of \$10,000 or more by removing a few bills from buy-ins that would otherwise have required proof of the source of funds before completing the transaction.<sup>399</sup> In these cases, it is often unclear if patrons are attempting to avoid the FINTRAC reporting requirement for cash transactions over \$10,000 or if they are trying to avoid BCLC's requirement that they provide proof of the source of funds for such transactions. This lack of clarity has led some of the witnesses appearing before the Commission to suggest that the threshold for requiring proof of the source of funds should be set at a value different from the threshold for large cash transaction reporting.<sup>400</sup> Given these concerns and the desirability of further reducing the quantities of unsourced cash accepted by the province's casinos, I recommend that the threshold for requiring proof of the source of funds be lowered to \$3,000.

**Recommendation 4:** I recommend that the threshold for requiring proof of the source of funds for casino transactions conducted in cash and other bearer monetary instruments be lowered to \$3,000.

### **Bank Drafts**

Bank drafts were also identified as an area of ongoing vulnerability by multiple witnesses.<sup>401</sup> According to these witnesses, this risk arises from the possibility that the patron presenting a bank draft may not have obtained the draft directly from a financial institution and that the draft may not contain information sufficient to permit casino staff to determine that it was not drawn on the patron's own bank account.<sup>402</sup> This risk has been recognized by both BCLC and GPEB and both are taking action to mitigate this risk, including imposing source-of-funds requirements for bank drafts and working

396 Exhibit 144, Ackles #3, paras 59–60; Evidence of K. Ackles, Transcript, November 2, 2020, p 61; Exhibit 90, Incident Report from River Rock on Unusual Financial Transaction (IN20200006443) (January 29, 2020); Exhibit 91, Incident Report from River Rock on Unusual Financial Transaction (IN20200012826); Exhibit 87, S. Lee #1, exhibits N, O, P.

397 Exhibit 505, Lightbody #1, para 286; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 84–85.

398 Evidence of S. MacLeod, Transcript, April 19, 2021, p 55.

399 Exhibit 87, S. Lee #1, exhibit P; Exhibit 574, Overview Report: Casino Surveillance Footage, appendices 10, 16, 18, 40, 50.

400 Exhibit 78, Beeksma #1, para 92; Evidence of S. Beeksma, Transcript, October 26, 2020, p 86; Exhibit 87, S. Lee #1, paras 67–69; Evidence of S. Lee, Transcript, October 27, 2020, p 42; Exhibit 530, Ennis #1, para 104.

401 Exhibit 78, Beeksma #1, para 90 and exhibit CC; Evidence of S. Beeksma, Transcript, October 26, 2020, p 90; Evidence of K. Ackles, Transcript, November 2, 2020, pp 56–57; Evidence of D. Tottenham, Transcript, November 5, 2020, p 39; Evidence of C. Skrine, Transcript, January 27, 2021, pp 41–42; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 55–56.

402 Evidence of S. MacLeod, Transcript, April 19, 2021, p 56; Evidence of C. Skrine, Transcript, January 27, 2021, pp 41–42; Evidence of K. Ackles, Transcript, November 2, 2020, pp 56–57; Exhibit 78, Beeksma #1, para 90; Evidence of S. Beeksma, Transcript, October 26, 2020, p 90.

with the Counter Illicit Finance Alliance of British Columbia to encourage financial institutions to enhance the information included on bank drafts.<sup>403</sup>

## **GPEB Additional Anti–Money Laundering Measures**

### ***Changes to Power and Authority of GPEB***

Alongside the reforms described above, several additional measures intended to enhance GPEB’s anti–money laundering response have been introduced in recent years. These measures include two changes to GPEB’s authority. The first of these is that, since 2019, GPEB has had the authority to bar casino patrons from the province’s casinos,<sup>404</sup> a measure previously within the exclusive jurisdiction of BCLC. Perhaps more significantly, GPEB has recently been granted greater authority over BCLC. In 2018, the *Gaming Control Act* was amended to remove the requirement for ministerial approval of directives issued to BCLC by the general manager of GPEB.<sup>405</sup> Mr. MacLeod testified that, as of the date of his evidence, there had not been a need for him to exercise this authority, as GPEB and BCLC have managed to resolve by agreement any issues that may have otherwise led to a directive.<sup>406</sup>

### ***AML Vulnerabilities Working Group***

A further initiative originating within GPEB is the Anti–Money Laundering Vulnerabilities Working Group.<sup>407</sup> This group, established in February 2019, brings together representatives from several different GPEB divisions to identify money laundering vulnerabilities within the gaming industry and, where appropriate, make recommendations to GPEB’s leadership to address or mitigate those vulnerabilities.<sup>408</sup>

## **BCLC Anti–Money Laundering Program**

BCLC’s anti–money laundering program is overseen by BCLC’s anti–money laundering unit.<sup>409</sup> The mandate of the anti–money laundering unit includes:<sup>410</sup>

1. Addressing changes to policy driven by legislative or regulatory amendments;

403 Exhibit 78, Beeksma #1, para 90; Evidence of S. Beeksma, Transcript, October 26, 2020, p 90; Evidence of K. Ackles, Transcript, November 2, 2020, pp 56–57; Evidence of D. Tottenham, Transcript, November 5, 2020, p 39; Evidence of C. Skrine, Transcript, January 27, 2021, pp 41–42; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 55–56.

404 Evidence of K. Ackles, Transcript, November 2, 2020, pp 113, 118.

405 Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

406 Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 21, 91.

407 Exhibit 144, Ackles #3, para 50.

408 Ibid, para 52 and exhibit N; Evidence of K. Ackles, Transcript, November 2, 2020, pp 58–59; Evidence of C. Skrine, Transcript, January 27, 2021, pp 42–43.

409 Exhibit 484, deBruyckere #2, para 6.

410 Ibid, para 7.

2. Identifying technology solutions to anti–money laundering and other regulatory reporting obligations in order to enhance efficiency;
3. Supervising and monitoring all FINTRAC reports/records submitted to FINTRAC for timeliness and accuracy and disseminating applicable reports to the Gaming Policy and Enforcement Branch and to law enforcement as required;
4. Enhancing the Lottery Corporation’s “know your customer” capabilities through the establishment of high-risk player profiles by accessing open source and internal databases, with particular emphasis on those players undertaking large cash transactions;
5. Conducting anti–money laundering and other appropriate training to Lottery Corporation staff and service providers;
6. Continuously monitoring adherence to anti–money laundering processes and policy by Lottery Corporation staff and service providers;
7. Monitoring high-risk player behaviour for indicators of criminal conduct;
8. Identifying trends which may be indicative of money laundering, fraud, or other criminal conduct;
9. Establishing British Columbia Lottery Corporation–law enforcement working groups with the police of jurisdiction in the municipalities where Lottery Corporation casinos and community gaming centres are situated;
10. Conducting due diligence examinations, where requested, with respect to prospective contractors to the Lottery Corporation; and
11. Monitoring the use of cash alternative programs for compliance with FINTRAC / Gaming Policy and Enforcement Branch requirements while ensuring proper safeguards are in place to limit the Lottery Corporation’s exposure to reputational, financial, and regulatory risks.

In his evidence, Kevin deBruyckere, BCLC’s director of anti–money laundering and investigations, identified and described the following elements of BCLC’s current anti–money laundering program, some of which are described in detail elsewhere in this Report:<sup>411</sup>

1. Source of Funds Interview Process;
2. Source of Funds Process;
3. Source of Wealth Process;

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411 Ibid, para 9.

4. Cash Conditions / Restrictions;
5. Receipting Requirement at \$10,000;
6. High Risk Patron Enhanced Due Diligence Process;
7. Housewife / Student Occupation and Open Source Intelligence Review;
8. Reasonable Measures Process;
9. Public Safety Risk Patron Process;
10. Information Sharing Agreement with the Royal Canadian Mounted Police;
11. Refused Cash Buy-In Requirements;
12. Convenience Cheque Review Process;
13. Bank Draft Monitoring;
14. Alert and Watch Processes;
15. Patron Gaming Fund Account Monitoring; and
16. Business Relationship Determination and Monitoring.

## **Relationship Between GPEB and BCLC**

The Commission heard evidence from several witnesses regarding the current state of the relationship between GPEB and BCLC.<sup>412</sup> Despite the history of challenges in the relationship between elements of the two organizations, witnesses from both GPEB and BCLC spoke to an excellent relationship in recent years.<sup>413</sup> Mr. deBruyckere, for example, described the relationship in the following terms:<sup>414</sup>

On my arrival at BCLC, I was impressed with BCLC's team and the AML controls that were in place. Since I have been at BCLC, there was and continues to be a strong relationship with GPEB and law enforcement. With respect to GPEB in particular, I attribute the strong relationship not just to the individuals currently in their respective roles at each organization, but to an acceptance of each organization's responsibilities under the applicable legislation.

412 Exhibit 485, Affidavit #3 of Kevin deBruyckere, sworn on January 19, 2021 [deBruyckere #3], para 19; Evidence of K. deBruyckere, Transcript, January 21, 2021, p 98; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 157–58; Evidence of C. Skrine, Transcript, January 27, 2021, pp 36, 48, 58–59; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 91, 113–15.

413 Exhibit 485, deBruyckere #3, para 19; Evidence of K. deBruyckere, Transcript, January 21, 2021, p 98; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 157–58; Evidence of C. Skrine, Transcript, January 27, 2021, pp 36, 48, 58–59; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 91, 113–15.

414 Exhibit 485, deBruyckere #3, para 19.

Mr. MacLeod offered a similar perspective, focusing on the relationship between those at the executive level:<sup>415</sup>

I think it's an excellent relationship. We've established that through regular meetings. I meet regularly with – at the time it was Jim Lightbody to discuss issues as they pop up. We had regular meetings. That's carried through to the [successive] CEOs to the current one. I also have weekly calls with a couple of the other individuals within BCLC that hold executive portfolios. We meet jointly. The execs from GPEB and BCLC meet jointly on a quarterly basis to, again, review issues and initiatives that are ongoing within both organizations. So, I think it's very collaborative. It's really an excellent relationship that we have with BCLC.

Whatever difficulties may have existed between BCLC and GPEB previously, it appears that, based on the evidence before the Commission, those difficulties are a thing of the past, and there is a strong and effective relationship between the two organizations today. It is important that both work to maintain a collaborative and effective working relationship. That said, I caution GPEB that it should not, in the name of relationship maintenance, shy away from exercising its authority when a money laundering vulnerability cannot be adequately addressed otherwise.

### ***Gaming Integrity Group***

The results of this improved relationship are evident in the creation of the Gaming Integrity Group. The Gaming Integrity Group is a joint initiative of BCLC, GPEB, and JIGIT involving regular meetings in which all participants identify and discuss incidents and individuals that pose a threat to the integrity of gaming.<sup>416</sup> Mr. Ackles described the purpose and activities of the Gaming Integrity Group as follows:<sup>417</sup>

In early 2018, the Gaming Integrity Group (“GIG”), formerly the Gaming Intelligence Group, was established as a collaborative network to discuss issues as they arose in the anti-money laundering environment. GIG is made up of representatives of the BCLC Anti-Money Laundering Group (“BCLC AML-Group”), GPEB Enforcement Division, and JIGIT, as represented by GPEB-seconded members and JIGIT police members. The GIG is a group comprised of front-line investigators which discuss individual incidents relating to money laundering in British Columbia. GIG’s terms of reference define the group, identify the membership, and set the broad level goals and outcomes...

Since 2018, GIG has had weekly conference calls and beginning in March 2019, GIG has had monthly in-person meetings. At the monthly

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415 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 19–20.

416 Exhibit 504, Skrine #1, para 66; Evidence of C. Skrine, Transcript, January 27, 2021, pp 76–77; Exhibit 144, Affidavit #3 of Ken Ackles, made on October 28, 2020, paras 46–48.

417 Exhibit 144, Ackles #3, paras 46–49.

in-person meetings, an attendee will take the meeting minutes, which are later distributed to the meeting attendees, and reviewed and adopted at the next in-person meeting ... With the onset of the COVID-19 pandemic, we have not continued with our monthly GIG meetings.

However, throughout the COVID-19 pandemic, GIG has continued with its weekly conference calls. Through the GIG meetings, members share information about gaming issues from their respective perspectives, including law enforcement, regulatory, and revenue generation perspectives. By way of example only, GIG has discussed such issues as, trends or patterns in unusual financial transactions being reported, unsourced cash or chips being passed on the gaming floor, and individuals that may present public safety issues. Through these discussions, GIG has identified multiple incidents where further action, such as the imposition of cash / chip conditions on patrons or local or provincial barring under section 92 of the [*Gaming Control Act*], was required.

GIG has facilitated collaboration and cooperation with the various stakeholders and enabled us to better understand incidents that negatively impact the integrity of gaming in British Columbia.

## **Future State: 100 Percent Account-Based, Known Play and Cashless Casinos**

Despite the progress that has been made in eliminating suspicious transactions and reducing the risk of money laundering in the province's casinos, it is evident from the Commission's hearings that both the gaming industry and government are actively pursuing strategies to further enhance the industry's anti-money laundering response. These strategies range broadly from greater collaboration with other sectors of the economy<sup>418</sup> to continued interest in a hard cap on cash transactions,<sup>419</sup> changes to the regulatory model governing the industry,<sup>420</sup> and technological enhancements.<sup>421</sup>

Some of the evidence given regarding opportunities to enhance the gaming industry's anti-money laundering regime focused on the prospect of 100 percent account-based, known play and, eventually, entirely cashless casinos.<sup>422</sup> This evidence offered a compelling vision of a future for the gaming industry in this province in

418 Evidence of J. Lightbody, Transcript, January 28, 2021, p 96.

419 Exhibit 522, Desmarais #1, para 109; Exhibit 78, Beeksma #1, para 93; Evidence of S. Beeksma, Transcript, October 26, 2020, p 109.

420 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 68–72; Evidence of D. Eby, Transcript, April 26, 2021, pp 240–41; Evidence of S. MacLeod, Transcript, April 19, 2021, p 75.

421 Evidence of D. Tottenham, Transcript, November 10, 2020, pp 209–10; Exhibit 484, deBruyckere #2, para 12; Exhibit 148, Tottenham #1, para 189; Exhibit 522, Desmarais #1, para 117.

422 Exhibit 522, Desmarais #1, paras 110–11; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 57, 83–84, 88–89, 118–20; Exhibit 485, deBruyckere #3, paras 9–13; Evidence of K. deBruyckere, Transcript, January 21, 2021, pp 92–95; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 158–61.

which every patron that enters a casino is identified, their transactions and play are automatically tracked through an account linked to both casino and online betting, and cash, historically the dominant method of payment in British Columbia's gaming facilities, has been replaced entirely by secure, traceable alternatives.<sup>423</sup>

Mr. Desmarais set out a detailed vision of this future in his oral evidence:<sup>424</sup>

In my view – and this is my personal view, Mr. Commissioner – the next step is we need to know every single player that comes through the front door. Not only when they come through the front door. We need to know ... every single game they play ... whether it be putting money into a slot machine or whether they're playing on a table game, we need to understand that. That will solve a lot of problems.

That will solve – first and foremost, which is quite frankly and with no disrespect to the intent of this Commission, right now my biggest focus is on player health. Our products from time to time do cause harm, and we've got to do something to make sure that we eliminate that harm. There should be no revenue, Mr. Commissioner, from high-risk play. You will find those in our strategic plan. For us to accomplish that we need to know our players better.

We need to know our players better across ... our entire product line. They're tied to each other. Most of our players ... play online, or at least most of our online players play in casinos. 98 percent of our players buy lottery. We have some products that over time we now know that were traditionally not considered to be that risky are in fact risky from a player health perspective.

We have to do better and the way we do that is by knowing them. We eliminate – when people make the great decision to voluntarily self-exclude from our products, we have to help them to continue ... in the spirit of that great decision that our products just aren't right for them. 100 percent known play, Mr. Commissioner, will solve all of that. A hundred percent known play will also reduce the amount of criminality in our facilities.

There are other technologies available to us. You've heard quite a bit about the chip swap. Everyone was uncomfortable with that. We still have liability around chips. It still exists today. There is technology today, however, that will mitigate, virtually eliminate that risk through automated chip tracking, which is in use in Macao and elsewhere with virtually a hundred percent accuracy. That would reduce problematic play. It would

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423 Exhibit 522, Desmarais #1, paras 110–11; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 57, 83–84, 88–89, 118–20; Exhibit 485, deBruyckere #3, paras 9–13; Evidence of K. deBruyckere, Transcript, January 21, 2021, pp 92–95; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 158–61.

424 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 158–61.

reduce issues around who owns what chip. If somebody bought a series of chips, they left the casino and they come back with those chips in somebody else's possession, we would know and they wouldn't be permitted to play with them. That's in the short term.

As we move forward we need to ensure that we have account-based gaming across all our lines of business. Account-based gaming will allow our players an option to move away from cash and to create accounts, properly managed, properly overseen accounts where we can put limits on how much players can play if they have issues or ... if they preset their player amounts themselves, which we have in a limited fashion now in slot machines on casinos. But also that will enable us to start using digital wallets.

We're behind, Mr. Commissioner. We need to step into the digital age, particularly on land-based casinos, and ... we need to utilize digital payment forms not only as a means to keep our players safe, but also as a means to reduce the risk and potential of crime, whether it be money laundering or anything else. Those are the first and second ... steps.

The third step, Mr. Commissioner, is once we get those options really available and incent our players to start using them more, at some point – we're probably talking years down the road, but at some point we'll reach a critical mass where ... we'll be able to make a decision – and so it will be ... a decision on the part of the province, as well, I suppose, make a decision we're just not – all of the play in casinos will be cashless. That's not going to occur overnight.

I encourage BCLC, GPEB, and government to work collaboratively to bring this vision to fruition as expeditiously as possible. Mr. Desmarais is correct when he describes the gaming industry in this province as being “behind.” There was no shortage of evidence in the Commission's hearings that the gaming industry has historically been – and in many respects remains – a cash-based business. There seems little justification for this when Canadian society has, in many respects, moved past physical cash into an age of digital commerce.

The evidence before the Commission indicates that the transition described by Mr. Desmarais has, in some respects, already begun. Mr. deBruyckere gave evidence that a form of 100 percent known play has been instituted as part the COVID-19 reopening plan for casinos, as all patrons are required to produce a rewards card or other casino-issued identification for contact-tracing purposes.<sup>425</sup> In my view, this requirement should, if possible, remain in place permanently (or be reinstated if it has lapsed), or at the very least, BCLC's experience with this temporary measure should be applied to pursue a permanent form of 100 percent known play to further anti-money laundering measures.

<sup>425</sup> Exhibit 485, deBruyckere #3, para 9; Evidence of K. deBruyckere, Transcript, January 21, 2021, p 93.

Mr. deBruyckere also testified that BCLC is actively seeking a technological solution that would enable the expansion of account-based gaming.<sup>426</sup> His evidence was that, in November 2020, BCLC issued a request for a “customer identity and access management” solution to manage player access and permit players to engage with all BCLC products through a single player account.<sup>427</sup> Once in place, this solution combined with a 100 percent known play requirement would move BCLC significantly in the direction of the vision outlined by Mr. Desmarais and much closer to the ultimate goal of cashless casino gaming.

I note that there may well be ancillary benefits, unrelated to concerns about money laundering, to a move toward 100 percent account-based, known play. Mr. Desmarais described the potential advantages from a responsible gaming standpoint, and the potential benefits of known play and account-based gaming for marketing and customer relations purposes are not difficult to identify. These developments may also result in cost savings, including savings arising from a reduction in FINTRAC reporting. In my view, however, the value of pursuing 100 percent known play and account-based gaming is not dependent on these ancillary benefits. These measures are worth pursuing even if they result in a net loss to BCLC or government and even if they ultimately lead to losses in business at the province’s casinos.

For these reasons, I recommend that the minister responsible for gaming issue a direction to BCLC to implement 100 percent account-based, known play in this province’s casinos. I understand that BCLC has already implemented a form of 100 percent known play for the purposes of contact-tracing and, as of the time of the Commission’s hearings, was actively seeking to procure a technological solution to enable 100 percent account-based play. This evidence, alongside the evidence before me of practices in other jurisdictions,<sup>428</sup> makes clear that 100 percent account-based, known play is possible, and I see no reason why the gaming industry in this province should not be able to adopt such measures rapidly. I will leave to the minister to determine a reasonable timeline for implementation of these measures following consultation with BCLC and GPEB.

**Recommendation 5:** I recommend that the Minister Responsible for Gaming direct the British Columbia Lottery Corporation to implement 100 percent account-based, known play in British Columbia’s casinos within a timeframe specified by the minister.

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426 Exhibit 485, deBruyckere #3, paras 12–13; Evidence of K. deBruyckere, Transcript, January 21, 2021, p 95.

427 Exhibit 485, deBruyckere #3, paras 12–13; Evidence of K. deBruyckere, Transcript, January 21, 2021, p 95.

428 Exhibit 1037, Report on Known Play by Ernst & Young LLP (April 30, 2021).

## Chapter 13

# Were Illicit Funds Laundered Through BC Casinos?

Money laundering is defined in the Commission's Terms of Reference as "the process used to disguise the source of money or assets derived from illegal activity." Money or assets derived from illegal activity are known as proceeds of crime. In the context of this Inquiry, a major controversy in the gaming sector is whether, and if so, to what extent, the large amounts of cash, mostly in \$20 denominations, organized in bundles of specific values, often secured by elastic bands, carried in a motley collection of containers, sometimes delivered in privately owned vehicles outside of normal business hours and used as cash buy-ins at British Columbia casinos were the proceeds of crime and an integral part of a money laundering scheme.

The controversy has three critical perspectives: the first is whether there is a history of money laundering in British Columbia's gaming sector. The second is focused on the knowledge and understanding of those involved in the gaming industry based on contemporaneous evidence and information. The third is focused on knowledge and understanding of the contemporaneous state of affairs in light of the evidence and information which has been marshalled through this Inquiry.

Exploration of each of these perspectives is mandated by the Terms of Reference in this Inquiry. Paragraph 4(1)(b) of the Terms of Reference requires me to review, "the acts or omissions of regulatory authorities or individuals with powers, duties, or functions in respect of [gaming]." That review must be conditioned by the evidence, information, and understanding that was contemporaneously available to those individuals or those authorities being reviewed. In making findings that may be critical of the acts or omissions of such entities and individuals, it would not be appropriate to conduct that review based on hindsight resting on a foundation of subsequently obtained evidence, information, or understanding.

At the same time, under paragraph 4(1)(a)(i), I am required to inquire into and make findings of fact in respect of “the extent, growth, evolution, and methods of money laundering in the [gaming sector].” Resolving that mandate does necessitate relying on a foundation of subsequently obtained evidence, information, and understanding. It is an equally important perspective from which important factual findings laying the foundations for recommendations may be made.

At the outset of this Inquiry, there was a broadly held belief that proceeds of crime had been laundered through British Columbia casinos. Several media reports and the public discourse supported this narrative. I do not consider these reports or beliefs to be “evidence” on which I can rely. Dr. Peter German, QC, in his March 31, 2018, report titled *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos (Dirty Money 1)* asserted that “for many years, certain Lower Mainland casinos unwittingly served as laundromats for the proceeds of organized crime.”<sup>1</sup> While I am directed by the Commission’s Terms of Reference “to review and take into consideration” Dr. German’s report, I do not consider the conclusions reached by Dr. German, on their own, to be a sufficient basis for findings that may be critical of any individual or organization. I am required to engage in an independent review of the evidence called before the Commission and to arrive at my own conclusions without viewing the opinions or conclusions of Dr. German and others as binding. I have commenced this Inquiry with an open mind on this, and indeed every, topic, and maintained that approach throughout the Commission’s proceedings.

In light of that, it is important to address the concept of proof in the context of an inquiry such as this which cannot, and will not, make findings of either criminal complicity or civil liability. To put it another way, whatever findings of fact I make as Commissioner cannot be regarded as the equivalent of finding criminal culpability or civil responsibility. See: *Canada (Attorney General) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 (*Krever*) at para 34.

In *Krever*, Mr. Justice Cory drew a clear distinction between the essential nature of an inquiry and a civil action or criminal trial in a way that, in my view, has ramifications for the concept of proof in a commission of inquiry.

In para 34 of *Krever*, Justice Cory described the nature of findings in an inquiry as opposed to a trial or civil action in the following terms:

Rather, an inquiry is an investigation into an issue, event or series of events. The findings of a commissioner relating to that investigation are simply findings of fact and statements of opinion reached by the commissioner at the end of the inquiry. They are unconnected to normal legal criteria. They are based upon and flow from a procedure which is not bound by the evidentiary or procedural rules of a courtroom. There are no legal consequences attached to the determinations of a commissioner. They are

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1 Exhibit 832, *Dirty Money 1*, p 10.

not enforceable and do not bind courts considering the same subject matter. The nature of an inquiry and its limited consequences were correctly set out in *Beno v. Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, [1997] 2 F.C. 527, at para. 23:

A public inquiry is not equivalent to a civil or criminal trial ... In a trial, the judge sits as an adjudicator, and it is the responsibility of the parties alone to present the evidence. In an inquiry, the commissioners are endowed with wideranging investigative powers to fulfil their investigative mandate ... The rules of evidence and procedure are therefore considerably less strict for an inquiry than for a court. Judges determine rights as between parties; the Commission can only “inquire” and “report” ... Judges may impose monetary or penal sanctions; the only potential consequence of an adverse finding ... is that reputations could be tarnished.

The Commission’s exploration of money laundering and anti-money laundering in the gaming sector has been extensive. Evidence on this sector included 20 overview reports, more than 350 exhibits, and over 50 witnesses who testified exclusively or primarily about money laundering and anti-money laundering efforts in this sector. Several other witnesses provided evidence on various economic sectors, including gaming.

Of the 23 participants granted standing at this Inquiry, 10 are primarily concerned with the gaming sector.

The fact that the gaming sector has attracted as much time, attention, and evidence as it has in this Inquiry is not surprising. As I discussed in Chapter 5, money laundering gives rise to real risks and social harm. However, it is by its nature a well-hidden crime. It blends in with innocuous surroundings; its commission makes no noise, causes no obviously visible damage, and leaves no easily identifiable effect. In this country there have been few prosecutions of money laundering and its nature, size, and consequences are not easily or readily understood.

In that context, the visibility of an apparently overt form of money laundering for up to a decade in one of British Columbia’s economic sectors relied on, in part, as a source of revenue for the provincial government is bound to capture attention, at least in part, because it may furnish insights into how endemic money laundering is in the anatomy of the province’s economy.

In the case of British Columbia’s casinos, particularly during the period between approximately 2008 and 2018, very substantial amounts of cash said to be the product of drug trafficking, illegal gaming, and other forms of cash-generating criminal activities were used to fund high-level gamblers in exchange for the anonymity of hidden or camouflaged transactions.

Until 2009, the casino industry in British Columbia was entirely cash-based. The amounts of cash being brought into casinos steadily increased year over year as betting limits increased to the point where in January 2014 a single gambler could bet up to \$100,000 on one hand of baccarat. One witness indicated that \$7 to \$8 billion in cash flowed through British Columbia casinos annually between 2012 and 2015.<sup>2</sup>

Based on the events set out in Chapters 9 to 12 and the entirety of the record before me, it is abundantly clear that significant money laundering took place in the gaming industry over an extended period of time. Between 2008 and 2018, casinos in the Lower Mainland of British Columbia regularly accepted extraordinarily large volumes of cash, much of which was suspicious in nature and bore obvious hallmarks of being the proceeds of crime. Based on its appearance and surrounding circumstances and the size of many of the individual transactions in which it was accepted, there is little room for doubt that much, if not most, of the cash received in these suspicious transactions was, in fact, the proceeds of crime. In this way, hundreds of millions of dollars of illicit cash was accepted by British Columbia casinos and ultimately contributed to the revenues of the provincial government.

The evidence before the Commission establishes that this cash was funneled into British Columbia casinos as part of a complex money laundering scheme. The predominant money laundering typology connected to the gaming industry was the “Vancouver model” in which illicit cash, or casino chips acquired with illicit funds, were provided to gamblers, many of whom had significant wealth abroad, but could not easily access this wealth in Canada, at least for the purpose of gambling. Gamblers provided with illicit cash would use it to gamble, genuinely putting it at risk and often losing it. Whether they won or lost, those gamblers would return the funds in another form, often in another jurisdiction. This accomplished the objectives of those intent on laundering this money by converting bulky and highly suspicious cash into another, less suspicious, form and transferring it elsewhere in the world.

While the process of laundering these criminal proceeds was not completed in its entirety in British Columbia casinos, the long-standing ability and willingness on the part of some Lower Mainland casinos to accept large volumes of highly suspicious cash was integral to the money laundering typology referred to above and discussed in more detail below. The acceptance of these funds ensured a constant demand for extraordinary quantities of cash, offering those intent on laundering this cash a convenient means of disposing of the proceeds of their crimes and a mechanism by which its illicit origins could be obscured.

The discussion that follows addresses the questions of whether, how, when, and where money laundering occurred in this province’s casinos. It begins by discussing the evidence that supports the conclusion that proceeds of crime were accepted by casinos and how the acceptance of these funds facilitated the Vancouver model money laundering typology. It then turns to consider the extent of this activity, including the

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<sup>2</sup> Evidence of R. Kroeker, Transcript, January 25, 2021, pp 187–89.

amount of criminal proceeds laundered in this way and the timeframe and location in which it occurred.

## Acceptance of Proceeds of Crime

The evidence before me leaves little room for doubt that much, if not most, of the significant amounts of cash identified by the British Columbia Lottery Corporation (BCLC) as “suspicious” between 2008 and 2018 were the proceeds of crime. In my view, this conclusion is abundantly clear solely from the appearance of this cash and the size and character of the transactions in which it was received and should have been apparent to anyone with a lens into these features of these transactions. Further support for this conclusion is found in the manner in which cash arrived at the province’s casinos, the observations of officers involved in two police investigations into these transactions (commenced in 2010<sup>3</sup> and 2015<sup>4</sup> respectively), from the effects of measures intended to reduce suspicious cash in the province’s casinos, and from the apparent impact of arrests made by the Joint Illegal Gaming Investigation Team (JIGIT) in 2017.

## Volume and Appearance of Cash Transactions

That the province’s casinos were routinely accepting illicit funds should have been abundantly clear from the size of suspicious cash transactions accepted by casinos and the appearance of the cash used in those transactions. According to the evidence of witnesses who testified before the Commission, suspicious cash transactions in British Columbia casinos began to increase in 2007.<sup>5</sup> By 2009 the volume of cash entering Lower Mainland casinos had accelerated significantly,<sup>6</sup> and six-figure buy-ins were observed regularly by 2010.<sup>7</sup> Between 2010 and 2015 the number of large and suspicious cash transactions continued to increase.<sup>8</sup> 2014 saw the most drastic increase with buy-ins of \$400,000 and higher becoming relatively common.<sup>9</sup>

These observations are consistent with data available regarding large and suspicious transactions during this time period. The “Reports of Findings” prepared by the Gaming

3 IPOC Intelligence Probe.

4 E-Pirate investigation.

5 Evidence of J. Schalk, Transcript, January 22, 2020, pp 109–10; Exhibit 181, Affidavit #1 of Larry Vander Graaf, made on November 8, 2020 [Vander Graaf #1], exhibit G.

6 Exhibit 181, Vander Graaf #1, para 38.

7 Evidence of G. Friesen, Transcript, October 28, 2020, p 83; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–14.

8 Evidence of D. Dickson, Transcript, January 22, 2020, p 11; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 46–47; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–14, 21; Evidence of S. Lee, Transcript, October 27, 2020, p 19; Exhibit 87, Affidavit #1 of Stone Lee, sworn on October 23, 2020 [S. Lee #1], para 33; Exhibit 145, Affidavit #1 of Robert Barber, made on October 29, 2020 [Barber #1], para 36.

9 Evidence of G. Friesen, Transcript, October 28, 2020, pp 83–84; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 58–59; Exhibit 78, Affidavit #1 of Steve Beeksma, affirmed on October 22, 2020 [Beeksma #1], para 50; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 31–32.

Policy and Enforcement Branch (GPEB) investigation division, discussed in Chapter 10, offer some insight into the frequency of extremely large cash transactions prior to the end of 2014. One such report, dated November 19, 2012,<sup>10</sup> reveals that in a one-year period between August 31, 2010, and September 1, 2011, 80 separate patrons bought-in for over \$100,000 on at least one occasion, with a single patron accounting for over \$5 million in suspicious cash transactions. The same report indicates that during the nine-month period between January 1 and September 30, 2012, 79 patrons bought-in at least once for \$100,000 or more and 17 patrons had total suspicious cash buy-ins of \$1 million or more. As time progressed, these remarkably large transactions became increasingly commonplace. In 2014, BCLC reported 595 suspicious transactions with a value of \$100,000 or more<sup>11</sup> to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Incidents of suspicious transactions of \$100,000 or more fell only slightly to 527 such transactions in 2015, then declined steadily until 2017 before virtually ceasing in 2018 following implementation of Dr. German’s source-of-funds recommendation (as modified by BCLC), discussed in Chapter 12.<sup>12</sup>

Vast volumes of cash are intrinsically a significant money laundering vulnerability and, in my view, the extraordinary size of these transactions is a compelling indicator that the cash of which they were comprised was the proceeds of crime. There is simply no other plausible explanation for how casino patrons could have so frequently obtained such enormous volumes of cash, let alone why they would choose to do so, given the availability, at least as of 2009, of viable alternatives to the use of cash.

Alongside the size of these transactions, the appearance of this cash is a further compelling indicator that much of it was the proceeds of crime. As Sergeant Melanie Paddon, a former RCMP officer with 39 years’ experience in law enforcement, the vast majority of which was focused on the investigation of money laundering and proceeds of crime, testified, “[I]t’s never just the cash. It’s the circumstances that surround [it].”<sup>13</sup>

I have heard significant evidence concerning accepted indicators that cash is the proceeds of crime. This includes evidence from experts including Simon Lord, a senior officer with the United Kingdom’s National Crime Agency, and Sergeant Paddon, an expert in cash bundling. Mr. Lord testified that bundling cash in \$10,000 blocks, fixing it with elastic bands, and organizing it in non-uniform orientations are common indicators of criminal proceeds.<sup>14</sup> Similarly, Sergeant Paddon testified that cash facing different directions, bound with elastic bands, arranged in bricks of \$1,000, \$2,000, \$5,000, or \$10,000 and carried in bags, suitcases, or boutique bags all suggest that the cash is the proceeds of crime.<sup>15</sup> Other witnesses with experience in law enforcement

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10 Exhibit 181, Vander Graaf #1, exhibit G.

11 Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020 [Cuglietta #1], exhibit A. Note: “Cathy Cuglietta” and “Caterina Cuglietta” refer to the same witness.

12 Exhibit 482, Cuglietta #1, exhibit A.

13 Evidence of M. Paddon, Transcript, April 14, 2021, p 20.

14 Evidence of S. Lord, Transcript, May 29, 2020, pp 10–12.

15 Evidence of M. Paddon, Transcript, January 15, 2021, pp 150–53; Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–22.

testified that “drug money” or “street money” is commonly wrapped in elastic bands or in plastic, consisting largely of \$20 bills<sup>16</sup> arranged in bricks of specific value, often \$10,000<sup>17</sup> and transported in shopping bags, suitcases, or sports bags.<sup>18</sup> This can be compared to cash from banks, which witnesses testified is usually wrapped in paper bands, bundled according to a set number of notes – as opposed to value – and comprised of notes oriented to face in the same direction.<sup>19</sup>

The descriptions of criminal proceeds offered by Sergeant Paddon and other witnesses are notable for their similarity to the descriptions of the cash accepted in suspicious transactions in this province’s casinos. The evidence before me establishes that the cash used in many of these transactions, which often took place very late at night or very early in the morning, often consisted of misoriented \$20 bills, bound with elastics and carried in boxes, bags, or suitcases.<sup>20</sup> In some cases, the cash displayed further, more egregious, reasons for suspicion, including cash that was burnt, bloodied, covered in white powder,<sup>21</sup> or smelling of illegal or suspicious substances.<sup>22</sup> These observations provide further reason to question the legitimacy of the sources of cash used in casinos generally.

The consistency of the appearance of cash accepted by casinos with commonly accepted indicators of proceeds of crime was also identified directly by several witnesses who gave evidence in the Commission’s proceedings. Sergeant Paddon, for example, who was engaged in the Integrated Proceeds of Crime (IPOC) intelligence probe that began in 2010, concluded that the commonly accepted indicators of illicit cash identified in her evidence aligned with

- 16 Evidence of J. Karlovcec, Transcript, October 29, 2020, p 74–75; Evidence of R. Barber, Transcript, November 3, 2020, p 14–15; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 114, 173; Exhibit 181, Vander Graaf #1, para 54; Evidence of J. Schalk, Transcript, January 22, 2021, pp 112–13.
- 17 Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 74–75; Evidence of M. Hiller, Transcript, November 9, 2020, p 12; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 3–4; Evidence of S. Lord, Transcript, May 29, 2020, p 11; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 54; Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–17; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 112–13.
- 18 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–17; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, p 112.
- 19 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–17; Evidence of S. Lord, Transcript, May 29, 2020, pp 10–12; Evidence of J. Karlovcec, Transcript, October 29, 2020, p 75; Evidence of M. Hiller, Transcript, November 9, 2020, p 12; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 47–48; Exhibit 663, Affidavit of Cpl. Melvin Chizawsky, made on February 4, 2021 [Chizawsky], para 97.
- 20 Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–14; Exhibit 166, Affidavit #1 of Michael Hiller, sworn on November 8, 2020 [Hiller #1], paras 58–59; Evidence of M. Hiller, Transcript, November 9, 2020, pp 8–9; Evidence of M. Graydon, Transcript, February 11, 2021, p 17; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 89–90; Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12, 174–75; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–15, 97–100; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 46–47; Evidence of T. Doyle, Transcript, February 9, 2021, pp 183–84; Exhibit 145, Barber #1, paras 29–30; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 54; Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–22.
- 21 Evidence of T. Towns, Transcript, January 29, 2021, p 151; Evidence of D. Dickson, Transcript, January 22, 2021, p 83.
- 22 Evidence of D. Sturko, Transcript, January 28, 2021, pp 123–25; Evidence of D. Dickson, Transcript, January 22, 2021, p. 83; Exhibit 181, Vander Graaf #1, para 37.

the cash observed in British Columbia casinos during this investigation.<sup>23</sup> Further, several of the witnesses who testified about their experience working in the gaming industry also had law enforcement experience, which they drew on in giving evidence that indicators of illicit cash were commonly observed in the large cash transactions taking place in the province's casinos.<sup>24</sup> Kenneth Ackles, for example, who joined GPEB as an investigator in 2013 after 37 years as a member of the RCMP, gave the following evidence:<sup>25</sup>

My experience as a policeman gave me the impression that the way that these bills were presented and in the fashion that they were presented, wrapped in elastic bands, packaged in bundles with misorientated bills – and I mean that by either face up, face down, reversed within the bundles – was significant to me from my experience in other investigations where I also had an opportunity to view bundled cash at the scenes of investigations that I conducted where cash was seized, it was the proceeds of crime or significantly the result of a commodity exchange in a criminal investigation.

Michael Hiller, who worked as a BCLC investigator from 2009 until 2019 after more than 28 years with the RCMP, identified the features of these transactions that aroused his suspicion as follows:<sup>26</sup>

First off, the large quantity of \$20 bills which were frequently involved in these large cash transactions ... It could be \$50 bills and \$100 bills, but certainly the large quantity of \$20 bills, they were consistently bundled in a similar manner with elastic bands. There were other indicators such as deliveries of such cash to the casino and/or passing of such cash to the casino.

There are indicators such as a VIP player already playing with chips, losing all the chips, making a cellphone call and then another delivery of money occurred. There were some times when I knew from my video review that the VIP player was out of chips at the table, had lost everything, met up with somebody in a nearby washroom on the floor, reappeared at the table and now had cash or chips to buy in again.

Circumstances where a VIP player would leave the casino for a very short amount of time, get into a vehicle, drive a very short distance ... (and) ... returned to the casino and now had a bag of cash to buy in.”

Mr. Hiller went on to explain that the manner in which this cash was bundled was consistent with his understanding, based on his law enforcement experience, of how cash is packaged in the drug trade.<sup>27</sup>

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23 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–22.

24 Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12; Evidence of R. Barber, Transcript, November 3, 2020, pp 14–15; Exhibit 145, Barber #1, paras 29–30; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 54; Evidence of M. Hiller, Transcript, November 9, 2020, pp 8–9.

25 Evidence of K. Ackles, Transcript, November 2, 2020, p 11.

26 Evidence of M. Hiller, Transcript, November 9, 2020, pp 8–9.

27 Ibid, pp 10–12.

Robert Barber worked as a GPEB investigator from 2010 until 2017, following 30 years with the Vancouver Police Department. He offered similar evidence of his view of these transactions in his affidavit. He indicated, however, that he did not believe it was necessary to have law enforcement experience to appreciate the irregularities in these transactions and that, in his view, “common sense” was sufficient to identify that this cash was obviously illegitimate.<sup>28</sup>

The transactions that I found shocking and concerning would typically involve patrons buying-in at the casino using cash packaged in rubber bands, cardboard boxes or shopping bags and not in the manner I understood cash obtained from a financial institution would be packaged. These transactions were frequently in amounts of \$50,000 or more, typically entirely or predominantly in \$20 bills.

Even though I had no experience in money laundering or proceeds of crime investigations, it was immediately apparent to me that this cash was likely the proceeds of crime. This belief was not necessarily from my experience in law enforcement, as opposed to common sense. Multiple people were delivering cash to the casino in plastic bags and cardboard boxes. It seemed obvious to me that this cash had to relate to illegitimate businesses.

On their own, the volume and appearance of the cash accepted in suspicious transactions by this province’s casinos offer ample basis for the conclusion that much, if not most, of this cash was the proceeds of crime. This cash was often received in extraordinarily large quantities of \$100,000 or more and was commonly presented in a manner bearing multiple well-established indicators that it was the proceeds of crime. As discussed later in this chapter, no witness who testified offered a plausible alternative legitimate explanation for the frequency, magnitude, and character of the large cash buy-ins at Lower Mainland casinos during this time period. There is simply no other rational explanation that accounts for both the size of these transactions and their appearance, and I have little difficulty concluding on this basis that British Columbia casinos did routinely accept the proceeds of crime.

### **Additional Evidence Supporting the Conclusion that BC Casinos Accepted the Proceeds of Crime**

As indicated above, it is abundantly clear from both the size of the suspicious transactions conducted in the province’s casinos and the appearance of the cash accepted in those transactions that much, if not most, of this cash was illicit in origin. While, in my view, no further evidence is required to reach this conclusion, the record before the Commission does offer additional support for this finding. This includes evidence of the manner in which the cash used in these transactions sometimes arrived at casinos, the observations of officers engaged in two relevant law enforcement investigations (commenced in 2010

<sup>28</sup> Exhibit 145, Barber #1, paras 29–30; see also Evidence of R. Barber, Transcript, November 3, 2020, p 84.

and 2015), the effect of measures intended to combat the use of illicit cash in the gaming industry beginning in 2015, and a decline in suspicious transactions that occurred following nine arrests made by the Joint Illegal Gaming Investigation Team in 2017.

### ***Manner in which Cash Arrived at BC Casinos***

While it was not uncommon for patrons to arrive at casinos in the Lower Mainland already in possession of cash they would use to gamble, there is substantial evidence in the record before the Commission that cash was frequently delivered to patrons after their arrival, often seemingly in response to a phone call from the patron, often late at night or very early in the morning, outside of standard business hours.<sup>29</sup> While not definitive proof that these funds were the proceeds of crime, this evidence supports the conclusion that they were, as it suggests that the funds had not been sourced from conventional financial institutions and, alongside their volume and appearance, is highly suggestive of something unusual about their origins.

### ***Observations of Officers Engaged in 2010 and 2015 Police Investigations***

As discussed in detail in Chapters 3 and Chapter 39, the RCMP IPOC unit and Federal Serious and Organized Crime (FSOC) unit commenced investigations into suspicious transactions in British Columbia casinos in 2010 and 2015 respectively. Multiple officers involved in these investigations gave evidence in the course of the Commission's hearings.<sup>30</sup> Several of these officers had extensive experience and expertise in proceeds of crime investigations including Sergeant Paddon, Calvin Chrustie, and Barry Baxter – all former members of the RCMP IPOC unit – as well as Melvin Chizawsky.<sup>31</sup>

The observations made by these experienced officers in the course of the two investigations further support the conclusion that much of the suspicious cash received by British Columbia casinos was the proceeds of crime. While the 2010 investigation, described as an “intelligence probe” and discussed in detail in Chapter 39, did not establish a definitive link between this cash and criminal activity, the investigators responsible were persuaded that these funds were illicit in origin. This belief is captured in the following synopsis contained in a January 2012 investigational planning report proposing the continued investigation of this activity:<sup>32</sup>

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29 Exhibit 181, Vander Graaf #1, exhibits L, O, P; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 29–30, 39, 73, 81; Evidence of M. Hiller, Transcript, November 9, 2020, pp 8–9; Exhibit 79, Affidavit #2 of Steve Beeksma, affirmed on October 22, 2020 [Beeksma #2]; Exhibit 144, Affidavit #3 of Ken Ackles, made on October 28, 2020 [Ackles #3], exhibit D; Exhibit 507, Affidavit No. 1 of Derek Sturko, made on January 18, 2021 [Sturko #1], exhibit E.

30 Evidence of C. Chrustie, Transcript, March 29, 2021; Exhibit 663, Chizawsky; Evidence of B. Baxter, Transcript, April 8, 2021; Evidence of M. Paddon, Transcript, April 14, 2021 and Transcript, January 15, 2021; Evidence of M. Chizawsky, Transcript, March 1, 2021.

31 Exhibit 425, Curriculum Vitae of Melanie D. Paddon; Exhibit 663, Chizawsky, pp 3–9, 44; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 2–9; Evidence of B. Baxter, Transcript, April 8, 2021, pp 2–5; Evidence of M. Paddon, Transcript, January 15, 2021, pp 111–13 and Transcript, April 14, 2021, pp 4–6; Evidence of M. Chizawsky, Transcript, March 1, 2021, pp 18–20.

32 Exhibit 760, Casino – Investigational Planning & Report – IPOC (January 30, 2012) [IPOC Report 2012], p 1; see also Exhibit 759, Casino Summary & Proposal – IPOC – December 2011.

Tens of millions of dollars in large cash-transactions (many transactions well over \$100,000, much of it in \$20 bills) are funnelled-through several of the larger casinos in B.C on an annual basis. Intelligence has revealed that the origin of much of these funds are derived from criminal activity and are the Proceeds of Crime.

While the investigation proposed in this January 2012 report did not proceed, the RCMP FSOC Unit commenced surveillance connected to suspicious transactions at the urging of BCLC in 2015.<sup>33</sup> In several days of surveillance, conducted over the course of approximately three months, the FSOC officers believed they had established a direct link between suspicious cash presented to Lower Mainland casinos by “VIP” patrons and an illegal cash facility based in Richmond, British Columbia, with links to transnational drug trafficking and terrorist financing.<sup>34</sup> This investigation and the observations of the officers involved is addressed in detail in Chapter 3.

I understand that neither of these investigations ultimately resulted in any convictions and that the 2010 intelligence probe did not result in any charges. Nevertheless, the observations of the experienced and highly qualified officers involved in these investigations, suggesting direct links between criminal activity and the highly suspicious cash routinely accepted by the province’s casinos, provide some additional support for the conclusion that much of this cash was the proceeds of criminal activity.

### ***Effect of Measures Intended to Reduce Suspicious Cash***

Further support is found in the impact of measures aimed at reducing suspicious transactions and, by extension, money laundering. These measures principally included the implementation and growth of BCLC’s cash conditions program, discussed in Chapter 11, and the implementation of Dr. German’s source-of-funds recommendation, as modified by BCLC, discussed in Chapter 12.

As described in Chapter 11, near the end of 2014, BCLC placed a single casino patron on conditions that prohibited him from buying-in with unsourced cash. A second patron was placed on such conditions in April 2015. A formal protocol governing the imposition of such conditions was introduced later the same month, and in August 2015,<sup>35</sup> following law enforcement’s identification of a link between proceeds of crime

33 Exhibit 148, Affidavit #1 of Daryl Tottenham, sworn on October 30, 2020 [Tottenham #1], paras 124–25; Evidence of D. Tottenham, November 4, 2020, pp 119–20; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 118–21; Exhibit 522, Affidavit #1 of Brad Desmarais, affirmed on January 28, 2021 [Desmarais #1], para 76; Evidence of C. Chrustie, Transcript, March 29, pp 62–66.

34 Exhibit 522, Desmarais #1, exhibit 55; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 67–69; Evidence of R. Alderson, Transcript, September 9, 2021, pp 41–43.

35 Evidence of J. Lightbody, Transcript, January 28, 2021, p 38 and Transcript, January 29, 2021, pp 117–18; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 117–18; Evidence of M. Hiller, Transcript, November 9, 2020, p 126; Evidence of B. Desmarais, Transcript, February 2, 2021, p 106.

and casino buy-ins, 10 additional patrons were placed on conditions.<sup>36</sup> By the end of 2015, a total of 42 patrons had been placed on conditions that prohibited them from buying-in with unsourced cash.<sup>37</sup> That year, the total value of transactions reported as suspicious by BCLC reflected a modest decrease from the previous year.<sup>38</sup> The following year, 2016, during which an additional 61 patrons were placed on conditions,<sup>39</sup> the value of suspicious transactions reported by BCLC fell more dramatically to less than half of what it had been in 2015.<sup>40</sup> This precipitous decline carried on into 2017 as the number of patrons subject to conditions continued to grow and the total value of suspicious transactions fell to just over a quarter of 2014 levels.<sup>41</sup>

The cash conditions program continued to expand in 2018,<sup>42</sup> and was supplemented in January of that year by the implementation of Dr. German's source-of-funds recommendation, discussed in Chapter 12.<sup>43</sup> As modified by BCLC,<sup>44</sup> the measures implemented in response to this recommendation required all patrons buying-in with more than \$10,000 in cash (as well as other bearer monetary instruments) in a 24-hour period to present proof of the source of their funds.<sup>45</sup> Despite the significant reduction in suspicious transactions already achieved through the cash conditions program, the implementation of this measure precipitated a dramatic acceleration in the rate of decline in the use of suspicious cash in casinos. In 2018, the year in which the recommendation was implemented, the total value of suspicious transactions reported by BCLC fell to \$5,520,550, less than 12 percent of what it had been the previous year.<sup>46</sup> Similar reductions are observed in the rates of large cash transactions reported to FINTRAC during this same time period. In 2014, 34,720 large cash transactions, with a total value of more than \$1.184 billion, were reported to FINTRAC from British Columbia casinos.<sup>47</sup> By 2018, this fell to 13,511 transactions with a total value of \$174 million, less than 15 percent of the 2014 cumulative value.<sup>48</sup>

That the timing of these significant drops in the number and value of large and suspicious cash transactions entering the gaming industry was so closely correlated to the implementation of the cash conditions program and to Dr. German's recommendation

36 Evidence of D. Tottenham, Transcript, November 4, 2020, p 177 and Transcript, November 10, 2020, pp 143–44; Evidence of R. Alderson, Transcript, September 9, 2021, pp 132–33.

37 Exhibit 482, Cuglietta #1, exhibit A.

38 Exhibit 784, Affidavit #2 of Cathy Cuglietta, sworn on March 8, 2021 [Cuglietta #2], exhibit A.

39 Exhibit 482, Cuglietta #1, exhibit A.

40 Exhibit 784, Cuglietta #2, exhibit A.

41 Exhibit 482, Cuglietta #1, exhibit A; Exhibit 784, Cuglietta #2, exhibit A.

42 Exhibit 482, Cuglietta #1, exhibit A

43 Exhibit 832, *Dirty Money 1*, p 247.

44 Exhibit 78, Beeksma #1, para 82; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 75–76; Exhibit 490, Affidavit #1 of Robert Kroeker, made on January 15, 2021 [Kroeker #1], paras 226–28; Exhibit 505, Affidavit #1 of Jim Lightbody, sworn on January 25, 2021 [Lightbody #1], para 261.

45 Exhibit 490, Kroeker #1, para 228; Exhibit 78, Beeksma #1, para 82; Evidence of S. Lee, Transcript, October 27, 2020, pp 40–41; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 75–76.

46 Exhibit 784, Cuglietta #2, exhibit A.

47 Exhibit 482, Cuglietta #1, exhibit A.

48 Ibid.

suggests that these measures played a significant role in causing these declines. When required to account for their source of funds, those who had been buying-in with large quantities of cash could not, or would not, do so. While I accept that patrons may have ceased or reduced cash buy-ins in response to this measure for varied reasons, the most obvious explanation for this pattern is that there was not a legitimate source that could be identified. This, in my view, supports the contention that a substantial portion of the funds identified as suspicious, which were previously accepted by the province's casinos, and which disappeared following implementation of these measures, were, in fact, the proceeds of crime. When viewed in the context of the size and appearance of these transactions and the observations of the officers involved in the police investigations referred to above, the disappearance of suspicious funds following the implementation of these measures strongly suggests that the reason for much of the decline of suspicious funds is that patrons were unable to prove the legitimate origins of the cash they had previously relied on to gamble with, because that cash did not have legitimate origins.

### **2017 JIGIT Arrests**

In June of 2017, nine individuals were arrested as part of an investigation by the Joint Illegal Gaming Investigation Team, the creation of which was described in Chapter 11.<sup>49</sup> JIGIT issued a press release and held a press conference to announce the arrests.<sup>50</sup> While the individuals arrested were not publicly identified in the press release or press conference, JIGIT did indicate that the investigation related to money laundering “through casinos.” The press release said, in part:<sup>51</sup>

In May of 2016, the investigation determined that a criminal organization allegedly operating illegal gaming houses, was also facilitating money laundering for drug traffickers, loan sharking, kidnappings, and extortions within the hierarchy of this organized crime group, with links nationally and internationally, including mainland China.

The investigation also revealed several schemes related to the collection and transferring of large amounts of money within and for the criminal organization.

During the investigation, it was apparent that there were multiple roles filled by different people which enabled or facilitated the organization in laundering large amounts of money through casinos.

Following these arrests, there was a brief but significant decrease in suspicious transactions.<sup>52</sup> The evidence before me is not sufficient to conclude definitively that

49 Evidence of K. Ackles, Transcript, November 2, 2020, pp 157–59; Evidence of D. Tottenham, Transcript, November 5, 2020, p 10; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 135–36 and Transcript, January 26, 2021, pp 152–53, 185–186; Exhibit 490, Kroeker #1, para 169.

50 Exhibit 490, Kroeker #1, para 169 and exhibit 89; Exhibit 505, Lightbody #1, exhibit 40.

51 Exhibit 505, Lightbody #1, exhibit 40.

52 Exhibit 148, Tottenham #1, para 97 and exhibit 108; Exhibit 490, Kroeker #1, para 175; Evidence of R. Kroeker, Transcript, January 25, 2021, p 136; Evidence of D. Tottenham, Transcript, November 5, 2020, pp 10–12.

these arrests caused this decline in suspicious activity. However, the correlation in time between the arrests and the decline in suspicious cash, considered together with other indicators that much of the suspicious cash accepted in the province’s casinos was derived from crime, buttresses the conclusion that a significant portion of the cash entering casinos in the province continued to have illicit origins until at least 2017.

## **Alternative Explanations for Large and Suspicious Cash Transactions**

In my view, the evidence referred to above presents a powerful case that the suspicious cash routinely accepted by British Columbia casinos was illicit in origin. However, several alternative explanations have been put forward for the possible origins of this cash. In some instances, these alternative theories were advanced in the course of the Commission’s hearings, while others emerged from evidence that I heard regarding explanations that were put forward during the time period that these transactions were prevalent. The alternative explanations suggested for the sources of this suspicious cash included cash-based business, legitimate financial institutions, automated teller machines (ATMs), underground banking, and cash imported from outside of Canada. Below, I consider whether any of these explanations offer a plausible basis to question the conclusion that much of the suspicious cash accepted in the province’s casinos was derived from crime.

### ***Cash-Based Businesses***

Cash sourced from cash-based businesses such as construction and renovation businesses, restaurants, or adult entertainment was one explanation offered for the highly suspicious cash received by British Columbia casinos.<sup>53</sup> I understand that the theory underlying this possible explanation is that, rather than depositing their cash revenue in a bank, the proprietors of cash-based businesses would use that cash to gamble in casinos. As such, while conceivable that this cash could be linked to the evasion of taxes, its origins would be in legitimate, rather than illicit, business activity.

### ***Legitimate Financial Institutions and ATMs***

Legitimate financial institutions were another source of cash propounded by witnesses before the Commission. Bud Smith, the former chair of the board of BCLC, for example, testified that a report from the Bank of Canada showed that \$20 bills were the most common denomination of cash, accounting for 40 to 45 percent of cash in circulation.<sup>54</sup> Others testified that casino patrons withdrew large volumes of cash from ATMs, which only dispensed \$20 bills at the time,<sup>55</sup> and from the “Global Cash” service on site in casinos.<sup>56</sup>

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53 Evidence of T. Towns, Transcript, January 29, 2021, p 147; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 70–71.

54 Evidence of B. Smith, Transcript, February 4, 2021, p 66.

55 Evidence of R. Kroeker, Transcript, January 25, 2021, p 187.

56 Ibid, pp 187–89.

## **Underground Banking**

Several witnesses suggested that “legitimate” underground banking, meaning *hawala*-type systems (discussed in Chapter 37) *not* using illicit funds, could account for some of the cash accepted by the province’s casinos.<sup>57</sup> The question of whether such underground banking systems are inherently illegal was raised in the evidence before the Commission.<sup>58</sup> I do not see it as necessary to resolve this question here, but note that such systems remove the verification mechanisms of regulated banking. No witness offered a basis for determining that the funds used by any such service were not criminal in origin, absent these mechanisms.

## **Cash Imports**

A number of witnesses raised the prospect that large volumes of cash could be imported from Mainland China, in some cases via Hong Kong.<sup>59</sup> A 2012 freedom of information (FOI) request was referred to in support of this proposition.<sup>60</sup> Brad Desmarais, who has served in multiple executive roles within BCLC, testified that the response to this FOI request showed that \$168 million was declared at ports of entry in BC and that \$4 million was seized at the border. However, it was not conclusive as to whether these funds were in cash.<sup>61</sup>

## **Inadequacy of Alternative Explanations for Large and Suspicious Cash Transactions**

In my view, these alternative explanations for the suspicious cash prevalent in the province’s gaming industry do not offer any basis to seriously question the conclusion that much of this cash was the proceeds of crime. I cannot completely rule out that *some* portion of the cash accepted by the province’s casinos during the time period in question originated from legitimate cash-based business or ATMs, was physically transported to Canada from other jurisdictions, or originated from some other non-illicit source. However, none of these suggested sources, in my view, provide a plausible explanation for the enormous volume of cash accepted by the province’s casinos, let alone its striking consistency with descriptions of commonly accepted indicators of criminal proceeds. Further, the alternative explanations do not explain the observations made by the experienced and highly qualified officers involved in the police investigations commenced in 2010 and 2015 into the source of this cash, or the impact of the 2017 arrests made by JIGIT.

57 Evidence of T. Towns, Transcript, January 29, 2021, p 147; Evidence of B. Desmarais, Transcript, February 1, 2021, p 84; Evidence of P. Ennis, Transcript, February 3, 2021, pp 89–91; Evidence of M. Graydon, Transcript, February 11, 2021, p 47.

58 Evidence of B. Desmarais, Transcript, February 1, 2021, p 86 and Transcript, February 2, 2021, pp 89–92.

59 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 70–71; Exhibit 166, Hiller #1, paras 77–82; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 65–72; Exhibit 522, Desmarais #1, paras 30–31, exhibit 8.

60 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 65–72; Exhibit 522, Desmarais #1, paras 30–31 and exhibit 8.

61 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 65–72; Exhibit 522, Desmarais #1, paras 30–31 and exhibit 8.

## **Conclusion**

For the reasons outlined above, I am persuaded that much, if not most, of the suspicious cash accepted in British Columbia's gaming industry was the proceeds of crime. This conclusion is abundantly clear from the size and character of the transactions observed and recorded in the province's casinos, and this evidence alone offers a sufficient basis for this conclusion. Further support for this conclusion is found in the observations of highly experienced officers involved in police investigations undertaken in 2010 and 2015, in the results of efforts to reduce suspicious cash in the industry, in the correlation between arrests made in 2017 and a decline in suspicious transactions, and in the absence of any plausible legitimate explanations for these transactions. Taken together, this evidence presents an incontrovertible case that these suspicious transactions were comprised predominantly of the proceeds of crime.

## **Money Laundering Typologies**

The proceeds of crime accepted by British Columbia casinos from VIP patrons for the purpose of gambling was part of a money laundering typology commonly referred to as the Vancouver model. This phrase was coined by John Langdale, an Australian academic, to refer to a distinct money laundering typology, described below.<sup>62</sup> While there are isolated incidents suggestive of at least one other typology in occasional use in the industry, the evidence before me suggests that the Vancouver model was not only the primary typology employed in the gaming sector, but also the only typology in use at any significant level. The discussion that follows describes the Vancouver model and identifies the evidence that supports the conclusion that it was in use in the gaming sector, before briefly discussing two other typologies.

### **The Vancouver Model Money Laundering Typology**

Under the Vancouver model money laundering typology, as it operated in connection with British Columbia's gaming industry, casino patrons provided with large quantities of illicit cash would use that cash to gamble and return it in a different form, sometimes in another jurisdiction (often via electronic funds transfer, in China). In this way, those intent on laundering money through this model were able to rid themselves of bulky, illicit cash, while transferring its value into a more convenient and less suspicious form in another jurisdiction. Evidence that the suspicious transactions observed in the province's casinos were connected to this typology is found in information provided to Mr. Hiller in 2014, in the observations made by officers engaged in the two police investigations referred to above, and in information obtained by BCLC through casino patron interviews conducted as part of its cash conditions program.

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<sup>62</sup> Evidence of S. Schneider, Transcript, May 26, 2020, pp 28-31.

### **Theories of GPEB Investigation Division and BCLC Investigator Mike Hiller and Information Obtained by Mr. Hiller**

As early as 2009, BCLC investigator Mike Hiller hypothesized that the highly suspicious cash transactions growing in frequency in the province's casinos were connected to a money laundering typology involving the provision of illicit cash to casino patrons and the return of those funds in other forms and/or locations.<sup>63</sup>

Mr. Hiller explained in his evidence that he became aware of this money laundering typology during his lengthy policing career and came to believe that it was being employed in the gaming industry almost immediately upon joining BCLC in 2009. He described his understanding of this typology in his testimony as follows:<sup>64</sup>

A My theory was that these VIP players were being provided this cash by organized crime and they were simply being used as a vehicle ... for organized crime to get rid of this money ... through the money laundering process.

Q Did you have a theory as to how the repayment was being made?

A I believed it was being made sometimes locally. That would have happened, of course. But I also believed that the higher-level VIP players that were borrowing hundreds of thousands of dollars were repaying it to the organization in China.

Mr. Hiller was not alone in this view. Members of the GPEB investigation division, led by executive director Larry Vander Graaf, a former RCMP officer with extensive policing experience and expertise in proceeds of crime investigations,<sup>65</sup> developed a similar belief around this time. Joe Schalk, also a former RCMP officer and the division's senior director at this time, communicated this theory to BCLC in a letter dated February 28, 2011. This letter, addressed to BCLC's manager of investigations, Gord Friesen, said in part:<sup>66</sup>

Large quantities of \$20.00 bill denominations will continue to be and are at present properly reported to the various authorities as "Suspicious Currency", both by the service provider and BCLC. Patrons using these large quantities of \$20.00 currency buy-ins may not in some, certainly not all cases, be directly involved with or themselves be criminals. Regardless of whether they win or lose all of the money they buy in with, we believe, in many cases, patrons are at very least FACILITATING the transfer of and/or the laundering of proceeds of crime. Those proceeds may have started out 2 or 3 persons or groups removed from the patron using these

63 Evidence of M. Hiller, Transcript, November 9, 2020, pp 22–23.

64 Ibid.

65 Exhibit 182, Curriculum Vitae of Larry Peter Vander Graaf; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 3–7.

66 Exhibit 112, Letter from Joe Schalk re Money Laundering in BC Casinos (February 28, 2011).

instruments to play in the casino. Regardless, money is being laundered. The end user, the patron, MUST STILL pay back all of the monies he/she receives in order to facilitate his buy-in with \$20.00 bills and for the person on the initial start of the facilitation process, the money is being laundered for him/her, through the use of the gaming venue. [Emphasis in original.]

I do not suggest that the existence of these theories serve as evidence that they were correct, though it is notable that these highly experienced police officers seem to have separately arrived at the same conclusion. In 2014, however, Mr. Hiller received support for this theory from a confidential source. He described the information he received at this time in his affidavit as follows:<sup>67</sup>

In 2014, a confidential source whom I considered to be a reliable source of information told me that major loan sharks were operating in BC casinos, and that the vast majority of VIPs get the money they gamble with in Lower Mainland casinos from loan sharks. I was told that these loans, plus a commission, are repaid in China, and that good customers pay a lower commission. Immediately upon learning this information, I prepared an iTrak incident report detailing what I had been told and brought the incident report to the attention of Mr. Friesen and Mr. Karlovcec.

While neither Mr. Hiller's belief in his theory nor that of the members of the GPEB investigation division are proof that the theory was correct, the information obtained by Mr. Hiller from this confidential source supports the conclusion that Mr. Hiller and Mr. Schalk had correctly identified the money laundering typology connected to large cash transactions in Lower Mainland casinos.

### ***Observations of Officers Engaged in 2010 and 2015 Police Investigations***

As discussed above, several years prior to Mr. Hiller receiving this information, the IPOC investigators that undertook the intelligence probe into these transactions beginning in 2010 reached a similar conclusion as to the money laundering typology in use in the gaming industry. The January 2012 investigational planning report referred to earlier in this chapter described the typology believed to be connected to these suspicious transactions as follows:<sup>68</sup>

In a one-year period (ending August, 2011), almost \$40 million dollars in suspicious buy-ins were identified, with the vast majority of these being in \$20 bills.

As noted, the individuals actually conducting the buy-ins at the casino, and doing the gambling, were wealthy Chinese businessmen, many with little to no ties to Canada. They choose to gamble at the casinos here, and to do so, they need ready access to significant amounts of Canadian cash.

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67 Exhibit 166, Hiller #1, para 74.

68 Exhibit 760, IPOC Report 2012.

Typically, they are wealthy, but their funds are overseas (PRC) [People’s Republic of China] and are subject to PRC government currency export and transaction-restrictions. These PRC government rules make it extremely difficult for these gamblers to get their money out of the PRC and into a Canadian bank account, where they can access it for their gambling activities. Thus they may “have the money”, but lack the ready access to large amounts of Canadian cash.

To fulfill the need of these gamblers for Canadian cash, there are several groups of people known to regularly frequent the River Rock and Starlight casinos. Investigation by IPOC ... to date indicates that these groups of loan-shark “facilitators” are constantly present in and around the casinos, ready to supply large quantities of cash to these high-roller players. These high-roller players typically pay-back their losses via bank-deposits in the PRC or Hong Kong, which are ultimately brought back to Canada by the loan-sharks (in non-cash form) as “legitimate” money. This is often done by international money-laundering groups, using a “hawalla” [*sic*] style of debt-settlement, where a debt in Canada can be paid-back with a corresponding credit overseas (or vice-versa), with actual money rarely even changing hands between the parties.

The officers engaged in the investigation commenced by the FSOC Unit in 2015 reached similar conclusions, as described in detail in Chapter 3.

### ***BCLC Patron Interviews***

Finally, the conclusion that the Vancouver model money laundering typology was employed in the province’s gaming industry is supported by evidence of information obtained by BCLC in the course of interviews of casino patrons conducted as part of its cash conditions program. Patrons described the source of the cash they used in British Columbia casinos in a manner consistent with the model described above.<sup>69</sup> Steve Beeksma, who joined BCLC as an investigator in 2008, after working for several years for Great Canadian Gaming Corporation (Great Canadian)<sup>70</sup> was involved in a significant number of these interviews. He gave the following evidence:<sup>71</sup>

As previously mentioned, BCLC’s AML [Anti-Money Laundering] Unit targeted players suspected of receiving cash from [Paul] Jin at the beginning of BCLC’s cash conditions program and they were asked about the nature of their dealings with Mr. Jin during their interviews. While it was not clear to us whether interest was being charged by Mr. Jin in respect of all of his customers, during these interviews we were often told that higher-level

69 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 152–53; Exhibit 78, Beeksma #1, para 75, exhibit AA; Exhibit 522, Desmarais #1, exhibit 29.

70 Exhibit 78, Beeksma #1, para 8.

71 Ibid, para 75.

borrowers were not being charged interest. We were also told by some players interviewed that the funds they were borrowing from Mr. Jin were later repaid in China. This was the first time that I understood that this was how funds were being acquired and repaid by Mr. Jin's customers.

Based on all of this evidence, it is abundantly clear, in my view, that the enormous quantities of illicit cash that came to be accepted in British Columbia's gaming industry were distributed to casino patrons as part of the Vancouver model money laundering typology. While these funds were genuinely gambled and often lost, their acceptance facilitated the laundering of this illicit cash by enabling criminal organizations to dispose of it and be repaid in other forms in other jurisdictions, thereby transferring the funds to another part of the world, converting them into a different form, and obscuring their illicit origins.

## **Other Money Laundering Typologies**

Based on the evidence before me, I am satisfied that the Vancouver model money laundering typology described above was the only typology of significant concern in the province's gaming industry. Other money laundering typologies, including refining and the exchange of cash for cheques with minimal or no play, were discussed in the Commission's hearings and are described below.<sup>72</sup> While there is some evidence of occasional activity indicative of refining, the evidence does not support that this was a significant issue for the industry at any time. With respect to the exchange of cash for cheques, the record before me is sufficient to allow for a positive conclusion that this type of activity was *not* occurring at a significant level during any relevant time in this province's casinos.

### ***Refining***

Refining refers to a method of money laundering in which patrons buy-in at a casino using small bills and subsequently cash out for larger bills.<sup>73</sup> While this typology does not convert cash into a different type of asset or medium of exchange, it advances the objectives of those intent on laundering illicit funds in two ways. First, it converts small denominations of currency, typically \$20 bills, which, as discussed above, are often viewed with particular suspicion, into larger denominations less likely to attract the same level of scrutiny. Second, it reduces the total, literal volume and weight of cash in the possession of the patron by exchanging a large number of low-value bills for a much smaller number of high-value bills. The total number and weight of \$100 bills is

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72 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 52–53, 68–71; Exhibit 78, Beeksma #1, paras 64, 89; Exhibit 4, Overview Report: Financial Action Task Force, Appendix O, APG & FATF, *FATF Report: Vulnerabilities of Casinos and Gaming Sector* (Paris: 2009) [FATF Gaming Report], pp 1234–35 and 1239–42; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 100–1, 104; Exhibit 490, Kroeker #1, exhibit 1.

73 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 52–53, 68–71; Exhibit 78, Beeksma #1, paras 64, 89; Evidence of R. Alderson, Transcript, September 9, 2021, pp 17–18; Exhibit 781, Affidavit #1 of Anna Fitzgerald, made on March 3, 2021 [Fitzgerald #1], exhibit 6; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 100–1, 104.

one-fifth that of an equivalent value of \$20 bills, meaning that the conversion of \$20 bills into \$100 bills results in a much more manageable mass of currency that is far easier to transport or conceal than in its original form.<sup>74</sup>

There is some evidence of isolated incidents of activity consistent with refining in the evidence before me. These include activities documented in a BCLC security incident report that took place in March 2000;<sup>75</sup> two related incidents that took place at the River Rock in 2012, leading to intervention by Ross Alderson, then a casino investigator stationed at the River Rock;<sup>76</sup> a 2014 incident documented by Mr. Beeksma;<sup>77</sup> and an incident on December 30, 2014, documented in emails between BCLC and a service provider.<sup>78</sup> References to this typology are also found in at least four Gaming Policy and Enforcement Branch audits of Lower Mainland casinos.<sup>79</sup> Each of these is described briefly below:

The March 2000 security incident report appears to describe a patron converting US dollars in small denominations into larger Canadian bills at Vancouver's Royal Diamond Casino:<sup>80</sup>

[The patron] attended at the Royal Diamond Casino and attempted to exchange \$11,600.00 US dollars into Canadian currency. The casino staff were certainly suspicious. She was able to convince the casino manager that she did intend to gamble with the money if exchanged, so they allowed her to exchange \$3,000 US dollars. She then went to the concession area of the casino, had something to eat, and then said she was going to go and meet a friend at another casino. She left without gambling any of the exchanged money. The \$11,600 US dollars that she produced was comprised of a mixture of large and small bills. Of course she asked to exchange the smaller bills first which they did for her.

The incidents that took place at the River Rock in 2012 were described by BCLC investigator Stone Lee as follows in his affidavit:<sup>81</sup>

74 Evidence of R. Alderson, Transcript, September 9, 2021, pp 17–18; Exhibit 781, Fitzgerald #1, exhibit 6; Exhibit 4, Appendix O, *FATF Gaming Report*, pp 1239–42; Exhibit 490, Kroeker #1, exhibit 1.

75 Exhibit 503, Overview Report: 1998–2001 BCLC Security Incident Reports Related to Loan Sharking, Money Laundering and Suspicious Transactions in British Columbia Casinos [OR: BCLC AML Security Reports 1998–2001], Appendix D, BCLC Security Incident Report bearing file number 00 0563 dated March 22, 2000.

76 Exhibit 87, S. Lee #1, para 36; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 51–53; Evidence of S. Lee, Transcript, October 27, 2020, p 25; Exhibit 78, Beeksma #1, para 64 and exhibits H, I, J; Evidence of R. Alderson, Transcript, September 9, 2021, pp 17–18.

77 Exhibit 79, Beeksma #2, p 16, exhibit 2; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 68–71.

78 Exhibit 129, Email from John Karlovcec to Robert Kroeker, re Large Cash Buy-ins (January 8, 2015); Evidence of J. Karlovcec, Transcript, October 30, 2020, p 53–54, 153–54.

79 Exhibit 781, Fitzgerald #1, exhibits 6, 26, 36, 38.

80 Exhibit 503, OR: BCLC AML Security Reports 1998–2001, Appendix D, BCLC Security Incident Report bearing file number 00 0563 dated March 22, 2000.

81 Exhibit 87, S. Lee #1, para 36.

I recall Mr. Alderson investigating and interviewing a patron beginning in March 2012, who was buying in for up to \$100,000 with \$20s, hardly playing, and then cashing out and leaving. On or about April 4, 2012, this patron returned to River Rock, bought in for approximately \$100,000 with \$20s and wanted to leave after 30 minutes of play. Mr. Alderson instructed Great Canadian staff to pay him out in \$20s instead of a higher denomination.

In their evidence, both Mr. Alderson and Mr. Beeksma, who was also stationed at the River Rock at that time, made clear that in the first incident referred to in Mr. Lee's evidence above, the patron was paid out in \$100 bills despite, as indicated, having played minimally after buying in with \$20 bills.<sup>82</sup> The purpose of Mr. Alderson's intervention on the second occasion was to ensure that the patron was not paid out in \$100 bills a second time.<sup>83</sup>

The third occurrence was discussed in Mr. Beeksma's evidence. He described observing a similar incident, also at the River Rock, that took place in 2014.<sup>84</sup> He summarized his observations as follows in a BCLC Incident File report:<sup>85</sup>

On the evening of 2014-FEB-09 a male patron ... produced \$200K in CDN \$20 bills for buying in at River [Rock's] VIP Salon. After receiving the chips [the patron] put approx. \$180K of them into his jacket pockets then gambled for approx 2 hours with the remaining \$20K before redeeming the full amount receiving cash (\$100 bills) to complete the disbursement. Although [the patron]'s reasoning for doing this is not known, changing his \$20 bills to \$100 bills after minimal play is a casino indicator of money laundering.

The fourth incident, which took place on December 30, 2014, was documented in an exchange of emails between BCLC and Great Canadian staff.<sup>86</sup> This incident involved a patron buying-in for an unspecified amount in \$20 bills, but receiving \$100 bills when cashing out, despite making only a single wager.

Finally, alongside these specific incidents, at least four GPEB audits completed between 2014 and 2016 refer to patrons buying-in at the River Rock Casino using \$20 bills and being paid out with \$100 bills.<sup>87</sup> These audits generally do not identify specific transactions and are primarily based on analysis of the transfer of cash between high-limit cash cages and the casino vault. As such, it is not possible – and it does not appear that any effort was made in these audits – to understand the pattern of play that patrons engaged in before they were provided with larger denomination bills

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82 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 52–53; Evidence of R. Alderson, Transcript, September 9, 2021, pp 17–19; Exhibit 78, Beeksma #1, exhibits H, I, J.

83 Evidence of R. Alderson, Transcript, September 9, 2021, pp 18–19.

84 Exhibit 79, Beeksma #2, exhibit 2; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 68–71.

85 Exhibit 79, Beeksma #2, exhibit 2.

86 Exhibit 129, Email from John Karlovcec to Robert Kroeker, re large Cash Buy-ins (January 8, 2015); Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 53–54 and 153–54.

87 Exhibit 781, Fitzgerald #1, exhibits 6, 26, 36, 38.

upon cashing out. Accordingly, while these audits offer some indication of possible refining activity, caution should be exercised in drawing firm conclusions that the activity referred to necessarily amounted to money laundering.

Without knowing the intentions of those conducting any of the transactions referred to above, it is impossible to know with certainty whether the actions of the patrons involved were motivated by an intention to launder money. However, the first four incidents, at least, involve highly suspicious activity that gives rise to plausible concern for money laundering. Given these occurrences – and the sheer volume of cash that cycled through major Lower Mainland casinos in the years leading up to 2018 – it is plausible that incidents of refining have occurred in this province’s casinos. However, in my view, the evidence before me does not support a conclusion that this was occurring with any regularity or in any systematic way.

I am satisfied that refining is not occurring and has likely never occurred at a substantial rate in this province’s casinos and is not a significant issue in the gaming industry in British Columbia. While the incidents described above are concerning, they represent a small number of transactions over the span of 14 years. One of these was stopped as it occurred, and all were identified as suspicious by BCLC and/or service provider staff. It is likely that these incidents are not the entirety of all such transactions that have occurred in the nearly five decades that casino-style gaming has been offered in this province, but I accept that refining is not a frequent occurrence.

I am satisfied as well that the absence of significant refining activity in British Columbia casinos is the result of effective measures to prevent it, implemented by BCLC and executed by service providers. These include, in particular, requirements that patrons who do not engage in “reasonable play” be paid out in the same denominations they used to buy-in.<sup>88</sup> It appears that this measure – alongside the sensitivity of BCLC investigators to the risk of refining, evidenced by the reports referred to above – is having its intended effect of preventing this money laundering typology in this province’s casinos, and I encourage BCLC to continue these efforts.

## **Exchange of Cash for Cheques**

Like refining, the “exchange of cash for cheques” money laundering typology also involves the use of casinos to replace illicit cash with a less suspicious, more convenient medium of exchange. In this typology, however, those intent on laundering money are not merely seeking to trade small bills for large, but to exchange cash for cheques, sparing themselves entirely from the scrutiny and inconvenience arising from cash lacking legitimate origins. Patrons seeking to employ this typology, like those intent on refining, will buy-in using cash generated through crime and engage in minimal play before cashing out. Instead of obtaining higher denomination bills, however, the patron will seek the return of their funds in the form

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<sup>88</sup> Ibid, exhibit 38; Evidence of R. Kroeker, Transcript, January 25, 2021, p 104.

of a cheque. This typology shares with refining the benefit of transforming bulky cash into a less suspicious form that is easier to transport and conceal. It also has the added benefit of converting cash into a form that may also have the appearance of being derived from casino winnings, enabling the incorporation of these funds into the legitimate financial system.<sup>89</sup>

Unlike refining, there is no compelling evidence in the record before me of *any* incidents suggesting the successful employment of this typology in British Columbia's casinos. To the contrary, there is positive evidence that the controls put in place by BCLC and executed by service providers have successfully prevented its occurrence. As described in detail in Chapter 12, concerns that this typology was occurring in the province's casinos were raised in media reporting in September 2017, a day after the commencement of Dr. German's review.<sup>90</sup> Mr. Kroeker described the allegations made in this reporting in his affidavit as follows:<sup>91</sup>

On Friday September 29, 2017, media reports alleged customers had been attending casinos, buying-in with large amounts of cash, engaging in little to no play, and cashing out and receiving a cheque.

In response, BCLC quickly engaged an external consulting firm to examine every cheque issued by the River Rock Casino over a three-year period.<sup>92</sup> While this audit identified irregularities in 49 transactions involving 28 patrons, I am satisfied that its results demonstrate that money laundering using this typology simply did not occur during the period covered by the audit in any systematic way or at any significant level.<sup>93</sup> A similar audit of cheques issued by the Grand Villa Casino was subsequently conducted, identifying irregularities in the issuance of only three cheques. Like the audit of River Rock cheques, this audit supports the conclusion that money laundering did not occur through this typology at the Grand Villa Casino during the time period examined.<sup>94</sup>

As is the case with refining, I accept that the controls implemented by BCLC and executed by service providers should be credited with successfully preventing this money laundering typology. Of particular significance, these controls include the restriction of funds issued through “verified winnings” cheques only to the portion of a patron's cash-out that represents winnings, with any initial buy-in made in cash returned in the form of cash, and restrictions on “convenience” or “return-of-funds”

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89 Exhibit 4, Appendix O, *FATF Gaming Report*, pp 1234–35; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 100–1; Exhibit 490, Kroeker #1, exhibit 1.

90 Exhibit 490, Kroeker #1, para 186; Evidence of T. Doyle, Transcript, February 10, 2021, pp 47–49; Exhibit 505, Lightbody #1, para 227; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 149–51 and Transcript, January 26, 2021, pp 158–59.

91 Exhibit 490, Kroeker #1, para 186.

92 Exhibit 490, Kroeker #1, paras 187–90 and exhibit 96; Evidence of R. Kroeker, Transcript, January 25, 2021, p 190; Exhibit 484, Affidavit #2 of Kevin deBruyckere, sworn on October 23, 2020 [deBruyckere #2], exhibit 14.

93 Exhibit 484, deBruyckere #2, exhibit 14.

94 Exhibit 490, Kroeker #1, para 191; Exhibit 484, deBruyckere #2, exhibit 17.

cheques that impose strict limits on the value of cheques issued to return cash buy-ins that do not represent winnings.<sup>95</sup> The apparent success of these measures in preventing this typology at the River Rock and Grand Villa casinos, despite the rate at which suspicious cash was entering the province's casinos at the time, is persuasive evidence that these measures are highly effective. Presuming they are properly implemented, these measures have almost certainly ensured that the results of these two audits are representative of the gaming industry as a whole.

In light of this success, it is necessary, in my view, to note that on multiple occasions in recent years, BCLC has proposed eliminating limits on the value of convenience cheques.<sup>96</sup> I understand the benefit these proposals may have in ensuring that funds issued by casinos can be traced and in further reducing the use of cash in the gaming industry, including by discouraging patrons from buying-in with cash previously paid out to them by a casino. In my view, however, even as measures such as the BCLC's cash conditions program and the implementation of Dr. German's source-of-funds recommendation have increased confidence that the cash accepted in the province's casinos is legitimate in its origins, limits on the value of convenience cheques remain an important safeguard against this form of money laundering and I recommend that those limits remain in place as the industry continues to transition away from cash.

**Recommendation 6:** I recommend that current limits on the amounts that casinos are able to pay out to patrons in the form of convenience cheques remain in place.

## Conclusion

While the gaming industry's successes in preventing these two typologies pale in comparison to the scale of the money laundering that occurred through the Vancouver model, they should not be overlooked. That the industry was able to successfully prevent these money laundering typologies is positive and went some length toward ensuring that the money laundering process could not be completed, in its entirety, within the four walls of a British Columbia casino. More significantly, these successes illustrate that the gaming industry is – and has long been – capable of taking effective action to prevent money laundering where motivated to do so. While this would suggest that the failure to prevent the rise of the Vancouver model was not the result of a lack of capacity, it offers reason for optimism that the industry can effectively prevent money laundering where it has the will to do so.

<sup>95</sup> Evidence of S. Beeksma, Transcript, October 26, 2020, pp 145–46; Evidence of T. Towns, Transcript, February 1, 2021, pp 32; Exhibit 484, deBruyckere #2, para 9; Exhibit 76, Overview Report: BCLC Standards, Policies, Procedures and Operational Services Agreements, pp 187–89.

<sup>96</sup> Exhibit 490, Kroeker #1, paras 139–142, 145–53 and exhibits 60, 63, 66; Exhibit 522, Desmarais #1, paras 95–96 and exhibits 70, 73; Evidence of R. Kroeker, Transcript, January 26, 2021, p 199.

## **The Extent of Money Laundering in the Gaming Industry**

In light of the conclusion above that money laundering did occur in British Columbia's gaming industry and having discussed the predominant typology by which it took place, the Commission's Terms of Reference require that I consider the extent of this activity. The discussion that follows does so in terms of the quantity of illicit funds laundered through the gaming industry, the duration of time over which it took place, and the geographical region in which it occurred. While it is not possible to determine with precision the exact amount of money laundered through this province's gaming industry, based on the record before me, it is abundantly clear that hundreds of millions of dollars of criminal proceeds were accepted in British Columbia casinos over a sustained period spanning at least a decade, predominantly in the Lower Mainland.

### **Quantity of Criminal Proceeds Laundered Through BC Casinos**

It is not possible to determine the exact dollar value of proceeds of crime laundered through this province's casinos using the Vancouver model typology described above. While the Commission has access to relatively precise data regarding the number and value of suspicious transactions reported to FINTRAC by BCLC and in reports related to suspicious cash transactions submitted to GPEB, pursuant to section 86 of the *Gaming Control Act*, SBC 2002, c 14, this data cannot be equated with the number and value of transactions amounting to money laundering. As was made clear repeatedly in the course of the Commission's hearings, it is not the case that every suspicious transaction necessarily amounts to money laundering. There are a broad range of indicators that can result in a transaction being reported to FINTRAC, all of which may be indicators of illicit activity, but none of which are definitive proof. On the other side of the ledger, the evidence before me also makes clear that even highly suspicious transactions were sometimes not reported as such.<sup>97</sup> Accordingly, there is good reason to believe that FINTRAC and section 86 reporting data may include transactions that were not connected to money laundering, while also omitting some that were.

This inability to arrive at a precise valuation of dollars laundered through the province's casinos does not mean that the evidence before the Commission offers no insight into the scale at which illicit funds were accepted in British Columbia gaming facilities. Rather, the evidence available paints a compelling picture of the extent of this problem, both in the aggregate and at specific time periods and is sufficient to allow for the conclusion that hundreds of millions of dollars have been laundered through this province's gaming industry. The evidence that supports this conclusion includes suspicious transaction reporting data, evidence of the impact of measures intended to reduce suspicious transactions and, ultimately, money laundering and evidence of suspicious activity occurring during specific time periods.

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<sup>97</sup> Exhibit 75, Overview Report: 2016 BCLC Voluntary Self-Declaration of Non-Compliance; Exhibit 166, Hiller #1, paras 60–66; Evidence of D. Dickson, Transcript, January 22, 2021, p 19.

## Suspicious Transaction Reporting

While I accept that it is not a precise measure of the amount of money laundered through the gaming industry, I am nevertheless satisfied that suspicious transaction reporting to FINTRAC and to GPEB is a useful indicator in identifying the extent of money laundering in the province’s casinos. This is particularly so when considered alongside the qualitative evidence discussed previously in this report regarding the nature of these transactions and the appearance of the cash used to conduct them.<sup>98</sup> This evidence offers insight into the nature of the transactions being reported as suspicious during the relevant time period and provides support for the conclusion that a significant portion of the suspicious transactions identified at this time were conducted using the proceeds of crime.

The suspicious transaction reporting data relevant to determining the extent of money laundering in the gaming industry comes primarily from two sources. Prior to the termination of Mr. Vander Graaf in 2014, the GPEB investigation division regularly produced “reports of findings” detailing the number and value of suspicious transactions reported to the Branch pursuant to section 86 of the *Gaming Control Act*. While the production of these reports appears to have ceased in 2014, BCLC’s FINTRAC reporting data for suspicious transactions is available for 2014 and the years that followed. BCLC’s FINTRAC reporting data does not track precisely the same information as the section 86 suspicious cash transaction reporting data, but both offer a clear indication of the frequency of suspicious transactions and the total value of suspicious funds accepted by the gaming industry at relevant times.

### GPEB Reports of Findings

The earliest GPEB report of findings detailing suspicious cash transaction reporting data is dated November 19, 2012,<sup>99</sup> referred to above. Table 13.1 indicates the number of suspicious currency transaction (SCT) reports received by the Branch annually between 2007 and 2011, with partial data for 2012:

**Table 13.1: SCT Reports Received by GPEB, 2007–2012**

<b>Calendar Year</b>	<b># of Section 86 SCT Reports</b>
2007	59
2008	213
2009	211
2010	295
2011	676
2012 (first nine months)	794

Source: Exhibit 181, Vander Graaf #1, exhibit G

<sup>98</sup> Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 4, 6, 10; Evidence of D. Dickson, Transcript, January 22, 2021, pp 6–7; Evidence of J. Schalk, Transcript, January 22, 2021, p 113; Evidence of R. Barber, Transcript, November 3, 2020, pp 14–15; Exhibit 144, Ackles #3, para 19; Exhibit 145, Barber #1, paras 29–30; Exhibit 181, Vander Graaf #1, para 54; Exhibit 166, Hiller #1, para 58.

<sup>99</sup> Exhibit 181, Vander Graaf #1, exhibit G.

A subsequent report from October 2013 offered the following data:<sup>100</sup>

**Table 13.2: Value of Reported SCTs, Various Periods, 2010–2013**

<b>Year</b>	<b># of Section 86 SCT Reports</b>
2008–09	103
2009–10	117
2010–11	459
2011–12	861
2012–13	1,062
2013 (first nine months)	840

Source: Exhibit 181, Vander Graaf #1, exhibit O.

While these first two reports do not provide comprehensive data regarding the cumulative value of reported transactions in each year, the second identifies the value of reported suspicious currency transactions for two one-year periods and one nine-month period. Table 13.3 also indicates the percentage of the suspicious cash accepted during each time period comprised of \$20 bills:<sup>101</sup>

**Table 13.3: Percentage of SCTs Comprised of \$20 Bills, 2011–2013**

<b>Time Period</b>	<b>Value of SCTs</b>	<b>% Comprised of \$20 Bills</b>
July 1, 2010–June 30, 2011 (one year)	\$39,572,313	75%
January 1, 2012–December 31, 2012 (one year)	\$87,435,297	68%
January 1, 2013–September 30, 2013 (nine months)	\$71,196,398	67%

Source: Exhibit 181, Vander Graaf #1, exhibit O.

The final such report, prepared shortly before Mr. Vander Graaf and Mr. Schalk were terminated in December 2014,<sup>102</sup> was produced in October 2014. Table 13.4 offers the following updated data regarding suspicious currency transactions reported in 2012–13 and 2013–14, as well as partial data for 2014–15:<sup>103</sup>

<sup>100</sup> Ibid, exhibit O.

<sup>101</sup> Ibid.

<sup>102</sup> Exhibit 145, Barber #1 para 88; Exhibit 181, Vander Graaf #1, exhibit QQ.

<sup>103</sup> Exhibit 181, Vander Graaf #1, exhibit Q.

**Table 13.4: SCT Reports Received by GPEB, 2012–2015**

<b>Year</b>	<b># of Section 86 SCT Reports</b>	<b>Total Value of SCTs</b>
2012–13	1,059	\$82,369,077
2013–14	1,382	\$118,693,215
2014–15 (first six months)	876	\$92,891,065

Source: Exhibit 181, Vander Graaf #1, exhibit Q.

### ***BCLC Suspicious Transaction and Large Cash Transaction Report Data***

While GPEB does not appear to have continued producing reports of this sort following the departure of Mr. Vander Graaf and Mr. Schalk, the cessation of the production of these reports coincides with the initial availability of BCLC suspicious transaction reporting data.<sup>104</sup> Table 13.5 indicates the number of suspicious transaction reports (STRs) submitted to FINTRAC by BCLC between 2014 and 2019 and the value of the transactions represented in those reports:<sup>105</sup>

**Table 13.5: STRs Submitted to FINTRAC by BCLC, 2014–2019**

<b>Year</b>	<b>Total # of STRs</b>	<b># of STRs \$50,001–\$100,000</b>	<b># of STRs over \$100,000</b>	<b>Total Value of STRs</b>
2014	1,631	493	595	\$195,282,302
2015	1,737	524	523	\$183,811,853
2016	1,649	257	161	\$79,458,118
2017	1,045	158	76	\$47,128,983
2018	290	6	3	\$5,520,550
2019	222	3	20	\$53,879,973*

Source: Exhibit 482, Cuglietta #1, exhibit A; Exhibit 784, Cuglietta #2, exhibit A.

\*Note: As indicated in Chapter 12, this increase in the value of transactions reported as suspicious in 2019 appears to be the result of an anomaly in reporting data for the months of October and November of 2019. With the exception of those two months, the STR data for 2019 is generally consistent with the data for 2018. This anomaly is not reflected in large cash transaction reporting data for these months, indicating that this increase in the number and value of transactions reported as suspicious was not connected to cash transactions.

<sup>104</sup> Exhibit 482, Cuglietta #1; Exhibit 784, Cuglietta #2.

<sup>105</sup> Exhibit 482, Cuglietta #1, exhibit A; Exhibit 784, Cuglietta #2, exhibit A.

I note that, while the data set out above drawn from GPEB reports of findings specifically identify suspicious cash transactions, this is not the case with BCLC FINTRAC reporting data, which also includes non-cash suspicious transactions, as well as e-gaming and “external request” suspicious transaction reports.<sup>106</sup>

Data obtained from BCLC also indicates the extent of large cash transactions (LCTs) – those of \$10,000 or more – over time.<sup>107</sup> While large cash transactions, most of which are not identified as suspicious by service provider and/or BCLC staff, should not be equated to proceeds of crime, Table 13.6 offers an indication of the volume of cash accepted by the province’s casinos in large transactions between 2012 and 2019:

**Table 13.6: LCTs Accepted by BC Casinos, 2012–2019**

<b>Year</b>	<b>Total # of LCT Reports</b>	<b># of LCT Reports \$50,001–\$100,000</b>	<b># of LCT Reports over \$100,000</b>	<b>Total Value of LCT Reports</b>
2012	21,525	1,240	567	\$492.3 M
2013	27,449	1,528	1,084	\$600.6 M
2014	34,720	2,402	1,881	\$1,184.6 M
2015	35,656	2,115	1,462	\$968.1 M
2016	37,596	1,109	662	\$739.6 M
2017	36,619	452	139	\$514.2 M
2018	13,511	59	10	\$174 M
2019	9,969	43	13	\$130.2 M

Source: Exhibit 482, Cuglietta #1, exhibit A.

The suspicious transaction report data discussed above (as distinct from the large cash transaction report data) reveal the substantial quantity of suspicious funds accepted by this province’s casinos over the course of a decade. In the four-year span between 2014 and 2017 alone, even at a time when BCLC had begun to implement measures to reduce suspicious transactions, BCLC reported more than half a billion dollars in suspicious transactions. While it is not the case that all of this money necessarily represents the proceeds of crime, given the evidence before me of the nature of transactions taking place in the province’s casinos at this time, I am satisfied that a substantial portion of it did and that this data supports the conclusion that hundreds of millions of dollars in illicit funds were laundered through this province’s gaming industry during the time period covered by the data set out above.

<sup>106</sup> Exhibit 482, Cuglietta #1, exhibit A.

<sup>107</sup> Exhibit 482, Cuglietta #1, exhibit A.

### ***Effect of Measures Intended to Reduce Suspicious Cash***

As addressed above in the discussion of the evidence supportive of the conclusion that money laundering took place in the gaming industry, the measures implemented beginning in 2015 to reduce suspicious transactions in the gaming industry had an impact on the volume of suspicious cash accepted in the province's casinos. Between 2014 – the year in which the first patron was placed on cash conditions and the year prior to the formalization of BCLC's cash conditions program – and 2018 – the year in which Dr. German's source of funds recommendation was implemented (as modified by BCLC) – the value of suspicious transactions reported by BCLC fell from just over \$195 million to just over \$5 million.<sup>108</sup> Over the same time period, the value of reported large cash transactions fell from nearly \$1.2 billion to just over \$174 million.<sup>109</sup> As discussed in Chapter 12, these declines in large and suspicious transactions were also correlated with declines in revenue for the River Rock Casino and for BCLC table games revenue overall.<sup>110</sup>

It is unlikely that every dollar of this reduction is attributable entirely to these measures. However, that the rate at which suspicious cash was entering the province's gaming industry dropped so dramatically in just a few years, following a period of sustained growth as reflected in GPEB reports of findings, at precisely the time that measures intended to have exactly this effect were implemented, is a strong indicator that a substantial amount of the cash was illicit. In my view, it is clear that a significant reason for the disappearance of such a large quantity of suspicious funds from the industry following the implementation of measures requiring proof that it had a legitimate source is that no such proof of legitimacy existed. As such, this reduction in suspicious transactions supports that a substantial portion of cash accepted in these transactions was illicit in origin.

### ***Suspicious Transactions During Discrete Time Periods***

The aggregate data set out above provides a valuable overview of the number of suspicious transactions that took place in the gaming industry and the volume of suspicious funds accepted as part of those transactions. While these data may offer the best indication of the overall scale of the money laundering crisis that emerged in the industry, the size of some of the figures set out above is so great that it can be difficult to discern their practical meaning. Accordingly, in order to assist in conveying the extent of the money laundering that took place in the gaming industry over this time period, it is useful, in my view, to also examine this activity at a more readily comprehensible scale.

In order to do so, I set out below four examples of suspicious activity that took place within relatively short time periods. The first two examples involve the activities of individual patrons, one in the course of a single night, the other in the span of a

<sup>108</sup> Exhibit 784, Cuglietta #2, exhibit A.

<sup>109</sup> Exhibit 482, Cuglietta #1, exhibit A.

<sup>110</sup> Exhibit 785, Affidavit #1 of Richard Block, affirmed on March 9, 2021, exhibit A.

month. The third relates to the suspicious activity that took place in the span of five weeks at a single casino, and the fourth provides broad data related to suspicious transactions in Lower Mainland casinos but limited to activity occurring within a single month.

### **September 2010**

As discussed in Chapter 10, on November 24, 2010, Derek Dickson, then GPEB's director of casino investigations for the Lower Mainland, wrote to Mr. Friesen, then BCLC's manager of casino security and surveillance, to express concern about the activities of Patron C at the Starlight Casino during the month of September 2010.<sup>111</sup> In his letter, Mr. Dickson set out in detail the buy-ins made by Patron C, beginning on August 31, 2010, and ending on September 29, 2010. In total, Mr. Dickson listed 21 transactions including cash buy-ins ranging from \$43,000 to \$250,020. In total, during this time period, Patron C bought-in for \$3,111,040 in cash, including \$2,657,940 in \$20 bills, plus additional buy-ins using casino chips. Patron C's cash buy-ins were packaged in shopping bags, which he was sometimes seen retrieving from the trunks of vehicles not belonging to him.<sup>112</sup> In obtaining his cash, often in the early morning hours, Patron C was seen associating with an individual previously suspected of cash facilitation.<sup>113</sup> The letter identified that both GPEB and the RCMP were very concerned about potential money laundering and Patron C's activities in BC casinos.

In a response to this letter,<sup>114</sup> John Karlovcec, then BCLC's assistant manager of casino security and surveillance, writing with the approval of both Mr. Friesen and Terry Towns,<sup>115</sup> then BCLC's vice-president of corporate security and compliance, indicated that the BC Lottery Corporation had conducted a review of Patron C's play during this period and concluded that he had bought-in for a total of \$3,681,320, of which he had lost \$3,338,740. Mr. Karlovcec concludes, from this data and other information about Patron C and his activities, that Patron C "did not meet the criteria that would indicate" that he was actively laundering money through his activity in the Starlight Casino. While BCLC personnel may have taken some comfort in the fact that Patron C lost nearly all of the funds he used to gamble during this month, in my view, this should have been cause for alarm, as it means that Patron C was not recycling the same cash to make these buy-ins. Rather, virtually every transaction conducted by Patron C was made using newly obtained cash. While the evidence does not indicate the source of Patron C's funds, it is difficult to fathom a legitimate source from which one could, and reasonably would, obtain more than \$3 million, predominantly in \$20 bills, in the span of one month. This example illustrates the scale of suspicious activity occurring even during the relatively early stages of the emerging crisis.

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111 Exhibit 110, Letter from Derek Dickson re Money Laundering in Casinos (November 24, 2010).

112 Exhibit 507, Sturko #1, Exhibit E.

113 Ibid.

114 Exhibit 111, Letter from John Karlovcec re Money Laundering in BC Casinos (December 24, 2010).

115 Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 110-11.

**September 24 and 25, 2014<sup>116</sup>**

Patron A attended the River Rock VIP room on the evening of September 24, 2014, remaining until the early morning hours of September 25. Just before 11:00 p.m., Patron A exhausted the chips he had obtained from an initial buy-in of \$50,000 made using \$100 bills. He made a phone call, exited the casino, and entered a black Mercedes SUV waiting in the River Rock parking lot. The SUV drove a short distance to the casino entrance, where Patron A exited the vehicle carrying a black suitcase and a brown bag. Patron A carried the suitcase and the bag to a cash cage, where he emptied their contents, \$500,040 in \$20 bills bundled with elastic bands and packaged in silver plastic bags. Patron A returned to the gaming tables and resumed play as he began to receive his chips.

Just after 1:00 a.m. on September 25, Patron A had again exhausted all or nearly all of his chips and began to use his phone. A few minutes later, Patron A left the casino and entered a Range Rover along with two other individuals who had been waiting near the vehicle. They drove to the front entrance of the casino. Patron A exited the vehicle and retrieved another suitcase from the rear of the vehicle. He returned to the cash cage. As before, he emptied the contents of the suitcase – \$500,030 entirely in \$20 bills, with the exception of \$190, which was in \$10 bills. Again, the cash was bundled with elastic bands and packaged in silver plastic bags. Patron A returned to the gaming tables and resumed his play as he began to receive his chips.

In the span of just over two hours, Patron A bought-in for more than \$1 million, almost entirely in \$20 bills wrapped in elastic bands and dropped off in the middle of the night. While the evidence before me does not definitively prove the source of these funds, it is difficult to imagine a plausible legitimate explanation as to their origin. These transactions are not a representative example of the activity of most VIP patrons on most evenings at this time. Rather, it appears that Patron A's combined buy-ins were likely the largest transaction ever to have taken place in a British Columbia casino. However, the enormous amount of cash accepted from Patron A on this evening, apparently without hesitation or question on the part of casino staff, offers some indication of the rate at which suspicious cash could be accepted by British Columbia casinos. That Patron A's buy-ins represent less than 1 percent of the total suspicious funds accepted in the gaming industry and reported by BCLC to FINTRAC in 2014 helps to illustrate the overall scale of suspicious activity in the gaming industry at this time.

**River Rock Casino: January 13–February 17, 2012**

Some sense of how the activities of VIP patrons like Patron A and Patron C fit into the broader context of the suspicious activity happening around them during a discrete period can be found in a GPEB investigation division report of findings dated February 22, 2012.<sup>117</sup> This report details the following information captured in section 86 reports made to the Branch regarding activity that took place at the River Rock during the five-week period between January 13 and February 17, 2012:

<sup>116</sup> Exhibit 181, Vander Graaf #1, exhibit P.

<sup>117</sup> Ibid, exhibit M.

- Number of Section 86 Suspicious Cash Transaction reports received: **85**
- Dollar value of suspicious buy-ins in \$20 denomination: **\$6,677,620**
- Dollar value of suspicious buy-ins in \$50 denomination: **\$251,200**
- Dollar value of suspicious buy-ins in \$100 denomination: **\$948,400**
- Total dollar value of all suspicious buy-ins: **\$8,504,060**
- Number of patrons involved in multiple suspicious cash buy-ins: **14**
- Total number of suspicious cash transactions reports generated by patrons with multiple suspicious buy-ins: **74**
- Highest number of suspicious buy-ins by a single patron: **19**
- Total dollar value of suspicious buy-ins by the patron with the highest number of suspicious buy-ins: **\$1,435,480** [Emphasis in original.]

While perhaps not reflective of the kind of prolific individual activity detailed in the two examples above, this data offers a compelling snapshot into the extent of suspicious activity taking place at the River Rock during this time period. In the span of just 36 days, the River Rock reported 85 suspicious cash transactions with a total value of just over \$8.5 million, meaning that the average value of these transactions was just over \$100,000. It reveals as well that a single patron was responsible for 19 of these transactions, with a value of more than \$1.4 million. Like the activities of Patron A and Patron C described above, this report suggests that individual patrons were bringing substantial quantities of cash, much of it in \$20 bills, into the casino over the course of a very short duration of time, illustrating on a smaller scale the kind of activity captured in the annual reporting data discussed above.

### **July 2015**

As discussed earlier in this Report, and repeatedly in the evidence before the Commission, a spike in suspicious transactions in casinos was observed in July 2015.<sup>118</sup> This spike was captured in a spreadsheet prepared by GPEB investigators Robert Barber and Ken Ackles,<sup>119</sup> which played a critical role in persuading the leadership of the Branch and responsible government officials of the need for urgent government action to respond to the suspicious activity taking place in the gaming industry.<sup>120</sup>

118 Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22; Evidence of C. Clark, Transcript, April 20, 2021, p 34; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 45–46; Evidence of J. Mazure, Transcript, February 5, 2021, pp 113–14, 116–17, 224–25.

119 Exhibit 144, Ackles #3, paras 23–24, exhibit D; Exhibit 145, Barber #1, paras 92–93, exhibit F; Evidence of K. Ackles, Transcript, November 2, 2020, pp 41–42; Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22 and 153; Exhibit 922, Affidavit no. 1 of Cheryl Wenezenki-Yolland, sworn on April 8, 2021 [Wenezenki-Yolland #1], paras 103–8.

120 Exhibit 587, Affidavit #1 of Joseph Emile Leonard Meilleur, made on February 9, 2021, para 87; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 72–73; Exhibit 541, Affidavit #1 of John Mazure, sworn on February 4, 2021, paras 150–51; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 46–47; Exhibit 922, Wenezenki-Yolland #1, paras 103–8; Evidence of M. de Jong, Transcript, April 23, 2021, pp 68–69. Exhibit 144, Affidavit #3 of Ken Ackles made on October 28, 2020, paras 23–24, Exhibit D; Exhibit 145, Barber #1, paras 92–95, exhibit F.

While the role this spreadsheet played in motivating a response to this crisis is important, the scale of the activity documented in the spreadsheet itself should not be overlooked. The spreadsheet identified and provided basic information about all suspicious cash transactions of \$50,000 or more that took place at Lower Mainland casinos during this month (it also included two transactions with values below \$50,000 in the amounts of \$49,980 and \$48,770).<sup>121</sup> It included more than 130 transactions with a total value of more than \$20 million, including \$14 million in \$20 bills,<sup>122</sup> and individual values ranging up to \$770,860. Table 13.7 identifies the number of transactions of \$100,000 or more included in the spreadsheet, categorizing them by value in \$100,000 increments:

**Table 13.7: SCTs of more than \$100,000 at Lower Mainland Casinos**

<b>Value Range</b>	<b># of Transactions</b>
\$100,000–\$199,999	44
\$200,000–\$299,999	18
\$300,000–\$399,999	11
\$400,000–\$499,999	3
\$500,000–\$599,999	2
\$600,000 - \$699,999	2
\$700,000 +	1

*Source:* Exhibit 144, Ackles #3, exhibit D; Exhibit 145, Barber #1, exhibit F.

The activity detailed in this spreadsheet represents the volume of suspicious activity occurring at casinos at the peak of the money laundering crisis in British Columbia's gaming industry. It reveals that, during this month, an average of four times each day at a casino in the Lower Mainland, a patron would buy-in with \$50,000 or more in cash, much of which was in \$20 bills. Of these four average daily transactions, more than two would consist of \$100,000 or more. Like those above, this example is not broadly representative of the scale of activity that took place over the duration of the time period at issue but illustrates the extent of the suspicious activity occurring in the province's casinos at its peak.

<sup>121</sup> Exhibit 144, Ackles #3, paras 23–24 and exhibit D; Exhibit 145, Barber #1, paras 92–93 and exhibit F; Evidence of K. Ackles, Transcript, November 2, 2020, pp 41–47; Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22, 153.

<sup>122</sup> Exhibit 144, Ackles #3, paras 23–24 and exhibit D; Exhibit 145, Barber #1, paras 92–93 and exhibit F; Evidence of K. Ackles, Transcript, November 2, 2020, pp 41–47; Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22, 153.

## When Did Money Laundering in BC’s Gaming Industry Occur?

The evidence before me supports that money laundering was a significant issue for the gaming industry, at a minimum, from 2008 to 2018. Several witnesses identified a point in or around 2008<sup>123</sup> or slightly afterwards<sup>124</sup> as marking a significant increase in the volume of cash entering the province’s casinos. Mr. Schalk and Mr. Vander Graaf both indicated that the GPEB investigation division developed a particular concern about money laundering in the industry at this time, due to perceived increases in suspicious activity.<sup>125</sup> Patrick Ennis, a long-time Great Canadian security and surveillance staff member, recalled a noticeable jump in the size of cash transactions connected to a specific increase in betting limits, which I found in Chapter 10 took place in 2008.<sup>126</sup> The evidence of Mr. Schalk, Mr. Vander Graaf, and Mr. Ennis in this regard is corroborated by the section 86 suspicious currency transaction reporting data set out above, which identifies a significant increase in the number of suspicious cash transaction reports from 59 reports in 2007 to 213 reports in 2008.<sup>127</sup>

While this marks the beginning of the money laundering crisis that would emerge in the industry over the next several years, peaking in or around 2015, I do not suggest that no money laundering took place in the industry prior to this time. As indicated above, suspicious cash transactions were being reported to GPEB, albeit at much lower levels, prior to this time, and there is evidence before the Commission of cash facilitation in the industry dating back to the 1990s.<sup>128</sup> While I cannot rule out the possibility that some of this activity was connected to money laundering, given the relatively low level of play prior to 2008, and the absence of evidence regarding the nature of the suspicious transactions and the source of the funds provided by cash facilitators at this time, I am unable to conclude with certainty that money laundering was a significant issue in the gaming industry prior to 2008.

I find that, following its emergence in 2008, money laundering in the gaming industry through the Vancouver model persisted as a significant issue for approximately a decade until 2018. The rate at which suspicious cash entered the province’s casinos remained

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123 Exhibit 181, Vander Graaf #1, para 35, exhibit G; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 48, 51–52 and Transcript, November 13, 2020, p 39; Exhibit 530, Affidavit #1 of Patrick Ennis, made on January 22, 2021 [Ennis #1], para 15; Evidence of P. Ennis, Transcript, February 3, 2021, p 72 and Transcript, February 4, 2021, p 24.

124 Exhibit 517, Affidavit of Terry Towns, made on January 22, 2021, para 59; Exhibit 87, S. Lee #1, paras 24–29; Exhibit 507, Sturko #1, para 67; Exhibit 78, Beeksma #1, paras 45–50.

125 Exhibit 181, Vander Graaf #1, para 35; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 48, 51–52, 165–66 and Transcript, November 13, 2020, p 39.

126 Exhibit 530, Ennis #1, para 15; Evidence of P. Ennis, Transcript, February 3, 2021, p 72; Evidence of P. Ennis, Transcript, February 4, 2021, p 24.

127 Exhibit 181, Vander Graaf #1, exhibit G.

128 Exhibit 87, S. Lee #1, paras 9–10; Evidence of S. Lee, Transcript, October 27, 2020, p 12; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 27–28; Evidence of P. Ennis, Transcript, February 3, 2021, pp 68–69; Exhibit 147, Affidavit #1 of Muriel Labine, affirmed on October 23, 2020, paras 6 and 10; Evidence of M. Labine, Transcript, November 3, 2020, pp 169–170; Exhibit 503, OR: BCLC AML Security Reports 1998–2001.

elevated through 2017, before finally declining to reasonable levels following the implementation of new measures in January 2018 in response to Dr. German's source-of-funds recommendation.<sup>129</sup> The significant rate at which suspicious funds continued to enter the industry in 2017, combined with the impact of these new measures the following year, suggests that illicit funds continued to infiltrate the gaming industry into 2017. Additional support for this conclusion is found in the short-lived decline in suspicious transactions that followed the nine arrests made by JIGIT, referred to previously in this chapter.<sup>130</sup> The correlation between the two events suggests that the arrests may have disrupted the supply of illicit funds available to casino patrons, providing some additional support for the conclusion that such funds continued to make their way into casinos into 2017.

Again, I am unable to state with certainty that money laundering in some form did *not* occur beyond the bounds of this timeframe. There is evidence of suspicious transactions occurring into 2018 and beyond, including cash transactions of thousands of dollars, often in small bills, and those in which patrons exhibited behaviour likely intended to avoid either the FINTRAC large cash transaction reporting threshold or the threshold for providing proof of the source of their funds.<sup>131</sup> By this point, however, the volume of suspicious cash entering the province's casinos and the size of the suspicious transactions that continued to occur were so diminished that it does not appear that money laundering through large cash transactions remained a significant issue in the gaming industry at this time.

## **Where Did Money Laundering Occur in BC's Gaming Industry?**

The operation of the Vancouver model and by extension, money laundering in British Columbia's gaming industry was concentrated in the casinos of the Lower Mainland.<sup>132</sup> There is no evidence to suggest that money laundering through the Vancouver model typology or any other typology was a significant issue in casinos outside of this region during any time period examined by the Commission.

Among Lower Mainland casinos, the evidence before the Commission demonstrates that the largest volumes of suspicious cash were received at the River Rock Casino throughout this time period. In a February 2012 report of findings, the GPEB investigation division indicated that 40 percent of suspicious currency transaction reports submitted to the Branch, representing 50 percent of the value of those transactions, emanated from the River Rock.<sup>133</sup> Similarly, Mr. Barber gave evidence that

<sup>129</sup> Exhibit 482, Cuglietta #1, exhibit A; Exhibit 784, Cuglietta #2, exhibit A.

<sup>130</sup> Exhibit 148, Tottenham #1, para 197 and exhibit 108; Exhibit 490, Kroeker #1, para 175; Evidence of R. Kroeker, Transcript, January 25, 2021, p 136; Evidence of D. Tottenham, Transcript, November 5, 2020, pp 10–12.

<sup>131</sup> Exhibit 574, Overview Report: Casino Surveillance Footage, Appendices 10–51; Exhibit 87, S. Lee #1, paras 67–70 and exhibits N, O, P.

<sup>132</sup> Evidence of R. Barber, Transcript, November 3, 2020, pp 58–59; Evidence of T. Robertson, Transcript, November 6, 2020, pp 76–77.

<sup>133</sup> Exhibit 181, Vander Graaf #1, exhibit M.

he took on a new role within GPEB in July 2015 that provided him with greater insight into suspicious activity in casinos across the province. He estimated that approximately 90 percent of large cash transactions took place at the River Rock at that time.<sup>134</sup>

Mr. Barber's evidence in this regard is generally consistent with the contents of the spreadsheet that he and Mr. Ackles compiled of suspicious transactions that took place in July 2015.<sup>135</sup> Of the 133 transactions recorded in that spreadsheet, 114 took place at the River Rock, compared to 14 at the Edgewater Casino, four at the Starlight Casino, and a single transaction at the Grand Villa Casino. The conclusion that large and suspicious cash transactions were concentrated at the River Rock is also supported by graphical representations of reporting data prepared by BCLC, which are in evidence before me.<sup>136</sup>

It is clear, however, that money laundering was not isolated to the River Rock. While the rates of suspicious activity were lower at other casinos, the record before me reveals that rates of suspicious transactions elsewhere in the Lower Mainland were also elevated, and in some cases troublingly so, prior to the implementation of the cash conditions program and/or Dr. German's source-of-funds recommendation.<sup>137</sup> There is evidence before me that large transactions involving suspicious cash took place at other casinos in the region including the Starlight,<sup>138</sup> Grand Villa,<sup>139</sup> and Edgewater<sup>140</sup> casinos, in addition to the River Rock, during the time period identified above.

## Conclusion

Based on the record before me, there is little room for doubt that extensive money laundering occurred in the casinos of the Lower Mainland over the course of a decade, from approximately 2008 to 2018. During this time period, hundreds of millions of dollars in illicit funds were accepted from VIP patrons who had received this cash from criminal organizations on the condition that it be repaid, with repayment often taking place in another medium of exchange and in another jurisdiction. By accepting these enormous quantities of criminal proceeds, the gaming industry in this province

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134 Evidence of R. Barber, Transcript, November 3, 2020, pp 58–59.

135 Exhibit 144, Ackles #3, Exhibit D; Exhibit 145, Barber #1, Exhibit F.

136 Exhibit 482, Cuglietta #1, exhibit A.

137 Ibid.

138 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 5–6, 43–44, 181–182; Evidence of M. Hiller, Transcript, November 9, 2020, pp 10–13; Exhibit 488, (Previously marked as Exhibit A) Letter from Joe Schalk re Suspicious Currency Transactions – Money Laundering Review Report (December 27, 2012) [Schalk Letter December 2012]; Exhibit 145, Barber #1, exhibit F; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 23–31; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 86–87; Evidence of D. Dickson, Transcript, January 22, 2021, pp 4–7; Exhibit 507, Sturko #1, exhibit E; Exhibit 148, Tottenham, para 18 and exhibit 3; Evidence of S. Beeksma, Transcript, October 26, 2020, p 38; Exhibit 760, IPOC Report 2012.

139 Exhibit 79, Beeksma #2, exhibits 12 and 32; Evidence of M. Hiller, Transcript, November 9, 2020, pp 12–13; Exhibit 488, Schalk Letter December 2012; Exhibit 145, Barber #1, exhibit F; Exhibit 148, Tottenham #1, exhibit 3; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 124–25.

140 Evidence of S. Lee, Transcript, October 27, 2020, pp 18–19; Evidence of M. Hiller, Transcript, November 9, 2020, pp 12–13; Exhibit 145, Barber #1, exhibit F; Exhibit 148, Tottenham #1, exhibits 3 and 38; Evidence of D. Tottenham, Transcript, November 4, 2020, p 139; Exhibit 87, S. Lee, paras 28–30.

ensured continued demand for illicit cash. This demand was exploited by criminal organizations, who used it as a means of converting bulky and highly suspicious cash into more convenient and discreet forms while also transferring it to other jurisdictions. Having determined that money laundering did occur in the province's gaming industry, the extent of this activity, and when and where it occurred, the obvious questions that remain are why this problem developed, and who contributed to its rise and perpetuation. These questions are addressed in Chapter 14.

## Chapter 14

# What Contributed to Money Laundering in BC's Gaming Industry?

In the previous chapter, I found that money laundering did occur in British Columbia's gaming industry and made findings as to the nature and extent of the activity amounting to money laundering. Having done so, the Commission's mandate<sup>1</sup> requires that I next consider the factors that contributed to the growth and perpetuation of this activity. These include "the acts or omissions of regulatory authorities or individuals with powers, duties or functions in respect of" the gaming sector and whether any such acts or omissions amounted to corruption. The discussion that follows does so in two parts. The first part considers the contextual factors that formed the environment in which the money laundering crisis described in the preceding chapters developed and that enabled the rise of this activity in the province's casinos. The second part focuses on whether and how the acts and omissions of "regulatory authorities or individuals with powers, duties or functions in respect of" the gaming sector ("industry actors"), occurring within the context described in part one, contributed to the growth and perpetuation of this problem.

### **Part 1: Contextual Factors that Contributed to the Growth and Perpetuation of Money Laundering in BC's Gaming Industry**

Before discussing whether and how the acts and omissions of industry actors contributed to the growth and perpetuation of money laundering in British Columbia's gaming industry, it is necessary to consider the context in which these actors

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<sup>1</sup> Commission of Inquiry into Money Laundering in British Columbia Terms of Reference, s 4(1).

operated. In my view, the origins of money laundering in the gaming industry can be found, in part, in a constellation of factors that were, to a large extent, beyond the control of industry actors in this province. While these actors played a critical role in the development of this problem, their role largely took the form of responses – or the failure to respond – to an issue that was not entirely of their own making. In this sense, this initial discussion sets the stage for that which follows, which focuses squarely on the conduct of those industry actors, by describing the conditions and constraints under which they operated and to which they were called to respond.

The discussion of contextual factors below is divided into three parts. The first addresses factors that contributed to the demand for illicit cash, including the evolution of the industry, the historical centrality of cash in the industry, and Chinese currency export controls. The second focuses on the ready availability of substantial quantities of proceeds of crime in the Lower Mainland. The third, and final, contextual factor discussed below is a regulatory model that was not adequate to effectively address the growth of suspicious transactions in the industry.

## The Demand for Illicit Cash

As discussed in Chapter 13, the money laundering typology prevalent in the gaming industry in this province prior to 2018 was dependent on patrons bringing vast quantities of illicit funds into casinos in the Lower Mainland in order to gamble. There is no evidence that these patrons did so under duress or coercion, and based on the evidence before me, I accept that these patrons were generally not motivated to launder these illicit funds.<sup>2</sup> The obvious question raised by these facts is why these patrons, who were not intent on laundering money themselves, would voluntarily choose to gamble using large volumes of cash obtained from non-traditional, suspicious sources. In my view, the demand for illicit cash is explained by three factors: the evolution of the province's gaming industry, the historic centrality of cash in the industry, and Chinese currency export restrictions.

## Evolution of the Province's Gaming Industry

The first contextual factor that contributed to the rise of money laundering in the province's gaming industry is the evolution of the industry, beginning in the late 1990s, from one centred around small, temporary casinos operated by and for the benefit of charities<sup>3</sup> into a large, commercial, industry generating over a billion dollars

2 Exhibit 166, Affidavit #1 of Michael Hiller, sworn on November 8, 2020 [Hiller #1], para 74; Exhibit 112, Letter from Joe Schalk re Money Laundering in BC Casinos (February 28, 2011) [Schalk Letter February 2011]; Exhibit 760, Casino – Investigational Planning & Report – IPOC (January 30, 2012) [IPOC 2012]; Exhibit 78, Affidavit #1 of Steve Beeksma, affirmed on October 22, 2020 [Beeksma #1], para 75.

3 Exhibit 559, Affidavit #1 of Walter Soo, made on February 1, 2021 [Soo #1], paras 16–23; Exhibit 147, Affidavit #1 of Muriel Labine, affirmed on October 23, 2020 [Labine #1], para 4; Evidence of M. Labine, Transcript, November 3, 2020, pp 167–68; Evidence of R. Coleman, Transcript, April 28, 2021, pp 21–23; Exhibit 67, Overview Report: Regulation of Gaming in BC [OR: BC Gaming Regulations], para 70; Evidence of R. Duff, Transcript, January 25, 2021, pp 6–9.

a year in revenue for the provincial government, including \$1.25 billion in 2014–15 as money laundering in the gaming in the gaming industry peaked.<sup>4</sup> This evolution transformed virtually every aspect of the industry, involving the construction of large and sophisticated new facilities,<sup>5</sup> expanded hours,<sup>6</sup> dedicated VIP facilities and services,<sup>7</sup> and, crucially, bet limits that increased from \$5 prior to 1996 to \$100,000 by 2014<sup>8</sup> – a 20,000-fold increase in less than 20 years.

The industry actors that will be discussed in the next section of this chapter undoubtedly played a role in this evolution. However, by the time that increases in suspicious cash began to attract the attention of the Gaming Policy and Enforcement Branch (GPEB) investigation division in 2007 and 2008,<sup>9</sup> this evolution was nearly complete. While there were increases in betting limits<sup>10</sup> and enhancements to VIP facilities still to come,<sup>11</sup> new casinos had largely been built,<sup>12</sup> and a transition, to paraphrase Rick Duff, the long-time manager of the River Rock Casino, from “card rooms to casinos,”<sup>13</sup> had been achieved. As such, while some of these developments will be revisited in the discussion of the actions and omissions of industry actors, this evolved industry can, in part, be fairly viewed as a part of the context in which the industry’s money laundering crisis arose.

This evolution contributed to the rise of suspicious cash by attracting new patrons to the province’s casinos<sup>14</sup> and enabling play at levels previously unknown in British Columbia. Had the industry remained what it was in the mid-1990s, it is difficult to imagine that buy-ins for hundreds of thousands of dollars would have become the norm. Even if

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- 4 Evidence of D. Sturko, Transcript, January 28, 2021, pp 146–47; Evidence of R. Duff, Transcript, January 25, 2021, pp 19–21; Exhibit 559, Soo #1, paras 50–52; Exhibit 72, Overview Report: British Columbia Lottery Corporation Annual Reports (1986–2018/19) [OR: BCLC Reports 1986–2018/19], pp 1541, 1470, 1395, 1322, 1250, 1161.
- 5 Evidence of R. Duff, Transcript, January 25, 2021, pp 19–20; Exhibit 559, Soo #1, paras 50–52.
- 6 Evidence of W. Soo, Transcript, February 9, 2021, p 6; Evidence of M. Labine, Transcript, November 3, 2020, p 169; Exhibit 147, Labine #1, para 5.
- 7 Evidence of R. Duff, Transcript, January 25, 2021, pp 4–5, 22–24, 27–28, 35; Evidence of M. Chiu, Transcript, January 21, 2021, pp 4–7; Exhibit 148, Affidavit #1 of Daryl Tottenham, sworn October 30, 2020, para 26 [Tottenham #1]; Exhibit 166, Hiller #1, paras 29–30; Exhibit 1040, Affidavit #2 of Bill Lang, affirmed on May 21, 2021 [Lang #2]; Exhibit 559, Soo #1, paras 26–33, 60–67; Evidence of W. Soo, Transcript, February 9, 2021, pp 11–23.
- 8 Exhibit 505, Affidavit #1 of Jim Lightbody, sworn on January 25, 2021 [Lightbody #1], paras 40–56, exhibit 22; Evidence of R. Duff, Transcript, January 25, 2021, pp 7–8, 24–25, 29–40; Evidence of W. Soo, Transcript, February 9, 2021, pp 45–46; Evidence of M. Graydon, Transcript, February 11, 2021, pp 10–11; Exhibit 576, Affidavit no. 1 of Michael Graydon, made on February 8, 2021 [Graydon #1], paras 49–51; Exhibit 544, BCLC Letter from Michael Graydon to John Mazure, re High Limit Table Changes (December 19, 2013).
- 9 Exhibit 181, Affidavit #1 of Larry Vander Graaf, made on November 8, 2020 [Vander Graaf #1], para 35, exhibit G; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 48, 51–52, 165–166 and Transcript, November 13, 2020, p 39.
- 10 Exhibit 505, Lightbody #1, paras 40–56, exhibit 22; Exhibit 576, Graydon #1, paras 49–51; Exhibit 544, BCLC Letter from Michael Graydon to John Mazure, re High Limit Table Changes (December 19, 2013).
- 11 Exhibit 559, Soo #1, paras 60–65; Evidence of W. Soo, Transcript, February 9, 2021, pp 33–37.
- 12 Exhibit 559, Soo #1, paras 50–52.
- 13 Evidence of R. Duff, Transcript, January 25, 2021, p 20.
- 14 Evidence of R. Duff, Transcript, January 25, 2021, pp 20–21; Evidence of W. Soo, Transcript, February 9, 2021, p 58.

not strictly prohibited, a \$100,000 buy-in would simply serve no purpose where bets are limited to \$5. In such a context, even a patron that unfailingly lost every single hand they played, would need to place 20,000 bets before they had exhausted their buy-in. By 2014, that patron would need to play only a single hand. I am unconvinced as well that patrons with the means to gamble at the elevated levels permitted by 2014 would have been as enamoured with the old Richmond Casino and other gaming facilities of its vintage as they clearly were with the River Rock and other new, modern casinos. Accordingly, it was these changes that created the *opportunity* for VIP patrons to spend vast quantities of cash on gaming and made it attractive for them to do so. Had this evolution never occurred, it may be that these individuals would have found other reasons to acquire and spend vast quantities of illicit cash, perhaps even by gambling in illegal casinos. It simply would not have been possible, however, to do so in legal gaming establishments.

I pause to note as well that I do not accept that this evolution was inevitable. I understand based on the evidence of former minister responsible for gaming, Rich Coleman<sup>15</sup> and those who worked in the industry in its early days that the charitable gaming model came with its own disadvantages and that some modernization was required. It is clear, however, that the gaming industry that had developed by the mid-2010s was not the only alternative. It is striking that, in recounting a suggestion he made to David Eby, when Mr. Eby was the minister responsible for gaming, that the Province consider exiting the high-limit gaming industry, former BCLC board chair Bud Smith testified that the Vancouver gaming market is one of only five markets globally –including Las Vegas, Boston, Macau, and Australia – where gaming at the levels permitted in this province's casinos occurs.<sup>16</sup> Vancouver is undoubtedly a vibrant and global city, but one need only consider the major international markets excluded from this list to appreciate the rarefied company in which the Lower Mainland has found itself. The Vancouver market may have some unique advantages, including those referred to in the testimony of Jim Lightbody, who was appointed CEO of the British Columbia Lottery Corporation (BCLC) in 2014, after several years as its vice-president of casino and community gaming.<sup>17</sup> However, that cities such as New York, London, Paris, Shanghai, Tokyo, Los Angeles, Toronto, and many others have not developed gaming industries like the Lower Mainland's suggests to me that this was not the only path open to the province's gaming industry. Rather, it must be, at least in part, the result of policy choices made by the provincial government and the BC Lottery Corporation that have not been mirrored by the decisions made in other jurisdictions.

## **The Historic Centrality of Cash in BC's Gaming Industry**

The opportunity to gamble significant amounts of money presented by British Columbia's evolved gaming industry does not, in itself, explain the vast quantities of suspicious funds that came to afflict the province's casinos. Rather, the demand

15 Evidence of R. Coleman, Transcript, April 28, 2021, pp 20–25.

16 Evidence of B. Smith, Transcript, February 4, 2021, p 90.

17 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 24–25; Exhibit 505, Lightbody #1, para 68.

for illicit cash was also the product, in part, of the historic centrality of cash<sup>18</sup> in the gaming industry and the slow development of alternative methods by which patrons could buy in and gamble.

As discussed earlier in this chapter, I accept that the patrons responsible for bringing illicit funds into the province's casinos generally did not do so with the intent of laundering money, or even necessarily with the knowledge that the funds they were using were the proceeds of crime. Rather, it appears that these patrons simply wanted to gamble at the elevated levels permitted in the province's casinos and the reason that these patrons did so using illicit cash was that they were either unable or unwilling to buy in using alternative means. The evidence before me suggests that, to some extent, the use of cash may have been motivated by an inability on the part of these patrons to access Canadian financial services.<sup>19</sup> It is clear, however, that some patrons who had historically relied on suspicious cash were eventually able to find alternative means of buying-in once they were placed on conditions that forced them to do. This suggests that they may have been able to do so previously, had they been required to.<sup>20</sup> In either case, whether these patrons were motivated to deal in cash because of an inability to buy-in in any other way or because cash facilitators, who delivered vast quantities of cash on demand at any hour of the day or night, provided an enormously convenient service, it is clear that the alternatives to cash offered by the gaming industry simply did not meet the needs and/or preferences of patrons.

There is ample evidence before me to indicate that the gaming industry in British Columbia was historically cash only.<sup>21</sup> The very first efforts to introduce cash alternatives did not occur until 2009, when a pilot project to test the viability of Patron Gaming Fund accounts was introduced at the River Rock, Starlight, and Edgewater casinos.<sup>22</sup> In the years that followed, further cash alternatives were added, but they were slow to develop and, in many cases, not particularly popular.<sup>23</sup> Nor, crucially, was the use of these alternatives mandatory, regardless of the level at which a patron played.<sup>24</sup>

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18 Evidence of T. Towns, Transcript, January 29, 2021, pp 143–44, 169; Evidence of W. Soo, Transcript, February 9, 2021, pp 6–7; Evidence of S. Lee, Transcript, October 27, 2020, pp 11–12; Evidence of S. Beeksma, Transcript, October 26, 2020, p 28; Evidence of R. Duff, Transcript, January 25, 2011, p 8; Evidence of P. Ennis, Transcript, February 3, 2021, pp 68–69.

19 Exhibit 78, Beeksma #1, para 81; Exhibit 559, Soo #1, paras 73–74.

20 Exhibit 78, Beeksma #1, para 81; Evidence of D. Tottenham, Transcript, November 4, 2020, p 150.

21 Evidence of T. Towns, Transcript, January 29, 2021, pp 143–44, 169; Evidence of R. Duff, Transcript, January 25, 2021, p 8; Evidence of W. Soo, Transcript, February 9, 2021, pp 6–8; Evidence of S. Beeksma, Transcript, October 26, 2020, p 28; Evidence of S. Lee, Transcript, October 27, 2020, pp 11–12; Exhibit 517, Affidavit #1 of Terry Towns, made on January 22, 2021 [Towns #1], para 58; Evidence of P. Ennis, Transcript, February 3, 2021, pp 68–69.

22 Exhibit 517, Towns #1, paras 92–93, exhibit 25; Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 63.

23 Exhibit 517, Towns #1, paras 115–131; Evidence of M. Graydon, Transcript, February 11, 2021, pp 27–28; Exhibit 557, Affidavit #1 of Douglas Scott, made on February 3, 2021 [Scott #1], para 40; Exhibit 559, Soo #1, paras 73–74; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 19–20.

24 Evidence of M. Graydon, Transcript, February 11, 2021, p 30; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 16–18 and Transcript, January 29, 2021, pp 116–17; Evidence of T. Towns, Transcript, January 29, 2021, pp 174–75; Evidence of D. Scott, Transcript, February 8, 2021, pp 30–32.

As a result, even as the gaming industry rapidly evolved to the point where patrons were permitted to play at levels where the use of cash would seem to have been enormously inconvenient, the industry remained largely oriented around cash.

In this sense, while the expansion of the industry created the opportunity for high-limit VIP gaming – for which there was clearly a demand – the historic centrality of cash in the industry and the absence of mandated cash alternatives played a role in creating a demand for cash specifically. Had the gaming industry mandated cash alternatives, it is possible that high-limit patrons would have had little reason or opportunity to resort to illicit cash and the industry could have evolved on the same trajectory that it did while being spared from the flood of illicit cash observed in the province's casinos throughout much of the 2010s.

## Chinese Currency Export Restrictions

A further factor that contributed to the demand for illicit cash is Chinese currency export restrictions. There is evidence before the Commission that the high-limit VIP patrons responsible for bringing substantial quantities of cash into the province's casinos were, in many cases, individuals with lives split between China and British Columbia.<sup>25</sup> This included those who maintained a residence in this province but business interests in China, as well as those who resided in China but had children or other family members based in British Columbia or who otherwise had connections to both jurisdictions.<sup>26</sup>

In many cases, it seems that the wealth these individuals held in China was more than adequate to allow them to gamble at the elevated levels permitted in the Lower Mainland's casinos.<sup>27</sup> The difficulty they faced was that Chinese regulations prohibited them from removing more than the equivalent of approximately Can\$50,000 from China in any year.<sup>28</sup> As such, a patron intent on gambling at the highest levels offered in the province's casinos would not be permitted to bring enough money out of China in an entire year to play even a single hand of baccarat at the maximum betting limit.

25 Evidence of W. Soo, Transcript, February 9, 2021, pp 36–37, 49–50; Evidence of T. Doyle, Transcript, February 9, 2021, pp 121–22; Evidence of R. Duff, Transcript, January 25, 2021, p 34; Evidence of T. Towns, Transcript, January 29, 2021, p 164; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 24–25.

26 Evidence of W. Soo, Transcript, February 9, 2021, pp 49–50, 59–60; Evidence of T. Doyle, Transcript, February 9, 2021, pp 121–22; Evidence of R. Duff, Transcript, January 25, 2021, p 34; Evidence of T. Towns, Transcript, January 29, 2021, p 164; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 24–25.

27 Evidence of T. Towns, Transcript, January 29, 2021, p 164; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 60–61; Evidence of G. Friesen, Transcript, October 28, 2020, p 92, 116–17, 129–30 and Transcript, October 29, 2020, pp 5, 51–52, 55–56; Evidence of J. Karlovcec, Transcript, October 29, 2020, p 89 and Transcript, October 30, 2020, p 125; Exhibit 111, Letter from John Karlovcec, re Money Laundering in BC Casinos (December 24, 2010) [Karlovcec Letter December 2010].

28 Exhibit 645, Keith Bradsher, “China Tightens Controls on Overseas Use of Its Currency,” *New York Times*, November 29, 2016; Exhibit 646, Gabriel Wildau, “Chinese Foreign Property Investment at 4-Year Low Amid Clampdown,” *Financial Times*, November 22, 2017; Evidence of D. Dickson, Transcript, January 22, 2021, p 37; Exhibit 78, Beeksma #1, exhibit U.

These restrictions contributed to the demand for cash for gambling purposes. Were it not for Chinese currency export restrictions, high-limit patrons could have accessed some of their wealth for gambling in Canada by legal methods. As a result of these restrictions, however, they were required to find a source of funds in Canada that was not derived directly from their own wealth. The Vancouver model money laundering typology is perfectly situated to solve this problem, allowing casino patrons to access cash in Canada without having to physically transport cash or other monetary instruments or otherwise transfer their funds out of China. By repaying those funds in China, patrons ensure that no money ever leaves China and avoid running afoul (or at least the appearance of running afoul) of currency export restrictions, while remaining able to obtain cash with which to gamble or, conceivably, spend in other ways.

In this sense, Chinese currency export restrictions further contributed to the demand for illicit cash. Patrons that wanted to gamble at high levels but could not remove their wealth from China through legitimate means were unable to make effective use of the cash alternatives that were available in casinos, which were largely predicated on access to the services of North American financial institutions. As a result, their options were limited to reliance on cash facilitators or not gambling at all. We have no way of knowing how many chose the latter option, but clearly some chose the former.

Before moving on to the next contextual factor, I wish to make absolutely clear that I am not suggesting that the race or ethnicity of the clientele of British Columbia's casinos was in any way a contributing factor to money laundering in the gaming industry. What I am identifying as a contributing factor are the specific laws of a foreign state, in this case China, which prevented those patrons from accessing wealth held in that state. Due to British Columbia's historic and cultural connections<sup>29</sup> and geographic proximity to China, it seems likely that this factor may have had a greater impact on this province's gaming industry than those of other jurisdictions, but it is important that it be understood that it is the laws of that foreign state that are at issue here and not the race or ethnicity of those subject to those laws.

## **The Supply of Illicit Cash**

The evolution of British Columbia's gaming industry, in combination with the absence of mandatory cash alternatives and Chinese currency export restrictions assist in explaining the demand for illicit funds for the purpose of gambling. However, this demand alone would have been of little significance without the supply to meet it. Accordingly, a critical contextual factor that contributed to the rise of money laundering in the province's gaming industry was one or more sources of substantial quantities of illicit funds.

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<sup>29</sup> Evidence of W. Soo, Transcript, February 9, 2021, pp 58–64; Evidence of R. Duff, Transcript, January 25, 2021, p 8.

## Availability of Substantial Quantities of Proceeds of Crime

The volume of funds supplied to casino patrons and the speed with which it could be produced, seemingly at any hour of the day or night, suggests that cash facilitators had ready access to a very sizable supply of cash. There is some evidence before me that these funds were linked to the drug trade,<sup>30</sup> and multiple witnesses with law enforcement experience described the appearance of cash accepted in the province's casinos as being consistent with “drug money,” “street money,” or other similar descriptors.<sup>31</sup> While it seems highly plausible that much of these funds were generated through illicit drug transactions, I am unable to say with any certainty that this was the source of all the funds. It is possible that some portion of the funds accepted by casinos was generated through other types of criminal activity inside of British Columbia or was generated elsewhere and imported into the province from other jurisdictions for the purpose of laundering.

Whatever the source, it is clear that the money laundering observed in the province's casinos was dependent on an enormous supply of illicit funds representing the proceeds of substantial criminal activity. Unlike more traditional “loan sharking” in which loans are repaid, with significant interest, in the jurisdiction in which they are issued, the Vancouver model money laundering typology would not generally result in the return of the distributed funds to the lender in British Columbia. Cash provided to gamblers in British Columbia that was repaid in China could not be recycled into a loan to another casino patron and would not generate interest in the province that could be used to expand the money-lending operation. In most instances, the cash distributed by cash facilitators and gambled in casinos must have represented fresh proceeds of crime, suggesting that the supply of illicit funds that this cash came from required – and received – constant replenishment.

The large quantities of illicit funds that made their way into the province's casinos takes on new significance when we consider that these funds must have been constantly replenished through new, profit-generating crimes. The scale of the criminal activity required to maintain this supply of funds and the toll it must have taken on society, whether within British Columbia or elsewhere, is extremely troubling.

## Absence of an Adequate Regulatory Model

In my view, the regulatory model that governed the gaming industry throughout the time period in which I have found that money laundering was occurring in

30 Exhibit 522, Affidavit No. 1 of Brad Desmarais, affirmed on January 28, 2021 [Desmarais #1], exhibit 55; Evidence of B. Desmarais, Transcript, February 1, 2021, p 121–22; Exhibit 663, Affidavit of Cpl. Melvin Chizawsky, made on February 4, 2021; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 67–69; Evidence of R. Alderson, Transcript, September 9, 2021, pp 41–43.

31 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 4, 6, 10; Evidence of D. Dickson, Transcript, January 22, 2021, pp 6–7; Evidence of J. Schalk, Transcript, January 22, 2021, p 113; Evidence of R. Barber, Transcript, November 3, 2020, pp 14–15; Exhibit 144, Affidavit #3 of Ken Ackles, made on October 28, 2020 [Ackles #3], para 19; Exhibit 145, Affidavit #1 of Robert Barber, made on October 29, 2020 [Barber #1], paras 29–30; Exhibit 181, Vander Graaf #1, para 54; Exhibit 166, Hiller #1, para 58.

the province's gaming industry contributed to the growth and perpetuation of this problem by inhibiting the industry's ability to respond to this issue. As discussed in Chapter 9, the regulatory model in place at that time was established when the *Gaming Control Act*, SBC 2002, c 14, was enacted in 2002. While minor changes were made to the Act periodically following its enactment,<sup>32</sup> the basic structure remained unchanged until 2018<sup>33</sup> and in large part remains in place today. In my view, the structure of the industry as established in this Act created an imbalance between the powers and authorities of the Gaming Policy and Enforcement Branch and BC Lottery Corporation, which undermined the ability of the Branch to fulfill its mandate and created a gap in regulatory oversight over the BC Lottery Corporation.

While the *Gaming Control Act* assigns the Gaming Policy and Enforcement Branch responsibility for safeguarding the integrity of the gaming industry,<sup>34</sup> its direct regulatory authority, prior to 2018,<sup>35</sup> was largely limited to oversight of gaming service providers and registered gaming workers. The Act contemplated the general manager of the Gaming Policy and Enforcement Branch issuing directives to the BC Lottery Corporation, but only with the consent of the responsible minister.<sup>36</sup> The Gaming Policy and Enforcement Branch's inability to autonomously issue directions to the BC Lottery Corporation impaired the ability of the Branch to fulfill its mandate because it is the BC Lottery Corporation, not service providers, that is responsible for the conduct and management of gaming.<sup>37</sup> In short, the Branch is responsible for the integrity of gaming,<sup>38</sup> but for most of its existence had no direct authority over the organization primarily responsible for determining how the gaming industry actually operates.

This effectively left oversight of the BC Lottery Corporation to the responsible minister directly, who may have had little prior experience with or knowledge of the gaming industry<sup>39</sup> and for whom, in practice, gaming was invariably a small part of a much larger portfolio.<sup>40</sup> As I will discuss later in this chapter, this imbalance in the regulatory structure of the industry would become a significant problem, as the BC Lottery Corporation proved resistant to the Gaming Policy and Enforcement Branch's advice and recommendations, and the succession of general managers responsible for leading the Branch were unable or unwilling to seek ministerial intervention prior to 2015.

In my view, a regulator properly empowered to fulfill its mandate of safeguarding the integrity of the industry would have had the necessary authority to require any

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32 Exhibit 70, Overview Report: Gaming Control Act Hansard [OR: Hansard].

33 *Gaming Control Act*, s 28(3); Exhibit 541, Affidavit #1 of John Mazure, sworn on February 4, 2021 [Mazure #1], para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

34 Ibid, s 23.

35 Ibid, s 28(3); Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

36 Evidence of J. Mazure, Transcript, February 5, 2021, pp 207–208; *Gaming Control Act*, s 28(3) (Repealed).

37 *Gaming Control Act*, ss 7(1), 31(2)(b).

38 Ibid, s 23.

39 See, for example, Evidence of S. Bond, Transcript, April 22, 2021, p 55.

40 Evidence of S. Bond, Transcript, April 22, 2021, pp 53–54; Evidence of M. de Jong, Transcript, April 23, 2021, pp 3–4; Evidence of D. Eby, Transcript, April 26, 2021, pp 2–3, 23, 226–27.

actor in the industry to take immediate action to respond to obvious criminal activity afflicting the province's casinos. Given the BC Lottery Corporation's role in dictating how the industry operated,<sup>41</sup> it was vitally important that the Gaming Policy and Enforcement Branch at least have clear authority over the BC Lottery Corporation. That it did not significantly inhibited the industry's ability to take corrective action when the BC Lottery Corporation proved unwilling to adequately respond as the money laundering crisis emerged.

## Conclusion

The discussion that follows turns from the role played by these contextual factors in the growth and perpetuation of money laundering in the gaming industry to consider that played by the actions and omissions of industry actors. As these actions and omissions are considered, it is important to continue to bear the contextual factors discussed above in mind. While they do not necessarily explain the actions of the individuals and organizations addressed in the section that follows, these factors are responsible for shaping the environment in which they operated.

While these factors may not justify the actions of the individuals and organizations discussed below, in my view, they played a significant role in creating the conditions to which industry actors were called to respond. The money laundering that I have found afflicted the industry between 2008 and 2018 was, in large part, the product of the factors discussed above and not the result of deliberate efforts to foster criminal activity in the industry. To the extent that industry actors contributed to this problem, it was largely through their failure to effectively take action to anticipate and ultimately solve this problem, not by setting out to create it in the first place.

## Part 2: Actions and Omissions of Industry Actors and Stakeholders

While the contextual factors discussed earlier in this chapter created conditions that were conducive to money laundering in British Columbia's gaming industry and assist in explaining its origins, it was the actions and omissions of government, industry and law enforcement that shaped its evolution into the crisis that afflicted the industry through much of the 2010s. As indicated above, there is no evidence that any of these actors deliberately set out to facilitate money laundering in the province's casinos; it is clear to me that they did not. However, as this activity grew, there were innumerable opportunities for various industry actors to intervene in order to stop or slow the burgeoning crisis. In many instances, these opportunities were either not recognized or not acted upon.

The discussion below considers, in turn, the following industry actors: gaming service providers, law enforcement, the BC Lottery Corporation, the Gaming Policy and

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<sup>41</sup> *Gaming Control Act*, s 7.

Enforcement Branch, and elected officials in critical roles in government, including former ministers responsible for gaming Rich Coleman, Shirley Bond, Michael de Jong, and David Eby, and former Premier Christy Clark. With the exceptions of Ms. Bond and Mr. Eby, the actions and omissions of each of these individuals and organizations contributed, to some extent, to the growth and development of money laundering in British Columbia's casinos.

I do not suggest that the contributions of these individuals and organizations were all equal. As will become apparent in the discussion that follows, it is clear that they were not. Each played a unique role in the gaming industry, was empowered with distinct levels of authority, and had access to different levels of information. The nature and extent to which the actions and omissions of each contributed to the growth and perpetuation of money laundering in the industry varies in accordance with these factors and – of course – with the nature of those actions and omissions. Still, in my view, that such a broad range of individuals and organizations played some role in facilitating, or at least failing to prevent, the development of the money laundering crisis that emerged within the province's gaming industry reveals the extent to which this crisis was the result of a systemic failure on the part of government, law enforcement and the industry itself. Gaming service providers, the Gaming Policy and Enforcement Branch, the BC Lottery Corporation, law enforcement, and the provincial government all had some level of capacity to prevent or slow money laundering in the province's casinos. As will be discussed below, while each took action at some level, none did all that they could to prevent this problem from developing or to respond to it as it grew. As such, all must share in the responsibility for its occurrence.

## **Actions and Omissions of Gaming Service Providers**

Based on the evidence before me, it is clear that the actions and omissions of gaming service providers associated with large Lower Mainland casinos operating during the relevant period played a role in the development and perpetuation of money laundering in British Columbia's gaming industry. Service providers are private-sector businesses that operate casinos on behalf of BCLC in accordance with the terms of "operational services agreements."<sup>42</sup> It is service provider staff that provide casino security, monitor surveillance cameras, deal cards, and staff cash cages. Accordingly, it is difficult to envision how a service provider could avoid having at least some hand in virtually anything that happens in a casino in this province.

In my view, there are three ways in which the actions of service providers contributed to money laundering in the gaming industry between 2008 and 2015. First, as service providers are responsible for the day-to-day operation of the province's

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<sup>42</sup> Exhibit 67, OR: BC Gaming Regulations, paras 121–25.

casinos,<sup>43</sup> it was their staff that received the suspicious cash that I have found was, in many cases, the proceeds of crime. Second, service providers participated in the growth and development of British Columbia's gaming industry, discussed previously, particularly in the development of high-limit VIP gaming in the Lower Mainland that drove the acceleration of the use of suspicious cash in casinos. Finally, it is clear from the evidence before me that service provider revenue considerations influenced the actions taken by BCLC to reduce suspicious transactions. In particular, the evidence suggests that, partly in response to communications with service providers related to the potential revenue impact of actions directed at VIPs, BCLC limited its efforts to reduce suspicious transactions.

That the actions of service providers contributed to the growth and perpetuation of money laundering in the gaming industry does not mean that service providers bear primary responsibility for the development and continuation of this problem. In my view, they do not. Viewed in the context of the place of service providers in the industry, including BCLC's role in setting casino policy and procedures, the limits of each service provider's influence to the casinos that they operated, the limited information available to service providers, and their status as private businesses, the importance of the role played by the actions of service providers is vastly diminished. When these factors are taken into account, it is clear, in my view, that the significance of the actions and omissions of service providers pales in comparison to that of BCLC and GPEB, discussed later in this chapter.

Finally, it is important to note that service providers, of course, are not a single, unified entity. There was a tendency in the Commission's hearings to discuss service providers collectively that has, at times, spilled into this Report. Given the common role played by service providers in the gaming industry, this is not necessarily inappropriate in most contexts. However, in discussing the manner in which service providers have contributed to the growth and perpetuation of money laundering in the gaming industry, it is important to distinguish between the conduct of different service providers where their actions and circumstances differed. This includes distinguishing between the different service providers that operate different casinos, as well as those that operated a single casino at different points in time, including the transfer of control of properties operated by Gateway Casinos & Entertainment Inc. (Gateway Inc.) to Gateway Casinos & Entertainment Limited (Gateway Limited) in 2010<sup>44</sup> and Paragon Gaming's exit from the BC gaming industry following the closure of Edgewater Casino and prior to the opening of Parq Vancouver.<sup>45</sup> I endeavour to do so as required in the discussion below.

43 Ibid, paras 121–24; Exhibit 76, Overview Report: BCLC Standards, Policies, Procedures and Operational Services Agreements [OR: BCLC Standards and Service Agreements]; Exhibit 572, Amended and Restated Casino Operational Services Agreement between BCLC and Great Canadian Casinos Inc. effective as at November 17, 2005 [Services Agreement 2005]; Exhibit 530, Affidavit #1 of Patrick Ennis, made on January 22, 2021 [Ennis #1], paras 22–41; Exhibit 560, Affidavit #1 of Terrance Doyle, made on February 2, 2021 [Doyle #1], paras 13–26.

44 Exhibit 1047, Overview Report: Gateway Casinos & Entertainment Inc. and Gateway Casinos & Entertainment Limited.

45 Exhibit 67, OR: BC Gaming Regulations, paras 134–36.

## **Contribution of Actions of Service Providers to Money Laundering in BC’s Gaming Industry**

As indicated above, there are three principal ways in which the actions of service providers contributed to the growth and perpetuation of money laundering in British Columbia’s gaming industry. First, service providers, who were responsible for the day-to-day operation of the province’s casinos were, in a very literal and immediate sense, responsible for carrying out transactions in which significant amounts of illicit funds were accepted by those casinos. Second, service providers participated in the growth of the gaming industry and the expansion of VIP gaming in the province’s casinos. Finally, concerns for service provider revenue became a limiting factor in BCLC’s efforts to reduce suspicious cash in the industry, due in part to communications from service providers expressing concern about the potential impact of some of those measures.

### ***Acceptance of Suspicious Funds by Service Providers***

Service providers are responsible for the day-to-day operation of the province’s casinos in accordance with the terms of operational services agreements with BCLC and under the regulation of GPEB. The responsibilities of service providers include supplying employees to work as cash cage staff, table games dealers, VIP hosts, and surveillance personnel. Accordingly, it is service provider staff who, for years, accepted suspicious cash at Lower Mainland casinos, catered to the VIPs who brought that cash into the casino, and identified transactions as suspicious and reported them to the BC Lottery Corporation.

Given the direct involvement of service provider staff in these transactions, and particularly given their responsibility for identifying and reporting these transactions as suspicious<sup>46</sup> (or “unusual,” in the parlance of the industry),<sup>47</sup> it is obvious that service providers had access to detailed information about the nature of suspicious transactions occurring in casinos. Service provider staff would have been aware of transactions occurring in the casinos they operated that I have already found were easily recognizable as likely consisting of the proceeds of crime. While there is no evidence that service providers were widely staffed with experienced former police officers like BCLC<sup>48</sup> or GPEB,<sup>49</sup> this kind of professional experience was not required to identify that there was something seriously amiss in the transactions regularly taking place in casinos. In short, if service providers did not recognize that the casinos they

46 Exhibit 560, Doyle #1, paras 17–26; Exhibit 148, Tottenham #1, paras 8–9; Exhibit 78, Beeksma #1, para 44; Exhibit 166, Hiller #1, para 10; Exhibit 87, Affidavit #1 of Stone Lee, sworn on October 23, 2020 [S. Lee #1], para 26; Exhibit 517, Affidavit #1 of Terry Towns, made on January 22, 2021 [Towns #1], para 27; Exhibit 490, Affidavit #1 of Robert Kroeker, made on January 15, 2021 [Kroeker #1], paras 47–48; Exhibit 530, Ennis #1, paras 22–41.

47 Exhibit 560, Doyle #1, para 17; Exhibit 530, Ennis #1, para 22.

48 Exhibit 148, Tottenham #1, para 3; Exhibit 490, Kroeker #1, para 3; Exhibit 522, Desmarais #1, paras 7–15; Exhibit 166, Hiller #1, paras 3–5; Exhibit 484, Affidavit #2 of Kevin deBruyckere, sworn on October 23, 2020, para 4; Exhibit 517, Towns #1, paras 3–12; Evidence of G. Friesen, Transcript, October 28, 2020, p 34; Evidence of J. Karlovcec, Transcript, October 29, 2020, p 73.

49 Exhibit 181, Vander Graaf #1, paras 2–6; Evidence of D. Dickson, Transcript, January 22, 2021, pp 2, 106; Evidence of J. Schalk, Transcript, January 22, 2021, p 182; Exhibit 144, Ackles #3, paras 4–7; Exhibit 145, Barber #1, paras 5–8; Evidence of T. Robertson, Transcript, November 6, 2020, p 29.

were operating were routinely accepting significant volumes of suspicious funds that were likely the proceeds of crime, it is because they were simply not paying attention.

In light of the access they had to detailed information about the suspicious transactions occurring in their own casinos, service providers clearly had access to the information required to recognize the extent to which those casinos were regularly accepting illicit funds. Armed with this knowledge, common sense should have dictated that there was a clear need to refuse these suspicious transactions. Had service providers taken this step, the resulting impact on money laundering in the gaming industry is obvious. Even if BCLC, GPEB, law enforcement, and government had done absolutely nothing to address this issue, service provider refusal to accept suspicious cash could have dramatically reduced the volume of illicit funds accepted by casinos and largely eliminated money laundering in the industry. That service providers could have taken this step and did not do so undeniably contributed to the perpetuation of money laundering in the province's gaming industry.

### ***Service Provider Authority to Refuse Transactions***

Current and former Great Canadian Gaming Corporation (Great Canadian) executives Walter Soo, Terrence Doyle, and Robert Kroeker, who was a vice-president within both Great Canadian and BCLC at different times, all gave evidence indicating that, in their view, there were limits on the authority of service providers to refuse suspicious transactions.<sup>50</sup> Both Great Canadian and Gateway Limited took similar positions in their closing submissions, arguing that they lacked the capacity and authority to investigate the origins of cash used in these transactions and that making decisions and/or developing policies regarding the acceptance and refusal of transactions were beyond their role and authority.<sup>51</sup> In my view, there is little basis for doubt that service providers did have the authority to refuse transactions.

I accept that it was outside the normal role of service providers to set general policies for the acceptance and rejection of cash or other transactions in the province's casinos. I reject, however, that service providers lacked any capacity to refuse suspicious transactions, for three reasons. First, there is nothing in any of the operational services agreements before the Commission that would seem to require that service providers accept every transaction presented to them.<sup>52</sup> It is unimaginable that the intention underlying any of those agreements was that service providers would be obligated to accept transactions bearing obvious signs of criminality. Second, there is uncontradicted evidence that service providers *did*, on multiple occasions make autonomous decisions to refuse transactions. In April 2015, for example, the River Rock refused a bank draft presented in suspicious circumstances, even though it was not strictly required by conditions imposed on the patron by

50 Evidence of W. Soo, Transcript, February 9, 2021, pp 87–90; Evidence of T. Doyle, Transcript, February 9, 2021, pp 184–89; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 119–20; Exhibit 1048, Affidavit of Diana Bennett, sworn on August 31, 2021, para 6.

51 Closing submissions, Great Canadian Gaming Corporation, paras 47–48, 56, 74; Closing submissions, Gateway Casinos & Entertainment Ltd., paras 38, 49–50; Transcript, October 18, 2021, pp 1, 10–11, 15, 17–19, 34.

52 Exhibit 572, Services Agreement 2005; Exhibit 76, OR: BCLC Standards and Service Agreements.

BCLC at that time.<sup>53</sup> Similarly, in an incident recounted in the evidence of former GPEB investigator Tom Robertson, a service provider made the decision to refuse a transaction after Mr. Robertson advised service provider staff that he did not believe the information a patron had provided to him regarding the source of a patron's cash was truthful.<sup>54</sup> Most significantly, Great Canadian, at the initiative of Patrick Ennis, a senior security and compliance staff member, made the autonomous decision to begin refusing a subset of suspicious transactions in 2016.<sup>55</sup> While a representative of BCLC apparently advised Great Canadian that it was not *required* to refuse these transactions, Great Canadian was never told that it should not or was not permitted to do so, and carried on with this policy even after receiving this advice.<sup>56</sup> Finally, the most compelling basis upon which any suggestion that service providers lacked the authority to refuse transactions should be summarily rejected, however, is simple common sense. The notion that service providers – confronted day after day with substantial amounts of cash bearing obvious indicators of criminal origins, dropped off in the dead of night, bundled in elastic bands, and packaged in shopping bags, knapsacks, and cardboard boxes – were under some legal obligation to accept this suspicious cash, much of which was likely the proceeds of crime, and had no choice but to facilitate money laundering by exchanging that cash for chips and permitting those presenting it to gamble is simply absurd, and I reject it.

However, even if service providers were somehow put in this untenable position, or had doubts as to whether they had the authority to refuse certain transactions, there is no basis to suggest that there was anything preventing them from raising concerns about the routine acceptance of this suspicious cash with BCLC, GPEB, or any other relevant authority. If concerned about these transactions but unsure of their authority to take action in response, service providers could surely have simply identified their concerns and asked for BCLC's blessing to turn the transactions away. Had they done so and been met with resistance from BCLC, it would perhaps be understandable if they had felt constrained in their ability to refuse suspicious cash. As there is no evidence before me that any service provider sought BCLC's approval to refuse these transactions, in my view, there is no credible basis for the suggestion that they had no choice but to accept them.

### ***Distinguishing Between Service Providers***

As identified above, it is necessary to distinguish between the different service providers active within the industry during the relevant time period. I note that the prevalence of suspicious transactions was not evenly distributed among casinos, even within the Lower

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53 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 149–59 and Transcript, November 10, pp 85–87.

54 Evidence of T. Robertson, Transcript, November 6, 2020, pp 69–73.

55 Exhibit 530, Ennis #1, paras 40 and 55–56, exhibit R; Evidence of P. Ennis, Transcript, February 3, 2021, pp 82, 145–52; Evidence of P. Ennis, Transcript, February 4, 2021, pp 17–19; Evidence of T. Doyle, Transcript, February 10, 2021, pp 15–16.

56 Exhibit 530, Ennis #1, para 65; Evidence of P. Ennis, Transcript, February 3, 2021, pp 151–52.

Mainland.<sup>57</sup> As discussed previously, while not limited to the River Rock, the presence of suspicious cash was heavily concentrated at that casino.<sup>58</sup> In this sense, the decision on the part of Great Canadian to continue to accept this suspicious cash facilitated the laundering of illicit funds to a much greater extent than did similar decisions by other service providers. I do note that Great Canadian ultimately did, of its own accord, decide to refuse a subset of suspicious transactions, a decision that did go some length towards addressing the problem.<sup>59</sup> The timing of a service provider's involvement in the industry is also relevant. Gateway Inc. exited the industry in 2010,<sup>60</sup> early in the evolution of this crisis, while Parq Vancouver entered the industry in 2017,<sup>61</sup> more than two years after its peak and shortly before the problem was substantially addressed by the implementation of new measures in response to Dr. Peter German's source-of-funds recommendation, as discussed in Chapter 12. These two service providers conducted a much smaller sample of suspicious transactions and may not have had the same degree of insight into the problem as service providers who had been accepting large, suspicious cash buy-ins for many years.

### ***Service Provider Participation in the Growth and Development of the Gaming Industry***

In addition to the immediate role played by service provider staff in accepting transactions involving obviously illicit funds, the actions of service providers also contributed to the rise of money laundering in the province's gaming industry through their participation in the growth and development of the industry and, in particular, high-limit VIP gaming that was closely associated with suspicious transactions.

There is evidence before me that VIP gaming was a focus for casinos operated by multiple service providers active in the Lower Mainland.<sup>62</sup> This included evidence about the development of new VIP facilities at the Starlight casino,<sup>63</sup> VIP hosting programs and services,<sup>64</sup> and hundreds of thousands of dollars in "comps" (complimentary items and services provided by a casino) spent by Gateway Limited on a patron identified in this Report as "Patron B" both before and after that patron was placed on cash conditions.<sup>65</sup>

57 Exhibit 482, Affidavit #1 of Caterina Cuglietta, sworn on October 22, 2020 [Cuglietta #1], exhibit A; Exhibit 145, Barber #1, para 12; Evidence of M. Hiller, Transcript, November 9, 2020, p 13; Evidence of S. Beeksma, Transcript, October 26, 2020, p 36; Exhibit 144, Ackles #3, exhibit D; Exhibit 181, Vander Graaf #1, exhibit M.

58 Exhibit 482, Cuglietta #1, exhibit A; Exhibit 145, Barber #1, para 12; Evidence of M. Hiller, Transcript, November 9, 2020, p 13; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 94–95; Evidence of S. Beeksma, Transcript, October 26, 2020, p 36; Exhibit 144, Ackles #3, exhibit D.

59 Exhibit 530, Ennis #1, paras 40, 55–56, exhibit R; Evidence of P. Ennis, Transcript, February 3, 2021, pp 82, 145–52; Evidence of P. Ennis, Transcript, February 4, 2021, pp 17–19; Evidence of T. Doyle, Transcript, February 10, 2021, pp 15–16.

60 Exhibit 1047, Overview Report – Gateway Casinos & Entertainment Inc. and Gateway Casinos & Entertainment Limited.

61 Exhibit 67, OR: BC Gaming Regulations, para 134.

62 Exhibit 148, Tottenham #1, para 26; Evidence of R. Duff, Transcript, January 25, pp 25–27.

63 Evidence of M. Chiu, Transcript, January 21, 2021, pp 13–16; Exhibit 480, Affidavit #1 of Bill Lang, affirmed on January 15, 2021; Evidence of R. Duff, Transcript, January 25, p 26; Evidence of M. Hiller, Transcript, November 9, 2020, pp 19–20.

64 Evidence of M. Chiu, Transcript, January 21, 2021; Evidence of W. Soo, Transcript, February 9, 2021, pp 24–25.

65 Exhibit 1040, Lang #2.

It also includes evidence that Parq Vancouver hired Mr. Duff prior to the opening of the new casino, specifically to develop its VIP program.<sup>66</sup>

However, the bulk of the evidence related to service provider efforts to enhance VIP gaming focused on Great Canadian and, in particular, the River Rock Casino. From the earliest days of the River Rock, Great Canadian was focused on the expansion of high-limit gaming at the casino. As Mr. Duff explained in his evidence, the transition from the old Richmond Casino to the River Rock was akin to going from “a card room to ... a casino”<sup>67</sup> and from its earliest days, the River Rock included dedicated VIP space,<sup>68</sup> initially offering both baccarat and blackjack,<sup>69</sup> but with the blackjack space soon repurposed for baccarat due to customer demand.<sup>70</sup>

Almost immediately after the River Rock opened, and despite the incorporation of VIP facilities into the initial design of the casino, Great Canadian began to develop plans to attract more VIP play, including international patrons. Between 2004 and 2007, Mr. Soo was directed to develop two proposals for premium international table games programs.<sup>71</sup> A report prepared in furtherance of the first of these two proposals defined the targeted market as follows:<sup>72</sup>

The Premium Table Game Player market consists of a finite group of affluent gamblers with the financial means to wager substantial sums of money on games of chance. They are serviced by casinos in a number of markets, including Asia, Australia, and Las Vegas. The game preferences for these players are table games, Blackjack, Roulette but internationally, the primary game is Baccarat.

A Premium Table Game Player is defined for the purposes of this report as an avid, experienced table game player with the ability and inclination to consistently make bets of US\$500 and greater. This means the player is capable of losing to the casino, on any given visit, US\$25,000 or more. [The] Premium Table Game Baccarat Player [market] is dominated by players of Asian descent, place of origin, or influence.

The primary target market for River Rock’s [Premium Table Game Player] program is financially successful and upwardly mobile Asian gamers whose game of choice is Baccarat. These players may be found among (i) those Asians traveling from or to countries in the Pacific Rim (primarily Hong Kong, Taiwan and The People’s Republic of China) and (ii) those Asians who reside in the Greater Vancouver Area.

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66 Evidence of R. Duff, Transcript, January 25, pp 4–5.

67 Ibid, p 20.

68 Ibid, pp 22–23.

69 Ibid, pp 22–23.

70 Ibid, p 23.

71 Exhibit 559, Soo #1, paras 34–59.

72 Ibid, exhibit C.

This report was prepared by a Nevada-based consulting firm retained by Great Canadian to advise on the elements required to support the kind of high-limit VIP play sought by Great Canadian.<sup>73</sup> As discussed in Chapter 10, the report made clear that the pursuit of international VIP table games play in the absence of adequate cash alternatives, particularly the availability of credit, would contribute to risks of “loan sharking” and money laundering.<sup>74</sup>

While each element of the product mix is important, the availability of credit is one of the critical factors when building a premium table game player program. International currency laws as well as heightened suspicions in this post 9/11 era precludes gamers from traveling with large sums of cash. It is simply inappropriate to expect an international traveler to carry in excess of \$25,000 in cash for gambling purposes. The gamer not only exposes himself to possible confrontations with customs authorities, he is exposing himself to theft or currency confiscation. Therefore, BCLC and River Rock must establish some form of credit that will allow premium table game players to access a sufficient amount of money to gamble with during their visits. Credit issuance also significantly reduces the potential for criminal activities such as loan sharking or money laundering to occur.

The proposals developed at that time by Mr. Soo were not directly implemented due, at least in part, to a lack of support from BCLC.<sup>75</sup> However, neither this lack of support nor the warning about money laundering discussed above dissuaded Great Canadian from continuing to pursue high-limit VIP gaming, despite the industry’s continued reliance on cash. These efforts included the continued expansion and development of VIP space and services at the River Rock,<sup>76</sup> and permitting gaming up to maximum limits permitted by BCLC, despite Great Canadian’s discretion to impose limits below those allowed by the BC Lottery Corporation.<sup>77</sup>

Through the report referred to above, Great Canadian had early notice that the pursuit of international VIP play in the absence of adequate cash alternatives would elevate the risk of money laundering facing the casinos it operated. Given the centrality of cash in the industry at this time, Great Canadian must have known that these steps would increase the volume of cash entering the River Rock. Mr. Ennis, Mr. Duff, and Mr. Soo all agreed in their evidence that this was a likely outcome of these changes.<sup>78</sup> Despite the predictability

73 Ibid, exhibit C.

74 Ibid, exhibit C.

75 Ibid, para 49, exhibit D.

76 Evidence of R. Duff, Transcript, January 25, 2021, pp 22–25; Evidence of W. Soo, Transcript, February 9, 2021, pp 33–37, 54–68; Exhibit 559, Soo #1, paras 60–74; Evidence of M. Hiller, Transcript, November 9, 2020, pp 19–20.

77 Evidence of W. Soo, Transcript, February 9, 2021, pp 46–48; Evidence of R. Duff, Transcript, January 25, 2021, p 31; Evidence of P. Ennis, Transcript, February 3, 2021, pp 118–20.

78 Evidence of P. Ennis, Transcript, February 3, 2021, pp 116, 119; Evidence of R. Duff, Transcript, January 25, 2021, pp 29–30; Evidence of W. Soo, Transcript, February 9, 2021, pp 37–39.

of this outcome, it does not appear that this elevated risk of money laundering was given any serious consideration in determining whether to take these steps.<sup>79</sup>

By 2014, as the volume of suspicious cash entering industry approached its apex, some within Great Canadian were continuing to push for even greater levels of VIP gaming, the obvious effect of which would have been to elevate even further the amount of suspicious cash entering the River Rock. In that year, a proposal to further expand and enhance VIP offerings at the River Rock was developed within Great Canadian.<sup>80</sup> Documents produced in October 2014 reveal that concerns about money laundering were not a deterrent to the further expansion of VIP offerings, but that the desire for this expansion was motivated in part by an interest in capitalizing on anti-corruption and anti-money laundering initiatives in other parts of the world by attracting players no longer able or willing to play in China and the United States because of such measures.<sup>81</sup> The following two paragraphs were included under the heading “Global Implications” within this proposal:<sup>82</sup>

China Central Government’s anti-corruption and flight capital campaign will escalate in 2015 thus discouraging and diverting a fair portion of VIP Baccarat play from Macau to River Rock Casino. It is widely believed that campaign scrutiny will ramp up when findings are completed and reported back to Beijing in 2015 ...

The United States’ campaign against illicit money laundering (American Justice Department, U.S. Treasury Department and FinCEN) will continue to intensify its investigation into the governance and ethical practices of Las Vegas gaming companies operating in Macau (Wynn, Sands and MGM). [People’s Republic of China] VIPs will encounter more restrictions to access funds for gaming in Macau and Las Vegas, reducing their desire to frequent these destinations and diverting their play to River Rock Casino ...

I acknowledge that current and former representatives of Great Canadian denied this interpretation of these passages.<sup>83</sup> In my view, however, their denial is incongruous with the clear meaning of the passage reproduced above, and I find that the intention of these proposals was to highlight the prospect of attracting gamblers who wished to avoid anti-corruption and anti-money laundering initiatives in other jurisdictions.

This proposal was implemented, at least in part.<sup>84</sup> That this proposal even came forward at this time and that it was not immediately rejected principally for ethical reasons or out of a desire not to exacerbate the rampant criminal activity already

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79 Evidence of R. Duff, Transcript, January 25, 2021, pp 30–34; Evidence of P. Ennis, Transcript, February 3, 2021, pp 117–20; Evidence of W. Soo, Transcript, February 9, 2021, pp 42–45.

80 Exhibit 559, Soo #1, paras 75–79 and exhibit J, K.

81 Ibid, exhibit J, K.

82 Ibid, exhibit J.

83 Evidence of W. Soo, Transcript, February 9, 2021, pp 57–68; Evidence of T. Doyle, Transcript, February 9, 2021, pp 119–32.

84 Evidence of W. Soo, Transcript, February 9, 2021, pp 54–57.

present at the River Rock is a telling indicator of how little concern there was within Great Canadian about this issue at that time.

This proposal was only the latest in a long history of efforts to drive VIP gambling at the River Rock to greater and greater heights, through the expansion and enhancement of VIP space and by allowing gaming up to maximum betting limits permitted by BCLC. Over time, due in part to these decisions, VIP play at the River Rock steadily grew<sup>85</sup> and, along with it, the volume of cash accepted by the casino.<sup>86</sup> As discussed previously, the volume and appearance of this cash should have made clear to any reasonable observer the likelihood that it was the proceeds of crime. Yet there seemed to be no consideration within Great Canadian of whether there was a need to retreat from – or at least stop expanding – VIP gaming for this reason.<sup>87</sup> In this sense, it is clear, in my view, that the actions of service providers, particularly Great Canadian, contributed to money laundering in the province's casinos by pushing the expansion of VIP gaming to new heights in the absence of adequate cash alternatives and, in doing so, encouraging VIP patrons to bring greater and greater volumes of cash into the River Rock and other casinos.

### ***Service Provider Revenue Considerations***

The third mechanism by which the actions of service providers contributed to the growth and perpetuation of money laundering in the province's gaming industry was by impressing upon BCLC the need for caution around anti-money laundering measures in order to minimize the impact on revenue. The record before me contains references to a number of incidents in which service providers, implicitly or explicitly, expressed concerns to BCLC and its staff that actions taken to address money laundering in the industry would have a negative impact on service provider revenue. It is clear as well that these expressions of concern found their mark and did, at times, cause BCLC to limit its anti-money laundering efforts.

While most of the evidence related to this issue is, again, focused on the River Rock Casino, there is some evidence that this dynamic was not entirely limited to one casino or service provider. A representative of Parq Vancouver, for example, expressed concerns about the revenue impact of the cash conditions program in an email to Brad Desmarais, who has held multiple executive roles with BCLC, in 2015.<sup>88</sup> Daryl Tottenham, BCLC's manager of anti-money laundering programs, gave evidence of his awareness of such concerns from multiple service providers during the time that he was stationed at the Starlight Casino.<sup>89</sup>

85 Evidence of R. Duff, Transcript, January 25, 2021, pp 22–23, 25–26; Exhibit 559, Soo #1, para 65.

86 Evidence of R. Duff, Transcript, January 25, 2021, pp 8–9; Evidence of W. Soo, Transcript, February 9, 2021, pp 7–8.

87 Evidence of R. Duff, Transcript, January 25, 2021, pp 30–34; Evidence of P. Ennis, Transcript, February 3, pp 117–20; Evidence of W. Soo, Transcript, February 9, 2021, pp 42–45.

88 Exhibit 505, Lightbody #1, para 94 and exhibit 29; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 141–42; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 109–11.

89 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 15–18.

However, perhaps unsurprisingly given the concentration of this issue at the River Rock, much of the evidence of service provider concern about BCLC’s anti–money laundering measures arose from that casino. This evidence spans a number of years and involves individuals at multiple levels of the two organizations. It includes, for example, Mr. Duff’s forceful expression of his concerns about player bans<sup>90</sup> and his resistance to then BCLC investigator Ross Alderson’s efforts to direct that a high-risk transaction be reversed and to interview patrons involved in suspicious activity<sup>91</sup> as well as concerns that emanated from Great Canadian on multiple occasions about the impact of player interviews on Great Canadian’s relationships with players.<sup>92</sup> This evidence also includes concerns about the revenue impact of BCLC actions expressed by Mr. Ennis to Mr. Alderson,<sup>93</sup> and complaints from the CEO of Great Canadian to Mr. Lightbody about the cash conditions program.<sup>94</sup>

It is clear that the expression of these concerns had their desired effect. In some instances, the impact of these complaints on anti–money laundering measures is direct and obvious. Mr. Duff’s advocacy appears to have led to the rescinding of patron barrings in 2009<sup>95</sup> and eventually persuaded former BCLC investigator Michael Hiller that patrons using the services of cash facilitators should not be barred from casinos.<sup>96</sup> I am not so convinced, and believe that barring patrons who used the services of cash facilitators could have been highly effective in reducing the volume of illicit funds accepted at the River Rock. However, it seems clear that Mr. Duff’s intervention changed both Mr. Hiller’s perspective and his actions.<sup>97</sup> Similarly, complaints from Great Canadian arising from Mr. Alderson’s efforts to interview patrons in 2012 led to a direction from Terry Towns, then BCLC’s vice-president, corporate security and compliance, to then-BCLC investigators Mr. Alderson, Stone Lee, and Steve Beeksma that they were not to speak to patrons.<sup>98</sup> This limited the actions that BCLC investigators could take to investigate suspicious transactions and prohibited a measure that could have assisted in gathering information about, and perhaps even deterring, those transactions. In other instances, the impact is not so clear. Mr. Lightbody, for example,

90 Evidence of M. Hiller, Transcript, November 9, 2020, pp 72–77, 80–88; Evidence of R. Duff, Transcript, January 25, 2021, pp 40–44; Exhibit 87, S. Lee #1, para 35.

91 Exhibit 87, S. Lee #1, paras 36–38 and exhibits A, B, C; Evidence of R. Alderson, Transcript, September 9, 2021, pp 17–20; Beeksma #1, exhibits H, I, J; Evidence of R. Duff, Transcript, January 25, 2021, pp 44–49.

92 Evidence of P. Ennis, Transcript, February 3, 2021, pp 105–10; Evidence of D. Tottenham, Transcript, November 5, 2020, pp 6–8 and November 10, 2020, pp 92–97; Exhibit 148, Tottenham #1, paras 83, 227; Exhibit 126, Email from John Karlovcec to Patrick Ennis, re Meeting to Discuss Protocol for Approaching VIP Players (October 17, 2014).

93 Evidence of D. Tottenham, Transcript, November 5, 2020, pp 6–7; Exhibit 148, Tottenham #1, para 227.

94 Exhibit 505, Lightbody #1, para 95, exhibit 30; Evidence of J. Lightbody, Transcript, January 29, 2021, p 127; Evidence of B. Desmarais, February 1, 2021, pp 143–44.

95 Evidence of M. Hiller, Transcript, November 9, 2020, pp 72–75.

96 Ibid, p 83.

97 Ibid, p 83.

98 Exhibit 78, Beeksma #1, para 66; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 53–57; Exhibit 87, S. Lee #1, paras 39–40; Evidence of S. Lee, Transcript, October 27, 2021, pp 25–28; Exhibit 148, Tottenham #1, paras 29–30; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 19–24; Evidence of R. Alderson, Transcript, September 9, 2021, pp 19–23, 164–65.

testified that he took no action to limit the cash conditions program in response to complaints from the CEO of Great Canadian about the potential impact of the program.<sup>99</sup>

The significance of this regular drumbeat of complaints and expressions of concern, however, is not, in my view, limited to direct reactions to specific complaints. Rather, I find that these communications kept the impact of anti-money laundering measures on service provider revenue front of mind for BCLC as it wrestled with the question of how to respond to these transactions. In turn, they motivated BCLC generally to approach this issue more timidly than it otherwise might have. Mr. Tottenham, for example, candidly acknowledged in his evidence that concern for service provider revenue was a factor in the actions that BCLC chose to take in response to suspicious transactions in casinos.<sup>100</sup>

Q Was one of the reasons that you did not introduce the blanket source of cash rule early on because of the feedback you were getting from individuals like David Zhu and Patrick Ennis at the River Rock that the sourced-cash conditions were impacting their business?

A No, it wasn't based on that. I mean, that is a factor that we considered in terms of the impact we were going to have on the industry overall. Not specifically River Rock. It's the impact it would have on if we, as an example, chose a period in early 2015 and just put a blanket 10,000 or more you had to have a receipt and dropped it on the entire industry, that would have a huge impact on the casino industry in British Columbia. So we had to kind of – we had to work towards building a program to get there, ultimately to get where we wanted to go. And it had to be accepted by obviously the service providers and the patrons along the way. So we had to work within our means to make it logical and to be able to defend it.

Q When you say it would have a huge impact on the industry, what you mean is it would have a negative impact on the revenue generated by that industry; is that correct?

A Absolutely. For the service providers it absolutely would have. And it's out of the norm too. You have to understand that when we're looking at our environment, there is no other environment in Canada and anywhere in North America that I'm aware of that operates at that level. If you go down to Vegas or you go to other casinos across Canada, there is no requirement when you come in with a small amount of cash and have to provide receipts and show where that cash came from before you can buy in. I mean, we are a very unique province with regards to the rules that we have in play.

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99 Exhibit 505, Lightbody #1, para 95; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 126–27.

100 Evidence of D. Tottenham, Transcript, November 5, 2020, pp 4–6.

Q It would have had a big impact on revenue, but would it also have had a big impact on the money laundering risk?

A It – in terms of the cash – and again, money laundering was not our concern in the primary sense of what money laundering is within the casino. We were looking at suspicious cash proceeds of crime source of funds angle. That was our concern. Yes, it would have had a very dramatic impact on that at the time. Essentially it would have gotten us very quickly to the point where we eventually have gotten to.

As will be discussed later in this chapter, this attitude is also evident in BCLC's internal reactions to external recommendations and directions that it take further actions to address suspicious cash. On multiple occasions, BCLC responded to recommendations that it take more aggressive action, including broad requirements for proof of the source of funds used in large cash transactions or caps on the amount of cash that could be used in a single transaction, by raising the prospect of revenue losses or negative reactions from service providers.<sup>101</sup>

In this sense, I am satisfied that the actions of service providers, most notably, but not exclusively, Great Canadian, contributed to money laundering in the gaming industry in this way. In some instances, these communications led to clear and direct responses that limited anti-money laundering measures, and generally they exerted a moderating force on BCLC action in this regard. This is not meant to suggest, however, that service providers are responsible for BCLC's failure to implement appropriate measures to address suspicious cash in the industry. This is not so. BCLC always had the option of disregarding these concerns and the responsibility to take appropriate action despite them. Responsibility for failing to do so, as is discussed at length later in this chapter, is appropriately borne by BCLC itself. The purpose of the present discussion is only to acknowledge that one of the contributing factors to this failure seems to have been the actual and anticipated reactions of service providers to more aggressive measures.

## **Contribution of Actions of Service Providers in Context**

The conclusion that the actions of service providers contributed to the growth and perpetuation of money laundering in the gaming industry should not be confused with a finding that they were primarily or even substantially responsible for this

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<sup>101</sup> See, for example, Evidence of R. Alderson, Transcript, September 9, 2021, p 22 and Transcript, September 10, 2021, pp 56–60, 187–91; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 27–29, 98, 112–16, 119–66 and Transcript, November 10, 2020, pp 33–39; Evidence of B. Smith, Transcript, February 4, 2021, pp 119–23; Exhibit 538, Email to Bud Smith from Jim Lightbody re Letter to Minister Re AML (October 24, 2015), with attachment [Lightbody Email October 2015]; Evidence of J. Karlovcec, Transcript, October 30, 2020 p 59; Exhibit 148, Tottenham #1, exhibit 7; Evidence of M. Graydon, Transcript, February 11, 2021, pp 69–73; Exhibit 511, Emails from Bill McCrea re BCLC Money Management Material (July 8, 2009), with attachment [McCrea Email 2009]; Exhibit 490, Kroeker #1, exhibit 51.

problem. In order to fully understand the nature and extent to which the actions of service providers contributed to the growth and perpetuation of money laundering, it is necessary to consider these actions in the context of the role played by service providers in the industry. While this context does not change the fact that these actions contributed to the problem, it does, in my view, assist in explaining these actions and makes clear that primary responsibility lies elsewhere.

There are four factors that are relevant to this discussion. The first is the relationship between service providers and each of BCLC and GPEB and the proper roles of each organization within the gaming industry. The second is the limits of the reach of service provider actions to the casinos that they were responsible for operating. The third is the disadvantaged informational position of service providers relative to BCLC and GPEB. The fourth is the fundamentally different objectives of service providers as private, profit-seeking businesses, as compared to BCLC as a Crown corporation and GPEB as a branch of the provincial government. Each is discussed in turn below.

### ***Role and Responsibility of Service Providers in BC's Gaming Industry***

While their direct role in the day-to-day operation of British Columbia casinos would seem to provide service providers with a high degree of control over activity in the province's casinos, the evidence before me reveals that the normal role of service providers in the province's gaming industry was, and remains, far more constrained than might appear at first impression. As is discussed later in this chapter, BCLC's "conduct and manage" mandate requires that it serve as the "operating mind" of lottery schemes in the province (aside from those operated by charities)<sup>102</sup> and the operational services agreements under which service providers work make clear that BCLC maintains a high degree of control over how service providers operate casinos.<sup>103</sup> This, alongside evidence given by service provider employees as to their understanding of their role in the industry,<sup>104</sup> makes clear that in the gaming industry, service providers are very much "policy takers" expected to faithfully execute the directions of BCLC, but with no significant role in autonomously developing policies and procedures themselves.

This is particularly so with respect to anti-money laundering measures. In addition to its conduct and manage mandate<sup>105</sup> and the level of control granted to BCLC by operational services agreements,<sup>106</sup> BCLC's status as a Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)-reporting entity further limits the role of service providers in combatting money laundering. The proper role of service providers

<sup>102</sup> *Great Canadian Casino C Ltd. v Surrey (City of)* (1999), 53 BCLR (3d) 379, 1998 CanLII 2894, paras 66–69, aff'd 1999 BCCA 619.

<sup>103</sup> Exhibit 572, Services Agreement 2005; Exhibit 76, OR: BCLC Standards and Service Agreements.

<sup>104</sup> Exhibit 560, Doyle #1, para 16; Evidence of T. Doyle, Transcript, February 9, 2021, p 102–5 and Transcript, February 10, 2021, pp 82–84.

<sup>105</sup> *Gaming Control Act*, s 7.

<sup>106</sup> Exhibit 572, Services Agreement 2005; Exhibit 76, OR: BCLC Standards and Service Agreements.

in this regard is clear: to identify and report suspicious activity to BCLC in order to enable the BC Lottery Corporation to report this activity to FINTRAC and take necessary additional steps to respond to money laundering risks.<sup>107</sup> In an industry with a properly functioning anti-money laundering regime, service providers would have reasonably expected that BCLC was reporting to FINTRAC as required, and that both BCLC and GPEB were taking other steps as needed to manage the risk of money laundering in the province's casinos. This does not absolve service providers of the responsibility at some point to take action in response to vast sums of suspicious cash, likely to be of criminal origin, in the casinos that they were responsible for operating. However, given their role in the industry, BCLC and GPEB should have taken action long before the need for service providers to do so arose. Service providers should never have been put in the position of needing to respond to serious money laundering activity in the absence of clear direction from BCLC or GPEB.

Given the distinct role of service providers relative to BCLC and GPEB, I note that it would be reasonable for service providers to assume that they are not privy to all of the information available to BCLC and GPEB or to all of the actions taken by these two organizations in response to money laundering risks. This does not mean that it would be reasonable for service providers to assume that BCLC and GPEB had the matter in hand regardless of the activity they were observing in the casinos that they operated, but it does offer some explanation as to why service providers may have been reluctant or slow to act as the money laundering crisis grew. While service providers had the information necessary to recognize the problem and some capacity to act beyond their optimal role, they would have known that both BCLC and GPEB were better positioned to respond to the growing crisis and were primarily responsible for doing so. In short, while service providers could have taken action to respond to rising volumes of illicit funds flowing into casinos, primary responsibility for doing so did not rest with them.

### ***Service Provider Record of Compliance***

Had service providers received appropriate direction to respond to the increasing suspicious transactions in the casinos that they operated, there is little reason to doubt that they would have responded effectively to that direction. It is evident from the record before me that service providers were largely compliant with directions they received and, in this regard, performed their proper role in the gaming industry's anti-money laundering regime well. There were occasional lapses in compliance,<sup>108</sup> but these were largely isolated incidents that held no prospect of materially contributing to the growth of money laundering in the industry. The one example of sustained non-compliance in the record before me is that application of an improper \$50,000 threshold for reporting suspicious transactions at the River Rock Casino, discussed in detail in Chapter 11.

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107 Exhibit 560, Doyle #1, paras 17–26; Exhibit 517, Towns #1, para 27; Exhibit 490, Kroeker #1, paras 47–48; Exhibit 530, Ennis #1, paras 22–41.

108 Exhibit 78, Beekma #1, para 41 and exhibit B; Exhibit 75, Overview Report: 2016 BCLC Voluntary Self-Declaration of Non-Compliance; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 31–35.

Given service providers' strong record of compliance, I have little doubt that, had BCLC or GPEB implemented adequate and appropriate anti-money laundering measures, service providers would have faithfully and effectively implemented them. Beginning in 2015, when BCLC implemented its formal cash conditions program and subsequent additional measures, up to and including the measures adopted following Dr. German's source-of-funds recommendation, service providers were, despite some initial "growing pains" associated with implementation of Dr. German's recommendation,<sup>109</sup> instrumental in the success of these measures through their effective compliance with BCLC's directions.

Limited instances of non-compliance notwithstanding, the evidence I heard suggests that service providers were highly capable in performing their proper role in the industry's anti-money laundering regime. They reported suspicious transactions effectively and otherwise complied with the policies and procedures established by BCLC and regulatory requirements imposed by GPEB. In some instances, service providers went above and beyond minimum requirements, including, for example, Great Canadian's efforts to exceed BCLC standards for surveillance camera coverage,<sup>110</sup> its anti-money laundering policy for non-gaming operations,<sup>111</sup> and its decision to refuse a subset of suspicious transactions beginning in 2016.<sup>112</sup> While there were additional actions that, in my view, service providers could have taken, most notably refusing suspicious transactions involving cash that was obviously the proceeds of crime, making the decision to do so would have far exceeded the normal role of service providers in combatting money laundering in the industry. That the question of whether service providers should have taken this step arises at all speaks as much to the failings of GPEB and BCLC as it does to the significance of the actions of service providers.

### ***Limited Reach of Service Provider Action***

An additional feature that distinguishes the role of service providers from that of BCLC and GPEB is that while the BC Lottery Corporation and the regulator have industry- and province-wide authority and responsibilities, the influence of service providers was – and remains – limited to the casinos that they operate. Whereas reforms enacted by BCLC or the exercise of GPEB's regulatory authority had the potential to affect activity in all casinos across the province, service providers could only take steps effective within the casinos that they operated, limiting the potential impact of any such action.

The limited reach of service providers restricts the potential impact of any actions they might have taken due to the likelihood that those actions would displace rather

<sup>109</sup> Exhibit 505, Lightbody #1, paras 279–86; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 31–35, 122; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 80–84.

<sup>110</sup> Exhibit 530, Ennis #1, para 39; Evidence of P. Ennis, Transcript, February 4, 2021, pp 8–11.

<sup>111</sup> Exhibit 560, Doyle #1, paras 43–44 and exhibit E; Evidence of T. Doyle, Transcript, February 10, 2021, pp 114–15.

<sup>112</sup> Exhibit 530, Ennis #1, paras 40, 55–66 and exhibit R; Evidence of P. Ennis, Transcript, February 3, 2021, pp 82, 145–52; Evidence of P. Ennis, Transcript, February 4, 2021, pp 17–19; Evidence of T. Doyle, Transcript, February 10, 2021, pp 15–16.

than prevent suspicious activity. Because suspicious activity was concentrated in the Lower Mainland, home to several casinos located within close proximity of one another, there were few barriers to patrons moving between the various gaming facilities in the region. The evidence before me reveals that VIP patrons did, in fact, patronize different facilities and that the loss of these patrons to their competitors was a source of concern for service providers. It is possible that a decision by one service provider to refuse a suspicious transaction would result in the same cash being accepted shortly thereafter by another casino a few kilometres away. There is evidence that this, in fact, did occur following a direction from BCLC that service providers refuse cash connected to cash drop-offs, requiring the BC Lottery Corporation to establish protocols to ensure that transactions refused at one casino were not subsequently accepted at another.<sup>113</sup>

I do not intend to suggest that this necessarily *explains* the failure of service providers to take action to address the obvious money laundering occurring in the casinos that they operated. However, in considering the extent to which service provider actions contributed to this problem, it is relevant, in my view, that despite their immediate responsibility for operating casinos, service providers acting on their own may ultimately have only been able to displace suspicious activity to their competitors. This limited effect, considered alongside the role of service providers in the industry and the apparent absence of any indication to service providers from BCLC or GPEB that there was a need for action, offers further insight into why service providers may not have taken what, in retrospect, appear to be obvious steps in response to the illegal activity in the casinos they were responsible for operating.

### ***Information Available to Service Providers***

The limited reach of service providers affected not only their capacity to respond to money laundering in the gaming industry, but also their ability to understand the nature and scale of this problem. Whereas BCLC and GPEB had an industry- and province-wide view of what was occurring in British Columbia's casinos, service providers had insight only into suspicious activity in the facilities that they operated.

The concentration of suspicious activity at the River Rock Casino is of particular relevance in considering the impact of the actions taken, or not taken, by Gateway Inc., Gateway Limited, Paragon, and Parq Vancouver. While it is clear that suspicious activity took place at casinos operated by each of these service providers, it is unlikely that any of them were aware of the full extent of such activity taking place at the River Rock or how activity at their own casinos may have fit into broader, province-wide trends. As such, the true scale of the crisis – and the urgency of the need for action – may not have been as readily apparent to these service providers as it was, or at least should have been, to BCLC, GPEB and, to an extent, Great Canadian, which did not have access to

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<sup>113</sup> Exhibit 148, Tottenham #1, paras 40–43 and exhibit 4; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 68–69; Exhibit 490, Kroeker #1, para 90 and exhibit 23; Evidence of P. Ennis, Transcript, February 4, 2021, pp 33, 35–36.

information from other service providers, but which would have had a clear view of the epicentre of the crisis at the River Rock.<sup>114</sup>

Just as they would not have had access to information from their competitors that was available to BCLC or GPEB, service providers, including Great Canadian, would not have had access to other information available to the BC Lottery Corporation and the regulator. Information obtained from law enforcement is of particular note, with the E-Pirate investigation offering a significant example. It is obvious that learning of the initial results of the E-Pirate investigation had a profound impact on BCLC and GPEB. Service providers were not privy to this information. This was appropriate, given the sensitivity of the investigation, but it means that, at this time, service providers were operating without this additional insight into the sources of the cash being accepted by the casinos they operated.

### ***Service Providers as Private, Profit-Seeking Businesses***

A final factor relevant to consideration of the contribution of the actions of service providers to the growth and perpetuation of money laundering in the gaming industry is their status as private, profit-seeking businesses. I use the word “private” in this context not to indicate that these businesses were privately owned, as opposed to publicly-traded, but to distinguish them from public entities, including branches of government like GPEB, or Crown corporations like BCLC. Unlike GPEB and BCLC, service providers did not have a mandate to act in the public interest. Their objective was – and remains – to generate returns for their owners or shareholders.

Again, this does not absolve service providers of the responsibility, at some point, to respond to obvious criminal activity occurring in the facilities that they managed. It does, however, further distinguish their position from those of BCLC and GPEB, both of which, as discussed below, have clear mandates to operate in the public interest. In my view, this further illustrates the distinct position of service providers in the gaming industry and underscores that it was BCLC and GPEB, not service providers, that bore primary responsibility for addressing money laundering in the province’s gaming industry.

## **Conclusion**

Given their direct involvement in the day-to-day operation of the province’s casinos, there is little doubt that service provider staff were well aware of the suspicious activity occurring in the casinos that they operated and that service providers had the capacity to take action to limit that activity within those casinos. It is clear as well that service providers participated in the development of this problem through their involvement in the growth of high-limit VIP gaming, and that concerns about service provider revenue limited BCLC’s actions to respond to the money laundering

<sup>114</sup> Exhibit 482, Cuglietta #1, pp 11–17; Exhibit 145, Barber #1, para 12; Evidence of M. Hiller, Transcript, November 9, 2020, p 13; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 94–95; Evidence of S. Beekma, Transcript, October 26, 2020, p 36; Exhibit 144, Ackles #3, exhibit D.

crisis that emerged in the gaming industry in the first half of the 2010s. As I discuss above, suspicious activity was not equally prevalent in the casinos of the Lower Mainland and, as such, the actions of different service providers did not contribute to money laundering in equal degree. However, it is clear that, to varying degrees commensurate with the extent of suspicious activity present in their casinos, the conduct of service providers did contribute to the growth and perpetuation of money laundering in the province's gaming industry and that there were actions available to service providers that would have assisted in ameliorating this problem.

This does not mean, however, that service providers bear primary responsibility for the growth and evolution of money laundering in the gaming industry. Rather, viewed in the context of their role in the industry, their limited reach and access to information and their lack of a public interest mandate, it is clear that their contribution to this problem pales in comparison to that of BCLC and GPEB. Despite their immediate engagement in the operation of the province's casinos, the role of service providers is primarily to execute the policies and procedures implemented by BCLC in accordance with the regulatory requirements of GPEB. While occasional instances of non-compliance with and resistance to BCLC anti-money laundering initiatives on the part of service provider representatives were unfortunate and counterproductive, the evidence before me indicates that service providers generally carried out their function of executing BCLC policies and procedures capably. I have no doubt that, had BCLC implemented appropriate anti-money laundering measures, or had GPEB imposed adequate regulatory requirements, service providers would have carried them out effectively. It is only because BCLC and GPEB did not do these things that the issue of actions taken – or not taken – by service providers arises at all.

## **Actions and Omissions of Law Enforcement**

The role of law enforcement in combatting money laundering in British Columbia, including its response to illicit funds in the gaming industry, is addressed comprehensively in Part XI of this Report. However, given the unique and critical role of law enforcement in the growth and perpetuation of money laundering in the gaming industry, it is necessary to address it at least briefly here as well. It is clear, in my view, that the action and inaction of law enforcement did contribute to money laundering in the industry.

Unlike service providers, BCLC, and GPEB, law enforcement has no role in the operation of the province's casinos or in setting casino policies or procedures. Rather, the role of the police, of course, is to investigate possible criminal activity and disrupt and deter that activity through the arrest of those responsible. The evidence before me shows that, from early in the development of money laundering in the gaming industry, there was a pressing need for police intervention and that this need should have been – and indeed was – evident to law enforcement. Despite this necessity, efforts to investigate activity connected to money laundering in the province's casinos prior to 2015 were limited.

## Limits of Law Enforcement Resources

The significance of law enforcement action and inaction in the development and perpetuation of money laundering in the gaming industry should be considered in the context of an understanding of the resources that were available to respond to this issue. The limited efforts on the part of police to investigate suspicious activity in casinos speaks, of course, to the decisions made by the law enforcement bodies in place at the time. It also gives rise to the question of whether sufficient law enforcement *resources* were available to respond to this issue. In my view, prior to 2016, the answer was “no.”

I am far from the first to recognize that there was a significant enforcement gap prior to 2016. The view that greater law enforcement resources available to the gaming industry were required was first recognized in the late 1990s, in the form of a Treasury Board proposal to establish a gaming-focused policing unit, which was withdrawn due to unexpected legal developments.<sup>115</sup> The years that followed were characterized by a near constant stream of proposals and recommendations identifying the need for additional resources. Prior to 2010, these included requests for resources for a “casino crime” unit within the Richmond RCMP detachment<sup>116</sup> and proposals from Fred Pinnock and Wayne Holland, both of whom served as officers-in-charge of the Integrated Illegal Gaming Enforcement Team (IIGET), seeking additional resources for that unit.<sup>117</sup> Between 2010 and 2015, recognition of the need for greater law enforcement engagement in the gaming industry took the form of: discussions between Mr. Begg, the RCMP, and GPEB regarding a 40-person unit to be established within the Combined Forces Special Enforcement Unit (CFSEU);<sup>118</sup> Mr. Kroeker’s 2011 report recommending the creation of a cross-agency task force;<sup>119</sup> a recommendation made in a 2014 report by Malysh Associates Consulting Inc. that “GPEB should consider establishing a police-accredited unit to provide policing services for the gaming industry”;<sup>120</sup> and

115 Exhibit 77, Overview Report: Integrated Illegal Gaming Enforcement Team [OR: IIGET], Appendix D: October 1997 Treasury Board Submission: Illegal Gambling Enforcement Unit.

116 Evidence of W. Clapham, Transcript, October 27, 2020, pp 143–65 and Transcript, October 28, 2020, pp 11–12, 18–19; Exhibit 94, RCMP Briefing Note – Supt. Ward Clapham – Richmond RCMP Annual Reference Level Update; Exhibit 97, City of Richmond – Report to Committee (September 1, 2006); Exhibit 98, City of Richmond – Additional Level Request Form for Budget Year 2007; Exhibit 101, RCMP Memorandum to City of Richmond (06-12-11).

117 Exhibit 77, OR: IIGET, paras 32–43, 50–51, Appendix O, Business Case for the Expansion of Integrated Illegal Gaming Enforcement Team, Appendix Q, Business Case for the Formation of a Provincial Casino Enforcement/Intelligence Unit, Appendix S, “Building Capacity”: Expansion of the Integrated Illegal Gaming Enforcement Team (IIGET); Evidence of F. Pinnock, Transcript, November 5, 2020, pp 96–98, 132–33; Exhibit 159, Integrated Illegal Gaming Enforcement Team (IIGET) – A Provincial Casino Enforcement – Intelligence Unit (June 27, 2007); Evidence of W. Holland, Transcript, December 2, 2020, pp 122–32.

118 Evidence of L. Vander Graaf, Transcript, November 13, 2020, paras 13–17; Evidence of K. Begg, Transcript, April 21, 2021, pp 51–57; Exhibit 181, Vander Graaf #1, para 131 and exhibit NN.

119 Exhibit 141 (previously marked as Exhibit B), Summary Review Anti-Money Laundering Measures at BC Gaming Facilities (February 2011) [Summary Review 2011], p 4.

120 Exhibit 181, Vander Graaf #1, exhibit CC.

recommendations from both Mr. Lightbody and GPEB in 2015 that ultimately led to the creation of the Joint Illegal Gaming Investigation Team (JIGIT).<sup>121</sup>

When JIGIT was established in 2016, its creation represented the long overdue fulfillment of a glaring enforcement gap identified repeatedly for nearly two decades. This gap meant that, for much of the history of the industry, and particularly after the disbanding of the RCMP Integrated Proceeds of Crime (IPOC) unit in 2012 (discussed in Chapter 39), no law enforcement unit effectively investigated suspicious transactions in the province's casinos, despite the apparent widespread consensus that such investigations were needed. This gap helped to shape the growing money laundering crisis by leaving the industry to manage the serious criminality afflicting British Columbia's casinos on its own. Whatever the failings of BCLC and GPEB, I accept that neither had the capacity or resources to undertake the sort of complex money laundering investigation called for by the activity evident in the province's casinos.

Reverting to the discussion of the supply and demand for illicit cash earlier in this chapter, the effect of this enforcement gap was that efforts to combat illicit funds in the gaming industry were limited to the demand side of the equation. As will be discussed in detail below, GPEB and BCLC had many avenues by which they could have endeavoured to reduce demand for illicit funds by limiting the use of unsourced cash to buy-in at the province's casinos. Limiting its supply, however, required complex investigation and enforcement activity outside of casino environments aimed at identifying where and from whom the cash originated. In the absence of engagement from law enforcement, there was simply no one to undertake this kind of action, leaving the gaming industry to contend with a substantial supply of illicit funds constantly ready to be delivered to Lower Mainland casino patrons.

## **Information Available to Law Enforcement**

Turning to the actions of those law enforcement units that did exist, BCLC and GPEB made significant efforts to ensure that law enforcement had access to the information necessary to identify the growing presence of illicit cash evident in the gaming industry from early in its development. Beginning in or around 2004, under the leadership of Mr. Towns, BCLC began to forward the information contained in suspicious transaction reports submitted to FINTRAC to the RCMP IPOC unit as well as to local police of jurisdiction.<sup>122</sup> GPEB made similar efforts to report suspicious transactions to law enforcement<sup>123</sup> and began consulting with the IPOC unit regarding

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121 Exhibit 505, Lightbody #1, exhibit 49; Exhibit 552, MOF Strategy Document, Gaming Policy and Enforcement Branch's Anti-Money Laundering Strategy Phase 3 (September 3, 2015) [MOF Strategy]; Evidence of M. de Jong, Transcript, April 23, 2021, pp 65–66, 99–100; Exhibit 902, Letter from Mike Morris re JIGIT (March 10, 2016) [Morris Letter]; Evidence of K. Ackles, Transcript, November 2, 2020, p 49.

122 Evidence of T. Towns, Transcript, January 29, 2021, pp 140–41; Exhibit 517, Towns #1, para 86.

123 Evidence of D. Dickson, Transcript, January 22, 2021, p 12; Evidence of R. Barber, Transcript, November 3, 2020, p 137; Evidence of J. Schalk, Transcript, January 22, 2021, p 137; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 158–61.

their specific concerns about suspicious transactions by 2008.<sup>124</sup> Given these efforts, it seems indisputable that the IPOC unit was well aware of the growing levels of suspicious activity taking place in casinos from the beginning of the evolution of that activity.

It is also clear, however, that law enforcement insight into this growing problem was not limited to what could be gleaned from reports forwarded by BCLC and GPEB. Rather, multiple law enforcement units outside of the IPOC unit independently identified criminality and suspicious activity connected to casinos as a growing threat. Between 2004 and 2007, the Richmond RCMP detachment sought resources to establish a “casino crime” unit dedicated to addressing increased criminal activity, including loan sharking and money laundering, connected to the newly constructed River Rock Casino, demonstrating an awareness of these issues.<sup>125</sup> Similarly, in 2007, during his tenure as officer-in-charge of IIGET, Mr. Pinnock was so concerned about growing illicit activity in legal casinos, including money laundering and “loan sharking,” that he proposed the creation of a new integrated law enforcement unit dedicated to this issue.<sup>126</sup> Mr. Holland, who succeeded Mr. Pinnock, had similar concerns. He sought the expansion of IIGET, in part to enable the investigation of such activity, and directed the preparation of a threat assessment that identified this issue as a concern,<sup>127</sup> relying in part on another RCMP report from 2008 titled “Project Streak – Money Laundering in Casinos: A Canadian Perspective.”<sup>128</sup> The 2008 report included the following passage about money laundering in British Columbia (and Ontario) casinos:<sup>129</sup>

Lauderers who use the casino industry to convert their illicit earnings usually visit more than one casino in the same area. Establishments of choice in Ontario include Casino Niagara, Casino Rama and Windsor Casino Limited. In British Columbia, the River Rock Casino Resort and Gateway Casino Burnaby are the preferred venues. Even though the RCMP has received various FINTRAC disclosures concerning the Casino de Montréal—the largest casino in Canada in terms of revenue—the number of suspicious transaction reports is minimal compared to establishments located in Ontario and British Columbia.

124 Evidence of J. Schalk, Transcript, January 22, 2021, pp 181–82.

125 Evidence of W. Clapham, Transcript, October 27, 2020, pp 143–63 and October 28, 2020, pp 11–12, 18–19; Exhibit 94, RCMP Briefing Note – Supt. Ward Clapham – Richmond RCMP Annual Reference Level Update; Exhibit 97, City of Richmond – Report to Committee (September 1, 2006); Exhibit 98, City of Richmond – Additional Level Request Form for Budget Year 2007; Exhibit 101, RCMP Memorandum to City of Richmond (06-12-11).

126 Evidence of F. Pinnock, Transcript, November 5, 2020, pp 97–98; Exhibit 77, OR: IIGET, paras 41–42; Exhibit 77, OR: IIGET, Appendix Q, Business Case for the Formation of a Provincial Casino Enforcement / Intelligence Unit.

127 Evidence of W. Holland, Transcript, December 2, 2020, pp 103–104 and 136–139; Exhibit 77, OR: IIGET, Appendix Y, Extent and Scope of Illegal Gaming in British Columbia 2005 to 2008.

128 Exhibit 77, OR: IIGET, Appendix X, Strategic Intelligence Assessment, “Project Streak – Money Laundering in Casinos: A Canadian Perspective” (2008).

129 Ibid.

Given the availability of this information to law enforcement, and particularly the RCMP, it is apparent that, even in the infancy of the rise of money laundering in British Columbia casinos, the police had the knowledge and information needed to identify that serious criminal activity had begun to infiltrate the province's gaming industry. Police were receiving detailed reports from BCLC and the regulator about suspicious activity occurring in the province's casinos, multiple senior RCMP members were seeking resources to respond to this problem, and the agency's own intelligence reports and threat assessments had identified money laundering in the province's casinos.

## **2010–2011 IPOC Unit Intelligence Probe**

As discussed in detail in Chapter 39, the RCMP IPOC unit was among the law enforcement bodies that seemed to recognize the gravity of the problem brewing in the gaming industry. The IPOC unit had a clear mandate to investigate such activity and, in fact, commenced investigative action in response to these concerns. Specifically, in 2010, the unit, with the support of GPEB, commenced an intelligence probe into suspicious transactions occurring in the province's casinos.<sup>130</sup> While a definitive link to criminal activity was not made at this time, the results of this probe showed sufficient promise that, in January 2012, the team responsible developed an operational plan with the following two objectives:<sup>131</sup>

- (1) to disrupt money laundering activity in and around Lower Mainland casinos (thereby disrupting the activities of organized crime groups within the province); and
- (2) to work with stakeholders in the gaming industry to effect legislative and regulatory change and minimize and/or eliminate the need for wealthy foreign gamblers to access large amounts of local, criminally derived cash.

This operational plan was never put into effect. For reasons addressed in Chapter 39, the IPOC unit was disbanded before it had an opportunity to do so.<sup>132</sup> The plan was not taken up by any other law enforcement unit.

It is difficult to overstate the significance of the opportunity lost when this operational plan was abandoned. In my view, the objectives identified in this plan were precisely what was called for to respond to the suspicious activity in the province's casinos at the time. The results of the E-Pirate investigation, which commenced a little more than three years later, suggest that there was a real prospect that, had this earlier investigation continued, it may have established a link to serious criminality and disrupted the flow of illicit cash before it ever reached casino property, thus addressing the problem in its early stages and preventing the large-scale money laundering through

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130 Evidence of B. Baxter, April 8, 2021, pp 27–30.

131 Exhibit 760, IPOC 2012; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 49–54; Evidence of B. Baxter, Transcript, April 8, 2021, pp 86, 149–54.

132 Evidence of B. Baxter, Transcript, April 8, 2021, pp 89, 153–54.

casinos that occurred in the years that followed. Accordingly, the immediate, and perhaps most significant, impact of this investigation may have been the disruption of the supply of illicit funds to casino patrons through the seizure of those funds and the arrest of the individuals responsible.

It is important to recall as well that this operational plan was proposed precisely at a time when there was a lack of consensus among industry actors as to the significance of rising levels of suspicious cash in casinos. The GPEB investigation division was urging BCLC<sup>133</sup> as well as their superiors in GPEB<sup>134</sup> and in government,<sup>135</sup> to take urgent and decisive action but had, to that point, been unsuccessful in those efforts. Government had just received Mr. Kroeker's report<sup>136</sup> which, while recommending some improvements, indicated that the industry had appropriate anti-money laundering measures in place, likely providing some level of comfort to those in government responsible for the industry. Most significantly, beyond developing voluntary patron gaming fund accounts, BCLC was taking no significant action to reduce suspicious cash in the industry. Based on the evidence of multiple senior BCLC corporate security and compliance staff from the time, the source of this reluctance was, in large part, that law enforcement had not confirmed to BCLC a link between suspicious cash and criminal activity.<sup>137</sup>

In addition to directly disrupting the supply of illicit funds, a successful investigation confirming the criminal origins of the suspicious cash that was beginning to flood the province's casinos would almost certainly have shattered the illusions under which many industry actors were operating and prompted a meaningful response, commensurate with the gravity of the situation, from each. Such an outcome would have bolstered the arguments being made by the GPEB investigation division at that time and may well have persuaded GPEB's general manager, Doug Scott, himself an experienced police officer<sup>138</sup> who also viewed these

133 Exhibit 108, Letter from Derek Dickson re Loan Sharking / Suspicious Currency & Chip Passing (April 14, 2010) [Dickson Letter April 2010]; Exhibit 110, Letter from Derek Dickson re Money Laundering in Casinos (November 24, 2010) [Dickson Letter November 2010]; Exhibit 112, Schalk Letter February 2011; Exhibit 488, Letter from Joe Schalk re Suspicious Currency Transactions – Money Laundering Review Report (December 27, 2012) [Schalk Letter December 2012].

134 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54, 67; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–18; Evidence of D. Sturko, Transcript, January 28, 2021 p 120; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Exhibit 144, Ackles #3, para 21; Exhibit 181, Vander Graaf #1, paras 37–41, 60–64, 82–84, 136–39 and exhibits G–R, X, Y, OO, PP; Evidence of D. Dickson, Transcript, January 22, 2021, pp 79–82. Evidence by J. Schalk, Transcript, January 22, 2021, 140–43, 149–52; Exhibit 557, Scott #1, paras 34–37; Exhibit 541, Mazure #1, para 53; Exhibit 507, Affidavit #1 of Derek Sturko, made on January 18, 2021 [Sturko #1], paras 92–96 and exhibit E.

135 Affidavit #1 of Larry Vander Graaf, made on November 8, 2020, paras 37, 74–76, 84, 132–35 and exhibits V, Z; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–43; Exhibit 527, Affidavit #1 of Sue Birge, made on February 1, 2021 [Birge #1], paras 30–43; Evidence of L. Wanamaker, Transcript, April 22, 2021 pp 6–8; Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–13.

136 Exhibit 141, Summary Review 2011.

137 Exhibit 517, Towns #1, para 59; Evidence of T. Towns, Transcript, January 29, 2021, pp 145–48, 165–68; Evidence of G. Friesen, Transcript, October 28, 2020, pp 57–58, 89–91, 145–46, 166–67 and Transcript, October 29, 2020, p 11; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 106–10, 126–27, 131–32.

138 Exhibit 557, Scott #1, paras 5–8.

transactions with suspicion,<sup>139</sup> that focusing on voluntary cash alternatives was not an appropriate or adequate response to the crisis emerging in the industry. It may have also convinced the provincial government that the conclusions expressed in Mr. Kroeker’s report did not tell the whole story and that the gaming industry faced a serious money laundering problem despite the presence of controls that Mr. Kroeker suggested met or exceeded industry standards. Most crucially, law enforcement confirmation that funds being used in the province’s casinos had criminal origins was *precisely* what those responsible for BCLC’s anti-money laundering program claimed they required in order to take meaningful action at that time. As such, it seems likely that an investigative result providing this confirmation may have convinced BCLC of the need for more robust action.

Crucially, the operational plan developed by the IPOC unit suggests that some of these outcomes may have been possible even *without* a positive investigative result. The second objective set out above suggests that the unit intended to work with “stakeholders in the gaming industry” to “minimize and/or eliminate the need for wealthy foreign gamblers to access large amounts of local, criminally derived cash” through legislative and regulatory change.<sup>140</sup> It is difficult to imagine, even if the investigation had failed to produce a definitive link between criminal activity and the suspicious cash flooding the province’s casinos, that BCLC, GPEB, and government would have failed to recognize the need for meaningful action in the face of advice directly from a law enforcement unit specializing in money laundering investigations that it needed to take action to minimize or eliminate this suspicious cash.

In this sense, the operational plan pointedly illustrates the significance of the decision to disband the IPOC unit and the failure of the RCMP to ensure that this investigation was taken up by another unit following IPOC’s disbandment. In January 2012, at a time when rates of suspicious cash in the gaming industry were rapidly accelerating, the unit had identified in writing precisely what was required to respond to the problem. The plan not only held some realistic prospect of disrupting the source of suspicious cash through an investigation undertaken by officers with exactly the skills and expertise required, but also held real potential to spur government, GPEB, and BCLC to take action themselves to raise the industry’s defences against this growing criminality. As I discuss in Chapter 39, I do not accept that the disbanding of the IPOC unit fully explains the failure to proceed with this operational plan, as there remained law enforcement units in the province capable of carrying out the investigation. It is clear, however, that this was its effect, and that in the period that followed, money laundering continued to flourish, largely unabated, for more than three years before any kind of comparable investigative effort was undertaken.

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139 Ibid, paras 34–37.

140 Exhibit 760, IPOC 2012.

## Law Enforcement Engagement Following Disbanding of IPOC

The January 2012 IPOC unit operational plan marked the last meaningful law enforcement engagement with the province's gaming industry until early 2015. Again, this was not for want of information, as BCLC and GPEB continued to forward detailed information to police. As discussed in Chapter 10, by 2014 suspicious activity in the industry had risen to the point where BCLC was urging CFSEU and other law enforcement units to commence an investigation of the sort proposed by IPOC in 2012.<sup>141</sup> Many months into this effort, Calvin Chrustie, then of the RCMP Federal Serious and Organized Crime unit agreed to devote some limited resources to surveillance focused on identifying the sources of cash used by casino patrons.<sup>142</sup>

In several days, taking place over the span of approximately three months, this surveillance confirmed the link between the suspicious cash flooding the gaming industry and organized crime.<sup>143</sup> In addition to the obvious disruption to the supply of illicit funds resulting from this successful investigation, the evidence before me makes clear the impact that this confirmation had on the gaming industry. It prompted BCLC to expand and accelerate its nascent cash conditions program, played a role in motivating the general manager of GPEB to seek government intervention to address suspicious cash in the industry, and assisted in motivating Mr. de Jong, then the minister responsible for gaming, to take the action he did in response, including the crucial decision to establish JIGIT.

Given how quickly the E-Pirate investigation was able to establish a link between suspicious cash accepted in casinos and criminality, and the observations of the officers involved in the earlier IPOC probe, it is likely that, had law enforcement meaningfully engaged with this issue earlier, the impact that E-Pirate had on both the supply of illicit funds to casino patrons and on the perspectives of both BCLC and the general manager of GPEB could have been achieved years earlier.

## Conclusion

In light of the above discussion, it is clear to me that the actions and omissions of law enforcement significantly contributed to money laundering in the gaming industry prior to the E-Pirate investigation in 2015. Law enforcement had ample information upon which it could have acted to commence investigative and enforcement action,

<sup>141</sup> Exhibit 148, Tottenham #1, paras 102–24; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 88–94, 118–19; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 7–8, 19, 21–25; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 65–68, 79–80; Evidence of R. Alderson, Transcript, September 9, 2021, pp 125–26, 129–30, 140–41.

<sup>142</sup> Exhibit 148, Tottenham #1, paras 124–25; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 119–20; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 118–20; Exhibit 522, Desmarais #1, para 76 and exhibit 53; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 25–128.

<sup>143</sup> Exhibit 522, Desmarais #1, exhibit 55; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22; Evidence of R. Alderson, Transcript, September 9, 2021, pp 41–43; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 126–31; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 59–61; Exhibit 587, Affidavit #1 of Joseph Emile Leonard Meilleur, made on February 9, 2021 [Meilleur], paras 81–83.

and it is clear that multiple law enforcement units recognized the need for such action. The IPOC unit went so far as to initiate an intelligence probe and develop an operational proposal aimed at both investigating the source of suspicious cash and encouraging regulatory and legislative changes to prevent its acceptance in casinos.

This operational plan held real promise to address the burgeoning money laundering crisis in the gaming industry. Regrettably, it was abandoned before it could be implemented when the IPOC unit was disbanded. Despite the continued efforts of GPEB and BCLC to provide information to law enforcement, no meaningful investigations were commenced until 2015, effectively leaving these two organizations to address serious criminality in the gaming industry on their own, without significant police involvement.

The obvious indicators of money laundering apparent in the industry beginning in or around 2008 called for meaningful law enforcement engagement. While, as discussed elsewhere in this Part, there was much that the industry and government could have done independently to reduce suspicious cash in the province's casinos, the engagement of law enforcement was crucial to a comprehensive response to the extensive money laundering that eventually came to afflict the industry. As such, the failure of law enforcement to seriously engage with this issue in the face of repeatedly being provided information identifying the problem prior to 2015 was a critical contributing factor to the growth and perpetuation of money laundering in the gaming industry.

## **Actions and Omissions of the BC Lottery Corporation**

Commensurate with the role it plays in this province's gaming industry, the action – and inaction – of BCLC contributed significantly to the growth and perpetuation of money laundering in the gaming industry prior to 2018. While BCLC eventually came to implement meaningful measures that dramatically reduced suspicious transactions connected to money laundering, it could have – and in my view, should have – taken decisive action far earlier to stem the flow of illicit cash into the province's casinos and ultimately into government revenues.

As the rate at which suspicious cash in the province's casinos grew, BCLC had access to the information necessary to recognize the scale and urgency of the emerging money laundering crisis in the gaming industry. This access to information, and the control BCLC held over the industry, placed it in a unique position to address the risk of money laundering in the gaming industry and rid the province's casinos of illicit funds long before the problem peaked in 2014 and 2015. However, despite its insight into what was occurring in the industry, its control over the operation of the province's casinos and warnings from GPEB and its own staff, BCLC failed to take meaningful action to reduce the occurrence, or even slow the growth, of suspicious cash transactions in casinos in the Lower Mainland prior to 2015.

In 2015, BCLC began to take action to reduce the volume of suspicious cash accepted by casinos, most significantly through the formalization of the cash conditions

program and related measures. As this program expanded, it would eventually come to have a meaningful, but ultimately inadequate, impact on the rate of suspicious cash transactions and, consequently, money laundering, in the province's casinos. By 2015, when BCLC began to implement its formal cash conditions program, the rate at which illicit cash was entering the industry had reached a crisis point and BCLC had received positive confirmation from law enforcement that at least some of this cash was the proceeds of crime. In this context, the cash conditions program and related measures taken at this time were too little and far too late. Due to the initial narrow focus of these efforts and the slow pace at which they were implemented, very large, suspicious cash transactions remained at alarming levels for years following the formalization of the cash conditions program. It is clear, in my view, that the province's casinos continued to accept significant quantities of illicit funds until the implementation of new measures in response to Dr. German's recommendation source of funds recommendation in 2018.

Below I discuss the role played by BCLC's actions and omissions in the development and perpetuation of money laundering in the gaming industry. This discussion focuses on three time periods: the two periods identified above – prior to mid-2015 and from mid-2015 to early 2018 – and a third beginning in January 2018. This discussion concludes by identifying three factors that, in my view, contributed to BCLC's inadequate response throughout the first two time periods – an emphasis on preserving revenue, a lack of interest in perspectives and advice originating outside of the BC Lottery Corporation, and an inordinate focus on international best practices coupled with a corresponding unresponsiveness to local conditions.

BCLC bears significant responsibility for the extensive money laundering that occurred in the province's gaming industry between 2008 and 2018. The discussion that follows does not paint a flattering picture of its actions during this time period. However, it is important to acknowledge at the outset of this discussion that it focuses on past events that are not, in my view, reflective of the current state of affairs. Since 2018, BCLC has played an important role in devising and implementing measures that have substantially reduced both the occurrence and the risk of money laundering in British Columbia casinos. While identifying past failings that contributed to the growth of money laundering in the province is a central part of the Commission's mandate, it is, in my view, also important that the public not be misled into believing that past problems are reflective of current conditions where, as here, that is not the case.

## **Role of BCLC in the Province's Gaming Industry**

In order to understand the role that BCLC's actions and inaction played in the occurrence of money laundering in the province's casinos, it is necessary to view those actions in the context of its place in the gaming industry. In my view, the centrality of BCLC in the industry heightens the significance of its actions, as its role makes clear that it not only had the ability to take decisive action, but also the responsibility to do so.

BCLC’s ability to take action to prevent and respond to money laundering in the gaming industry is grounded in its access to information about suspicious activity in the industry along with its high degree of control over the operation of the province’s casinos. In combination, these two factors put BCLC in a position to act decisively to stop and prevent money laundering. BCLC’s responsibility to exercise its influence over the industry to address money laundering is grounded in its mandate, as a Crown corporation, to act in the public interest, which was clearly communicated to – and understood by – BCLC.

### ***BCLC’s Access to Information***

BCLC’s access to information is relevant to the role its actions played in contributing to money laundering in the gaming industry because it had significant insight into what was happening in the province’s casinos throughout the time period in which I have found money laundering took place. Because of BCLC’s responsibility to report to FINTRAC, it had access to reports of both large cash transactions and “unusual” financial transactions identified by service providers from gaming facilities across the province.<sup>144</sup> This information allowed BCLC to connect transactions that occurred at casinos operated by different service providers in a way that service providers, who had access only to reports emanating from casinos they operated, did not.<sup>145</sup>

The evidence before me indicates that these reports provided BCLC with information about a substantial volume of suspicious transactions. In 2016, for example, BCLC received 2,018 “unusual financial transaction” reports and 11,480 large cash transaction reports from the River Rock Casino alone.<sup>146</sup> While I do not suggest that reporting by the River Rock is representative of the volume of reporting by other casinos in the province, this provides some insight into the level of information available to BCLC. Of course, BCLC was not merely a passive recipient of the information contained in these reports. In about 2006, it began stationing its investigators in casinos, providing first-hand insight into day-to-day activity at these facilities.<sup>147</sup> The evidence before me reveals that BCLC’s investigators made extensive efforts to further investigate “unusual” transactions reported by service providers to determine whether those transactions met the threshold for reporting to FINTRAC, including reviewing surveillance footage and speaking with casino staff.<sup>148</sup>

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144 Exhibit 560, Doyle #1, paras 17–26; Exhibit 148, Tottenham #1, paras 8–9; Exhibit 78, Beeksma #1, para 44; S. Lee #1, para 26; Exhibit 166, Hiller #1, para 10; Exhibit 517, Towns #1, para 27; Exhibit 490, Kroeker #1, paras 47–48; Exhibit 530, Ennis #1, paras 22–41.

145 Exhibit 517, Towns #1, para 21; Evidence of T. Towns, Transcript, February 1, 2021, p 24; Exhibit 78, Beeksma #1, para 40; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 161–62.

146 Exhibit 560, Doyle #1, para 24.

147 Exhibit 517, Towns #1, para 40; Evidence of T. Towns, Transcript, February 1, 2021, pp 27–29; Evidence of P. Ennis, Transcript, February 4, 2021, pp 27–38; Exhibit 78, Beeksma #1, paras 27, 31, 32; Evidence of G. Friesen, Transcript, October 28, 2020, pp 37–38; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 81–82.

148 Exhibit 78, Beeksma #1, paras 38, 51; Exhibit 148, Tottenham #1, paras 8, 9 and exhibit 87; S. Lee #1, paras 26–27; Exhibit 166, Hiller #1, paras 11–20; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 35–37; Evidence of M. Hiller, Transcript, November 9, 2020, pp 5–6; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 44–45.

Over time, BCLC took additional steps to gain information about patrons active in British Columbia casinos. In 2013, BCLC formed an anti-money laundering unit and began to enhance due diligence performed on casino patrons.<sup>149</sup> In 2014, it entered into an information-sharing agreement with the RCMP that allowed law enforcement to share information with BCLC, further enhancing its level of insight into player backgrounds, the source of funds used in casinos, and risks to public safety.<sup>150</sup> In 2015, BCLC began a concerted effort to interview patrons connected with large cash transactions.<sup>151</sup>

BCLC's direct insight into day-to-day activity at casinos, its extensive review of transactions reported as unusual by service providers, its visibility into casino activity province-wide, and the additional information gleaned from due diligence efforts, information-sharing with the RCMP, and patron interviews ensured that BCLC had sufficient information to allow it to understand the nature and scale of the suspicious activity occurring in the province's casinos and to take action in response.

### ***BCLC's Control over the Gaming Industry***

In addition to its access to the information necessary to understand day-to-day activities occurring in the province's casinos, BCLC also had significant control over the operation of the industry, ensuring that it had the authority to take action in response to suspicious activity. Its degree of control is evident from the content of its "conduct and manage" mandate, the nature of its relationship with service providers, and from evidence of actual directions eventually issued by BCLC to service providers.

The *Gaming Control Act* designates BCLC as "responsible for the conduct and management of gaming on behalf of the government" and authorizes BCLC to "develop, undertake, organize, conduct, manage, and operate provincial gaming ..."<sup>152</sup> The "conduct and manage" language mirrors that found in section 207(1) of the *Criminal Code*, RSC 1985, c C-46, the provision that exempts "lottery schemes" run by the government of a province from criminal prohibitions on gambling. The meaning of the phrase "conduct and manage" was considered by the British Columbia Supreme Court in *Great Canadian Casino C Ltd. v Surrey (City of)*,<sup>153</sup> which ultimately concluded that to have conduct and management of a "lottery scheme" requires an entity to act as the "operating mind" of the scheme.

149 Exhibit 522, Desmarais #1, paras 25, 36; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 53–54 and Transcript, November 10, 2020, pp 123–24; Exhibit 148, Tottenham #1, paras 76–78; Exhibit 78, Beeksma #1, paras 55–56; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 75–78; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 14, 20–22; Exhibit 505, Lightbody #1, paras 82–83.

150 Evidence of S. Beeksma, Transcript, October 26, 2020, p 148; Exhibit 522, Desmarais #1, para 26 and exhibits 6, 7; Evidence of B. Desmarais, Transcript February 2, 2021, p 43; Evidence of M. Hiller, Transcript, November 9, 2020, p 126; Exhibit 490, Kroeker #1, para 114.

151 Evidence of S. Beeksma, Transcript, October 26, 2020, pp 57–58, 150; Exhibit 148, Tottenham #1, para 140; Exhibit 87, S. Lee #1, paras 59–63; Exhibit 490, Kroeker #1, paras 96–105.

152 *Gaming Control Act*, s 7.

153 *Great Canadian Casino C Ltd. v Surrey (City of)* (1999), 53 BCLR (3d) 379, 1998 CanLII 2894 aff'd 1999 BCCA 619.

Insight into the extent of BCLC's control over the province's gaming industry is also found in the evidence of service provider staff who appeared before the Commission and in operational services agreements between BCLC and service providers.<sup>154</sup> In his evidence, Mr. Doyle described the obligations imposed on service providers by these agreements as follows:<sup>155</sup>

The OSAs require Great Canadian to abide by all policies and directives of BCLC. The OSAs and BCLC's standards, policies, and procedures are detailed and prescriptive in what Great Canadian must do as a service provider, including with respect to AML compliance and reporting. BCLC regularly audits Great Canadian and also hires third party experts to conduct comprehensive audits.

As indicated in this excerpt of Mr. Doyle's evidence, the relationship between service providers and BCLC is governed by operational services agreements. The content of these agreements is generally consistent with Mr. Doyle's evidence and with BCLC serving as the "operating mind" of the lottery schemes offered in casinos. For example, in the operational services agreement that governed the relationship between BCLC and Great Canadian beginning in 2005, the relationship between the BC Lottery Corporation and Great Canadian is described as follows in Article 2.03:<sup>156</sup>

The Service Provider acknowledges and agrees that the [BC Lottery] Corporation is solely responsible for the conduct, management and operation of all Casino Games in the Casino, in accordance with paragraph 207(1)(a) of the *Criminal Code (Canada)* and the *Gaming Control Act (BC)* and that the operational services to be supplied by the Service Provider under this Agreement are services authorized by paragraph 207(1)(g) of the *Criminal Code (Canada)*. The Service Provider acknowledges and agrees that the Service Provider shall have no authority and shall take no action which is in any manner inconsistent with the *Criminal Code (Canada)*, the *Gaming Control Act (BC)*, any successor statute, the Casino Standards, Policies and Procedures or the Rules and Regulations respecting Lotteries and Gaming of the [BC Lottery] Corporation, as such respectively exist or are amended from time to time.

I note that BCLC entered into a new operational services agreement with respect to Great Canadian's operation of the River Rock Casino in June 2018<sup>157</sup> and into new agreements with service providers for the Starlight,<sup>158</sup> Grand Villa,<sup>159</sup> and Parq

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154 Exhibit 572, Services Agreement 2005; Exhibit 76, OR: BCLC Standards and Service Agreements.

155 Exhibit 560, Doyle #1, para 16; Evidence of T. Doyle, Transcript, February 9, 2021, pp 102–5 and Transcript, February 10, 2021, pp 83–84.

156 Exhibit 572, Services Agreement 2005, p 4.

157 Exhibit 76, OR: BCLC Standards and Service Agreements, Appendix B, 2018 River Rock Casino Resort Operational Services Agreement.

158 Ibid, Appendix C, 2018 Starlight Casino Operational Services Agreement.

159 Ibid, Appendix D, 2018 Grand Villa Casino Operational Services Agreement.

Vancouver<sup>160</sup> casinos in the same year. These agreements each include provisions consistent with the one reproduced above.<sup>161</sup>

The extent to which the terms of the operational services agreements gave BCLC the capacity to control activity in the province's casinos, particularly with respect to suspicious transactions, is illustrated by the actions BCLC did ultimately take in this regard. As discussed in Chapter 11, these included the formalization of the cash conditions program in 2015 and its subsequent expansion,<sup>162</sup> a May 2016 directive requiring service providers to make source-of-funds inquiries of certain patrons,<sup>163</sup> an October 2016 directive requiring refusal of certain suspicious transactions,<sup>164</sup> and the “de-risking” of money services businesses in 2018.<sup>165</sup> Each of these measures was imposed on service providers by BCLC without formal direction from GPEB or the minister responsible for gaming. There was nothing of which I am aware that would have prevented BCLC from issuing these or more decisive directions years earlier.

I do not mean to suggest that BCLC had *carte blanche* to unilaterally impose any measure it chose on the gaming industry. There were actions that it sought to take but did not because of the intervention of or a lack of support from GPEB or government.<sup>166</sup> BCLC, for example, repeatedly sought to offer credit to patrons,<sup>167</sup> but could not obtain GPEB's formal approval,<sup>168</sup> which was required.<sup>169</sup> In addition, a proposal to set hard limits on the size of cash buy-ins was ultimately not implemented because Dr. German did not support it.<sup>170</sup> In other instances, BCLC implemented measures at the encouragement of or with modifications recommended by GPEB or

<sup>160</sup> Ibid Appendix E, 2018 Parq Casino Operational Services Agreement.

<sup>161</sup> Ibid, Appendix B, 2018 River Rock Casino Resort Operational Services Agreement, Article 3; Appendix C, 2018 Starlight Casino Operational Services Agreement, Article 3; Appendix D, 2018 Grand Villa Casino Operational Services Agreement, Article 3; Appendix E, 2018 Parq Casino Operational Services Agreement, Article 3.

<sup>162</sup> Evidence of D. Tottenham, Transcript, November 10, 2020, pp 143–44; Evidence of R. Alderson, Transcript, September 9, 2021, pp 132–33; Exhibit 522, Desmarais #1, paras 38–55; Exhibit 78, Beeksma #1, paras 73–77; Exhibit 87, S. Lee #1, paras 58–63; Exhibit 505, Lightbody #1, para 93; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 140–41 and Transcript, February 2, 2021, pp 106–9, 160–61; Exhibit 490, Kroeker #1, paras 96–105.

<sup>163</sup> Exhibit 148, Tottenham #1, para 149, exhibit 49; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 11–12.

<sup>164</sup> Exhibit 148, Tottenham #1, paras 40–41, exhibit 4; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 68–69; Exhibit 490, Kroeker #1, para 90; Evidence of P. Ennis, Transcript, February 4, 2021, pp 33 and 35–36.

<sup>165</sup> Exhibit 505, Lightbody #1, paras 313–18; Exhibit 148, Tottenham #1, para 159, exhibit 54; Exhibit 490, Kroeker #1, paras 209–21; Evidence of D. Tottenham, Transcript, November 5, 2020, pp 26–27.

<sup>166</sup> Exhibit 505, Lightbody #1, paras 298–312; Exhibit 522, Desmarais #1, paras 95–96; Exhibit 490, Kroeker #1, paras 92, 139–54, 196–208, 219 and exhibit 124; Exhibit 148, Tottenham #1, paras 175–81; Evidence of D. Tottenham, Transcript, November 5, 2020, pp 27–29 and Transcript, November 10, 2020, p 19.

<sup>167</sup> Exhibit 505, Lightbody #1, paras 320–23 and exhibits 49, 167; Exhibit 490, Kroeker #1, paras 93, 139–44 and exhibit 62; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 32–33; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 104–6.

<sup>168</sup> Exhibit 490, Kroeker #1, paras 93, 143–44.

<sup>169</sup> Ibid, para 143.

<sup>170</sup> Exhibit 505, Lightbody #1, paras 300, 303.

the responsible minister. Dr. German’s source-of-funds recommendation, for example, was implemented at the urging of the minister<sup>171</sup> and the manner in which it was implemented was modified based on advice from GPEB.<sup>172</sup> However, despite these limitations and the practical need to consult, collaborate with, and advise other industry actors and government, it is clear to me that BCLC had a high degree of control over the operation of the gaming industry in this province, and that at all relevant times it had the authority – notwithstanding expectations to advise and consult with others – to implement the kind of meaningful measures it ultimately did adopt to stem the flow of suspicious cash into casinos.

### ***BCLC’s Public Interest Mandate***

In addition to its high degree of control over how casinos operate, the role of BCLC in the gaming industry is also distinguishable from that of service providers by its obligation to act in the public interest. BCLC is not a private business that exists to pursue private profit; it is a Crown corporation created to serve the interests of the people of British Columbia.

BCLC’s mandate, as set out in the *Gaming Control Act*,<sup>173</sup> focuses on the practical activities in which the Lottery Corporation may engage and does not directly address its responsibility to act in the public interest.<sup>174</sup> There is ample evidence before the Commission, however, that this responsibility was clearly communicated to BCLC and that it was well understood within the BC Lottery Corporation. BCLC’s public interest mandate was repeatedly communicated in mandate letters and “shareholder’s letters of expectations” from a succession of cabinet ministers with responsibility for the gaming portfolio.<sup>175</sup> In a mandate letter dated October 2, 2017, for example, Mr. Eby wrote:<sup>176</sup>

Under the Gaming Control Act, BCLC is responsible for the conduct and management of gambling on behalf of government. As the new Minister responsible for gambling, I would like to confirm my expectation that BCLC, as a public sector organization and agent of government, will act in concert with government in the best interest of British Columbians. This means that BCLC will conduct its business in a manner that meets public expectations for social responsibility, public safety, and gambling integrity.

Mr. de Jong gave similar direction in a mandate letter that he issued during his tenure as minister responsible for gaming. The letter is undated, but was signed by the members of the BCLC board of directors on December 5, 2016:<sup>177</sup>

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171 Ibid, paras 258–61.

172 Ibid, paras 261–76; Exhibit 490, Kroeker #1, para 229.

173 *Gaming Control Act*, s 7.

174 Ibid.

175 Exhibit 501, Overview Report: BCLC Shareholder’s Letters of Expectations and Mandate Letters.

176 Ibid, Appendix 15.

177 Ibid, appendix 12.

Government seeks to deliver legal gaming in a sound and responsible manner that promotes the integrity of gaming and public safety. Under the *Gaming Control Act*, the Lottery Corporation is responsible for the conduct and management of gaming on behalf of government. The Lottery Corporation is directed to conduct its business in a manner that meets government's expectations for social responsibility, public safety, gaming integrity, and projected financial targets. This is achieved through a culture of innovation and cost containment as well as commitment to responsible gambling and anti-money laundering efforts.

Prior to Mr. de Jong's tenure, Mr. Coleman similarly directed BCLC to conduct and manage gaming in the public interest, instructing that it:<sup>178</sup>

Operate the gaming business within the social policy framework established by Government and in alignment with the [BC Lottery] Corporation's social responsibility objectives, building public trust and support in a manner consistent with the Province's Responsible Gambling Strategy. Continue to support the joint responsibility between the [BC Lottery] Corporation and the regulatory agency, the Gaming Policy and Enforcement Branch, for delivery of the Strategy.

While the precise language used in these letters changed from year to year, these examples are illustrative of the message delivered consistently to BCLC from successive responsible ministers serving in different governments.<sup>179</sup> This consistent messaging supports that BCLC received direct and repeated communication conveying government's expectation that it should act in the public interest.

The evidence further supports that this message was clearly received and understood by BCLC. This is evident in BCLC's annual reports,<sup>180</sup> as well as from the evidence given by senior BCLC representatives before the Commission.<sup>181</sup> The most recent annual report of the BC Lottery Corporation in evidence before the Commission is for the 2018–19 year.<sup>182</sup> On page six of the report, under the heading “Purpose of the Organization,” BCLC's “mission” is described as being “to conduct and manage gambling in a socially responsible manner for the benefit of British Columbians.” As with the mandate letters, the precise language used varied from year to year, but BCLC's annual reports have consistently described its purpose, mission, mandate, and/or values in similar terms.<sup>183</sup>

178 Ibid, appendix 8.

179 Ibid.

180 Exhibit 72, OR: BCLC Reports 1986–2018/19.

181 Evidence of J. Lightbody, Transcript, January 28, 2021, p 3; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 39–41; Exhibit 505, Lightbody #1, paras 11, 63–64, and 210; Evidence of M. Graydon, Transcript, February 11, 2021, pp 8–9; Exhibit 576, Graydon #1, para 11; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 69–72 and Transcript, February 1, 2021, pp 79–80, 154–56; Evidence of B. Smith, Transcript, February 4, 2021, pp 177–79; Exhibit 522, Desmarais #1, para 82.

182 Exhibit 72, OR: BCLC Reports 1986–2018/19, Appendix GG, British Columbia Lottery Corporation, *BCLC Annual Report 2018–2019* (Kamloops: British Columbia Lottery Corporation, 2019).

183 Ibid.

The notion that BCLC was to conduct and manage gaming in a socially responsible manner for the benefit of the citizens of the province was acknowledged repeatedly in the evidence of witnesses including Mr. Smith<sup>184</sup> and BCLC’s current and former senior executives, including former BCLC CEO Michael Graydon,<sup>185</sup> Mr. Desmarais, who joined BCLC in 2013 as its vice-president, corporate security and compliance, before going on to serve in other executive roles,<sup>186</sup> and Mr. Lightbody.<sup>187</sup> Each of these witnesses referred directly to BCLC’s obligation to act “responsibly” or in a “socially responsible” manner or acknowledged that BCLC is responsible for safeguarding the “integrity” of gaming.

Mr. Lightbody, in particular, stressed that social responsibility was of central concern to BCLC and to him personally, testifying that BCLC “live[s] by the credo ‘do the right thing.’”<sup>188</sup> He described BCLC’s mandate to act in the public interest and his role as CEO in fulfilling that mandate, as follows:<sup>189</sup>

I am aware that BCLC is mandated by the Province of British Columbia to conduct and manage the commercial gambling business in British Columbia in a socially responsible manner for the benefit of all British Columbians, that is, in a positive economic, social and environmental way. To that end, my responsibilities include:

- a. Responsibility for fostering a corporate culture that promotes ethical practices and encourages individual integrity and social responsibility; and
- b. Ensuring that all operations and activities of BCLC are conducted in accordance with laws and regulations, and BCLC’s policies and practices, including its Standards of Ethical Business Conduct.

I take pride in BCLC’s social responsibility mandate and worked diligently through my tenure to help BCLC to fulfill this mandate. I am personally committed to social responsibility and this underpins my leadership approach and management to the organization, including in the area of money laundering. I am very concerned about the potential for money laundering in British Columbia and in the gaming sector in particular.

In light of this evidence, there can be no doubt that government clearly communicated the expectation that BCLC would conduct and manage gaming in the public interest and would do so in a socially responsible manner. This expectation was

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184 Evidence of B. Smith, Transcript, February 4, 2021, 177–79.

185 Exhibit 576, Graydon #1, para 11; Evidence of M. Graydon, Transcript, February 11, 2021, pp 8–9.

186 Exhibit 522, Desmarais #1, para 82; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 79–80, 154–56 and Transcript, February 2, 2021, pp 69–72.

187 Exhibit 505, Lightbody #1, paras 11, 63–64, 210; Evidence of J. Lightbody, Transcript, January 28, 2021, p 3 and Transcript, January 29, 2021, pp 39–41.

188 Evidence of J. Lightbody, Transcript, January 29, 2021, p 40.

189 Exhibit 505, Lightbody #1, paras 63–64.

well understood by BCLC's senior leadership who, at least in principle, embraced this aspect of the BCLC's mandate and identified it as a central part of its mission.

### ***Significance of BCLC's Role in the Gaming Industry***

BCLC had access to detailed and timely information about suspicious activity taking place in casinos. It had significant control over how casinos were operated – including the authority to implement measures that would ultimately prove effective in reducing the flow of suspicious cash into casinos. BCLC also had the responsibility to conduct and manage gaming in the public interest and preserve the integrity of gaming. Based on these factors, the actions and inaction of BCLC had the potential to, and ultimately did, significantly affect the growth and evolution of money laundering in this province's gaming industry.

### **Contribution of BCLC's Actions to Money Laundering in BC's Gaming Industry**

In assessing whether and how the actions of BCLC contributed to money laundering in this province's gaming industry, it is useful to consider its actions and inaction in three time periods – prior to the formalization of BCLC's cash conditions program in 2015, following the formalization of this program until the implementation of new measures in response to Dr. German's source-of-funds recommendation in January 2018, and following the implementation these measures. While it would be inaccurate to suggest that BCLC was taking no action to address the risk of money laundering in any of these time periods, in my view, the character of its efforts fundamentally changed in each of these periods, and it is necessary that they be considered independently.

#### ***BCLC's Actions Prior to Formalization of the Cash Conditions Program***

Prior to the formalization of its cash conditions program in 2015, BCLC's actions – or more accurately, inaction – played a significant contributing role in the growth and perpetuation of money laundering in the province's casinos. Despite repeated warnings that casinos were accepting substantial amounts of illicit cash, and the identification of the Vancouver model money laundering typology as the likely method by which this cash was being laundered, BCLC failed to take meaningful steps to reduce suspicious transactions accepted by casinos during this time period. On the contrary, BCLC supported the expansion of gaming in a way that would inevitably increase the quantity of cash entering casinos. BCLC corporate security and compliance management recognized the risk associated with suspicious transactions, but nevertheless responded to these warnings by disputing that this activity was connected to money laundering and seeking to persuade BCLC staff and others outside the organization that there was no cause for concern. While BCLC did act during this period of time to enhance its anti-money laundering efforts, this action was not focused, and appears to have had minimal impact on, the flow of suspicious cash into the province's casinos.

### **Information Available to BCLC**

BCLC had ample reason to be concerned about rising suspicious cash transactions in the province's casinos beginning in or around 2008. In Chapter 10, I described the nature of the suspicious transactions that occurred with growing frequency in casinos in the Lower Mainland and the alarm with which they were viewed by some BCLC investigators and GPEB investigation division personnel. Because of its responsibility to report to FINTRAC, BCLC had detailed knowledge of the nature and frequency of these transactions. BCLC had access to the large cash transaction and unusual financial transaction reports prepared by service provider staff.<sup>190</sup> Its investigators, located on site in casinos, were responsible for further investigating possible suspicious transactions,<sup>191</sup> ensuring that BCLC had access to detailed information about their size and frequency, the denominations used in such transactions, the manner in which cash was bundled and packaged and how it arrived at casinos. Given the evidence before the Commission regarding the features of these transactions and the prominent indicators that this cash was the proceeds of crime,<sup>192</sup> discussed in Chapter 13, it should have been abundantly clear to BCLC early in this time period that there was a very high risk that these transactions consisted of the proceeds of crime and that a serious money laundering problem was emerging in British Columbia's casinos. This *was* abundantly clear to others familiar with the details of these transactions, including members of the GPEB investigation division,<sup>193</sup> BCLC investigators,<sup>194</sup> and members of the RCMP IPOC unit, which undertook a probe of this activity beginning in 2010.<sup>195</sup>

190 Exhibit 560, Doyle #1, paras 17–26; Exhibit 148, Tottenham #1, paras 8–9; Exhibit 78, Beeksma #1, para 44; Exhibit 87, S. Lee #1, para 26; Exhibit 166, Hiller #1, para 10; Exhibit 517, Towns #1, para 27; Exhibit 490, Kroeker #1, paras 47–48; Exhibit 530, Ennis #1, paras 22–41.

191 Exhibit 78, Beeksma #1, paras 38, 43–44; Exhibit 148, Tottenham #1, paras 8–9; Exhibit 87, S. Lee #1, paras 26–27; Exhibit 166, Hiller #1, paras 11–20; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 36–37; Evidence of M. Hiller, Transcript, November 9, 2020, pp 5–6; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 44–45.

192 Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–14; Exhibit 166, Hiller #1, paras 58–59; Evidence of M. Hiller, Transcript, November 9, 2020, pp 8–9; Evidence of M. Graydon, Transcript, February 11, 2021, p 17; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 89–90; Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12, 174–75; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–15, 97–100; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 46–47; Evidence of T. Doyle, Transcript, February 9, 2021, pp 183–84; Exhibit 145, Barber #1, paras 29–30; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 54; Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–22.

193 Exhibit 507, Sturko #1, exhibit E; Exhibit 112, Schalk Letter February 2011; Exhibit 108, Dickson Letter April 2010; Exhibit 110, Dickson Letter November 2010; Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12, 174–75; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–15, 97–100; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–14; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 54; Exhibit 145, Barber #1, paras 29–30.

194 Evidence of G. Friesen, Transcript, October 28, 2020, pp 98–99; Evidence of R. Alderson, Transcript, September 9, 2021, pp 11–13, 117–18; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 4, 6, 9–10; Evidence of M. Hiller, Transcript, November 9, 2020, pp 7–12, 22–33; Exhibit 166, Hiller #1, para 58; Exhibit 78, Beeksma #1, para 52.

195 Evidence of B. Baxter, Transcript, April 8, 2021, pp 27, 29; Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–17; Exhibit 760, IPOC 2012; Exhibit 759, Casino Summary & Proposal – IPOC (December 2011); Evidence of R. Coleman, Transcript, April 28, 2021, pp 132–33; Exhibit 181, Vander Graaf #1, exhibit G; Exhibit 110, Dickson Letter November 2010.

Even if, as inexplicably appears to be the case, this information was insufficient to convince BCLC of the emerging crisis in the province's casinos, the BC Lottery Corporation received repeated warnings and recommendations that ought to have put it on notice of the need for a decisive response. These warnings and recommendations came in a range of forms. In addition to media reporting on this issue, they included letters from the GPEB investigation division between 2010 and 2012,<sup>196</sup> which contained indications that law enforcement also had serious concerns about suspicious transactions in casinos.<sup>197</sup> Also, GPEB<sup>198</sup> and FINTRAC advised BCLC<sup>199</sup> that it needed to take additional steps to verify the source of funds used in large cash transactions. Finally, BCLC investigator and former RCMP officer Michael Hiller repeatedly expressed concerns regarding the origins of funds used in large cash transactions to his superiors.<sup>200</sup>

The timing and content of these warnings were discussed in detail earlier in this Report and I will not recount the evidence again here. However, I believe that it is important to note that these warnings not only contained general concern about the size and frequency of suspicious transactions and the appearance of the cash used in them, but also identified, with precision, the nature of the Vancouver model money laundering typology with which I have found those transactions were connected. In a February 28, 2011, letter addressed to BCLC manager of casino investigations Gord Friesen, for example, Mr. Schalk, then the senior director of investigations and regional operations for GPEB wrote:<sup>201</sup>

Large quantities of \$20.00 bill denominations will continue to be and are at present properly reported to the various authorities as “Suspicious Currency”, both by the service provider and BCLC. Patrons using these large quantities of \$20.00 currency buy-ins may not in some, certainly not all cases, be directly involved with or themselves be criminals. Regardless of whether they win or lose all of the money they buy in with, we believe, in many cases, patrons are at very least FACILITATING the transfer of and/or the laundering of proceeds of crime. Those proceeds may have started out 2 or 3 persons or groups removed from the patron using these instruments to play in the casino. Regardless, money is being laundered. The end user, the patron, MUST STILL pay back all of the monies he/she receives in order to facilitate his buy-in with \$20.00 bills and for the person on the initial start of the facilitation process, the money is being laundered for him/her, through the use of the gaming venue. [Emphasis in original.]

196 Exhibit 108, Dickson Letter April 2010; Exhibit 112, Schalk Letter February 2011; Exhibit 488, Schalk Letter December 2012.

197 Exhibit 110, Dickson Letter November 2010; Exhibit 112, Schalk Letter February 2011.

198 Exhibit 181, Vander Graaf #1, para 116; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 84–85; Exhibit 557, Scott #1, paras 73–74; Evidence of D. Scott, Transcript, February 8, 2021, pp 53–56.

199 Evidence of M. Graydon, Transcript, February 11, 2021, pp 75–76; Exhibit 578, Email from Byron Hodgkin to Michael Graydon re Fintrac audit (December 14, 2012) [Hodgkin Letter December 2012].

200 Evidence of M. Hiller, Transcript, November 9, 2020, pp 22–33; Exhibit 166, Hiller #1, paras 35–42, 74–75, 84, 89.

201 Exhibit 112, Schalk Letter February 2011.

BCLC received similar warnings internally from Mr. Hiller. Mr. Hiller testified that, based in part on his law enforcement experience, he believed from early on in his tenure that VIP patrons were being provided with cash by criminal organizations and repaying those funds in China.<sup>202</sup> He recalled that he communicated this theory to his superiors and believed they were well aware of his beliefs.<sup>203</sup> Mr. Hiller received additional information in 2014 that went some length toward confirming his suspicions. He described this information in his evidence as follows:<sup>204</sup>

In 2014, a confidential source whom I considered to be a reliable source of information told me that major loan sharks were operating in BC casinos, and that the vast majority of VIPs get the money they gamble with in Lower Mainland casinos from loan sharks. I was told that these loans, plus a commission, are repaid in China, and that good customers pay a lower commission. Immediately upon learning this information, I prepared an iTrak incident report detailing what I had been told and brought the incident report to the attention of Mr. Friesen and Mr. Karlovcec.

Later on, I would advise others at BCLC about this incident report, including Mr. Alderson, Mr. Sweeney, Mr. Desmarais, and Mr. Kroeker.

These warnings and recommendations should not have been necessary. Based on reports received from service providers and the efforts of its investigators alone, BCLC had ample basis to recognize the need for urgent and decisive action to address money laundering in the province's casinos. That BCLC was also receiving these warnings and recommendations ought to have been more than sufficient to persuade it that it was not responding appropriately to the information already in its possession. BCLC should have been spurred toward meaningful action to address the obvious indicators that money was being laundered through the gaming industry. Unfortunately, as is discussed below, these warnings failed to prompt the action that was obviously called for in the circumstances.

### ***BCLC Reaction and Response***

While it does not appear that the warnings and recommendations issued by GPEB, Mr. Hiller and others fell entirely on deaf ears, they did not result in any meaningful action on the part of BCLC to address the identified risks prior to 2015. Instead, BCLC seems to have remained entrenched in the untenable position that it did not need to take action to respond to the obviously suspicious activity taking place in the province's gaming industry, a view it sought to impress upon GPEB and its own staff.

Multiple former managers of BCLC's corporate security and compliance unit gave evidence that they were also of the view that rising large cash transactions in the province's casinos were cause for concern. Mr. Towns, Mr. Desmarais, Mr. Friesen, and John Karlovcec, Mr. Friesen's former assistant manager, all acknowledged that

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202 Evidence of M. Hiller, Transcript, November 9, 2020, pp 22–33.

203 Ibid, pp 23–33; Exhibit 166, Hiller #1, paras 35–42, 74–75, 84, 89.

204 Exhibit 166, Hiller #1, para 74.

these transactions were highly suspicious and that there was a risk that the cash used in them was the proceeds of crime.<sup>205</sup> Mr. Friesen's suspicion was so great, in fact, that he acknowledged in his testimony that they warranted law enforcement investigation, describing the action he would have liked to take in response to these suspicious transactions, had he been in the position to do so:<sup>206</sup>

I would like to have been a peace officer for the province. I would like to ... have had the ability to investigate proceeds of crime and its source. I would like to have been able to execute warrants, mount surveillance teams and determine the origins of cash and who was responsible, and ultimately hopefully prosecute. That's what I'd like to have done.

Mr. Friesen was not the only one within BCLC during this period whose suspicions rose to the level where they believed that a police investigation was warranted. Mr. Desmarais's concern about the cash being used in casinos grew to the point that, by 2014, under his direction, BCLC began to urge law enforcement agencies, including CFSEU, the Real Time Intelligence Centre, former members of the IPOC unit working with the Criminal Intelligence Service British Columbia / Yukon Territory, the Richmond RCMP and the RCMP Federal Serious and Organized Crime unit, to begin investigating the sources of cash relied on by casino patrons.<sup>207</sup>

Based on this evidence, it seems clear that these senior members of BCLC's corporate security and compliance staff *agreed*, at least to some extent, with the concerns expressed by members of GPEB and Mr. Hiller that the growing large cash transactions taking place in the province's casinos were highly suspicious and that there was a real risk that they were being conducted with the proceeds of crime. Given their apparent receptiveness to these views, it is difficult to understand BCLC's continued acceptance of these funds. Rather than acknowledge that the warnings were justified, BCLC repeatedly responded to these warnings during this period with dismissal.

In particular, BCLC was dismissive of these concerns in its communications to GPEB and its own staff. In addition to failing to implement recommendations put forward by GPEB, BCLC was skeptical of GPEB's concerns in its communications with the Branch.<sup>208</sup> In a 2011 letter, for example, GPEB expressed concern about a patron who had bought-in with \$3,111,040 in cash, including \$2,657,940 in \$20 bills, in the span of approximately

205 Evidence of T. Towns, Transcript, January 29, 2021, pp 145–47, 151–52, 160–61, 167; Exhibit 517, Towns #1, para 59; Exhibit 522, Desmarais #1, paras 30, 35; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 73–74, 87, 90, 97, 102–3; Evidence of G. Friesen, Transcript, October 28, 2020, pp 57–58, 87–88, 98, 97–100, 132–33, 140–41; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 99, 109, 118, 126, 132.

206 Evidence of G. Friesen, Transcript, October 28, 2020, p 100.

207 Exhibit 148, Tottenham #1, paras 102–24; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 88–94, 118–19; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 7–8, 19, 21–25; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 65–68, 79–80; Evidence of R. Alderson, Transcript, September 9, 2021, pp 129–31, 141.

208 Exhibit 111, Karlovcec Letter December 2010; Evidence of D. Dickson, Transcript, January 22, 2021, pp 35–38, 95–97; Evidence of J. Schalk, Transcript, January 22, 2021, pp 143–45; Exhibit 576, Affidavit #1 of Michael Graydon, made on February 8, 2021, exhibit D; Exhibit 557, Scott #1, paras 49–51 and exhibits 18, 19.

one month.<sup>209</sup> BCLC responded by advising that, based on the patron’s “history of play; his betting strategy; the fact he [had] requested only one verified win cheque during the dates in question; his win/loss ratio, and the fact that he owns a coal mine and commercial real estate firm” the patron did “not meet the criteria that would indicate he [was] actively laundering money in British Columbia casinos.” There was no acknowledgment in this letter that the activity was highly suspicious, nor that there was a risk that the patron was buying-in with the proceeds of crime, even if he was not, himself, motivated to launder money.<sup>210</sup>

BCLC delivered similar messages in its communications to its own staff. Despite the acknowledgment by the leadership of BCLC’s corporate security and compliance unit that there was a real risk that the suspicious cash prevalent in British Columbia casinos was the proceeds of crime, BCLC seems to have been intent on persuading its staff that money laundering was not a concern in their industry. Mr. Desmarais, for example, wrote multiple articles in BCLC’s internal newsletter, the *Yak* in 2013 and 2014 that downplayed the risk of money laundering in casinos. A May 2013 article sought to dispel the “myth” that “money laundering [was] rampant” in the province’s casinos by arguing that casinos were not a convenient place to launder money and by providing alternative explanations for large cash transactions.<sup>211</sup> A subsequent article written by Mr. Desmarais in September of the same year suggested that it was erroneous to associate large volumes of cash with organized crime.<sup>212</sup> Finally, in November 2014, Mr. Desmarais wrote a two-part article titled “Setting the Record Straight on Money Laundering in BC Casinos” disputing media reports about money laundering and suggesting that money laundering was unlikely to occur in casinos if patrons were not issued cheques or money orders.<sup>213</sup> Each of these articles post-dated GPEB’s identification to BCLC of the Vancouver model. In my view, Mr. Desmarais’s 2014 article is of particular note as, by this point, BCLC had grown so concerned about suspicious cash transactions that it had been attempting to motivate law enforcement to commence an investigation into suspicious transactions occurring in casinos for months.<sup>214</sup> These efforts are very difficult to reconcile with the message presented to BCLC staff in this article.

Messages similar to Mr. Desmarais’s were conveyed to BCLC staff through presentations by a journalist arranged by BCLC. The journalist advanced alternative

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209 Exhibit 110, Dickson Letter November 2010.

210 Exhibit 111, Karlovcec Letter December 2010.

211 Exhibit 166, Hiller #1, para 86, exhibit S; Exhibit 522, Desmarais #1, para 63, exhibit 37; Evidence of M. Hiller, Transcript, November 9, 2020, pp 57–59; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 75–78 and Transcript, February 2, 2021, pp 9–14, 152–53.

212 Exhibit 522, Desmarais #1, para 64, exhibit 38; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 78–80 and Transcript, February 2, 2021, pp 9–14, 152–53.

213 Exhibit 522, Desmarais #1, para 65 and exhibits 39, 40; Exhibit 166, Hiller #1, para 86 and exhibit T; Evidence of M. Hiller, Transcript, November 9, 2020, pp 59–62; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 9–14, 152–53.

214 Exhibit 148, Tottenham #1, paras 102–24; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 88–94, 118; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 7–8, 19, 21–25; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 65–68, 79–80; Evidence of R. Alderson, Transcript, September 9, 2021, pp 125–26, 129–30, 140–41.

theories regarding potential sources of the cash being used in large cash buy-ins.<sup>215</sup> Mr. Hiller testified that on two occasions in 2013, he attended such presentations arranged by BCLC.<sup>216</sup> Mr. Hiller described the first presentation as follows in his affidavit:<sup>217</sup>

I attended a presentation by [the journalist] on February 20, 2013. This presentation was held in a boardroom at BCLC's Vancouver office, at one of the monthly investigator meetings, which all BCLC casino investigators attended. I recall that Mr. Friesen introduced [the journalist]. I believe Mr. Karlovcec was also in attendance, but I cannot recall if Mr. Towns attended. While I don't have notes of the content of this presentation, I recall that it was related to cash entering Canada through the Vancouver airport and that [the journalist] suggested that this may be the source of the cash coming into Lower Mainland casinos.

In his affidavit, Mr. Hiller discussed the efforts he made to verify the contents of the presentation<sup>218</sup> and confront the presenter with contrary information.<sup>219</sup> Mr. Hiller described the second presentation as an “expanded version” of the first.<sup>220</sup>

In his evidence, Mr. Hiller also expressed concerns about an earlier event in which Mr. Graydon, then BCLC's CEO, gave a speech downplaying concerns about money laundering reported in the media.<sup>221</sup> Mr. Hiller described his concerns about this speech as follows:<sup>222</sup>

I recall a speech made by Michael Graydon, who was then BCLC's CEO, at an annual meeting of BCLC legal, investigation, and compliance staff on December 4, 2012. In his speech, Mr. Graydon expressed his disagreement with the way the media was portraying the issue of money laundering in casinos. While I agreed with Mr. Graydon that the media's portrayal of the issuance of verified win cheques was inaccurate, I noted that Mr. Graydon did not comment further on the reports of bags of cash coming in to casinos. I had hoped he would address these reports because, without further clarification, my impression was that he was implying that the reporting on the bags of cash was wrong.

Mr. Hiller went on to describe raising his frustrations with this speech with Mr. Towns, but that Mr. Towns disputed that patrons could be laundering money if they

215 Exhibit 166, Hiller #1, paras 77–82 and exhibits P, Q; Evidence of M. Hiller, Transcript, November 9, 2020, pp 54–57.

216 Exhibit 166, Hiller #1, paras 77–82.

217 Ibid, para 77.

218 Ibid, paras 78–80.

219 Ibid, para 79.

220 Ibid, para 81.

221 Ibid, para 83.

222 Ibid.

put their funds at risk and, typically, lost them.<sup>223</sup> In response, Mr. Hiller again voiced his belief to Mr. Towns that these patrons were being supplied with illicit funds by organized crime.<sup>224</sup> Mr. Towns disagreed.<sup>225</sup>

### ***Inadequacy of BCLC Action***

It is not the case that BCLC did nothing to prevent money laundering in its casinos prior to 2015. Throughout this time period, BCLC continued to report suspicious transactions to FINTRAC, GPEB, and directly to law enforcement.<sup>226</sup> It also implemented enhancements to its anti-money laundering program, including development of new cash alternatives intended to reduce the industry's reliance on cash;<sup>227</sup> removal and banning of cash facilitators from casinos;<sup>228</sup> technological enhancements;<sup>229</sup> banning of members of criminal organizations identified to BCLC by police;<sup>230</sup> enhancement of training for service provider staff;<sup>231</sup> creation of new, anti-money laundering focused positions within BCLC;<sup>232</sup> development of a "high-risk patron" list;<sup>233</sup> creation of an anti-money laundering unit;<sup>234</sup> and completion of an information-sharing agreement with the RCMP.<sup>235</sup>

What BCLC did not do and what, in my view, was clearly called for in the circumstances, was to impose measures aimed directly at stopping the flow of suspicious cash into casinos. Some of the measures identified above likely had some impact on suspicious cash transactions, but it must have been apparent that none were meaningfully stemming the flow of suspicious cash, which was increasing year after year. While there is some evidence before me that cash transactions would be refused in highly suspicious

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223 Ibid, para 84.

224 Ibid.

225 Ibid.

226 Exhibit 517, Towns #1, para 62; Evidence of G. Friesen, Transcript, October 29, 2020, p 42–43; Exhibit 148, Tottenham #1, paras 46, 56, 64; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 178.

227 Exhibit 517, Towns #1, paras 90–104, 115–31; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 2, 114–15; Evidence of T. Towns, Transcript, January 29, 2021, p 144 and Transcript, February 1, 2021, pp 7–8, 11–12; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 5, 14–16; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 127–28.

228 Exhibit 517, Towns #1, para 54; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 155–56; Exhibit 166, Hiller #1, paras 58, 71; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 34–35; Exhibit 78, Beeksma #1, para 33.

229 Exhibit 517, Towns #1, para 132.

230 Ibid, para 38; Exhibit 148, Tottenham #1, para 106; Exhibit 522, Desmarais #1, para 72 and exhibit 46.

231 Exhibit 517, Towns #1, para 133; Exhibit 1045, Affidavit #3 of Cathy Cuglietta, made on August 31, 2021; February 9, 2021; Exhibit 530, Ennis #1, exhibit A.

232 Ibid, para 134.

233 Ibid, para 137.

234 Exhibit 522, Desmarais #1, para 25; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 53–54; Evidence of D. Tottenham, Transcript, November 10, 2020, pp 123–24; Exhibit 148, Tottenham #1, paras 74–78; Exhibit 78, Beeksma #1, para 55; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 75–77; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 14, 20–21; Exhibit 505, Lightbody #1, para 82.

235 Evidence of S. Beeksma, Transcript, October 26, 2020, p 148; Exhibit 522, Desmarais #1, para 26; Evidence of B. Desmarais, Transcript, February 2, 2021, p 43; Evidence of M. Hiller, Transcript, November 9, 2020, p 126; Exhibit 490, Kroeker #1, para 114.

circumstances – such as where cash was burned or had blood or white powder on it<sup>236</sup> – these appear to have been isolated exceptions to the general practice of accepting cash buy-ins regardless of their size, character, or method by which cash arrived at the casino. Prior to the formalization of the cash conditions program in 2015 (and the prior placement of two patrons on cash conditions in late 2014 and early 2015), BCLC imposed no significant measures focused on eliminating or reducing suspicious cash transactions, or even verifying the legitimacy of the funds used in such transactions.

In fact, rather than take action to address the problem, BCLC took steps that exacerbated it by repeatedly increasing bet limits until 2014.<sup>237</sup> In light of the obviously suspicious nature of cash transactions occurring with growing regularity in the province's casinos and the serious concerns expressed by multiple parties as to the source of the funds being used to gamble in the province's casinos, it is difficult to understand how BCLC could have thought it appropriate to permit betting at higher and higher levels and, in doing so, increasing the risk of money laundering by facilitating the use of ever larger amounts of cash in the province's casinos.

By the spring of 2014, Mr. Desmarais's suspicions about cash entering the province's casinos had grown so great that he and those under his direction approached CFSEU in the hope of persuading it to commence an investigation into the source of funds used by casino patrons.<sup>238</sup> When it became apparent that CFSEU was not going to investigate, BCLC approached a succession of other law enforcement units<sup>239</sup> before the RCMP Federal Serious and Organized Crime Unit finally agreed to undertake surveillance in February 2015.<sup>240</sup> BCLC's persistence in seeking law enforcement engagement is commendable, and the difficulty it encountered in doing so is concerning. What is also troubling about these efforts, however, is that even though BCLC's concerns about suspicious transactions had grown to the point where it was urging any law enforcement unit that would listen to commence an investigation into the funds used by casino patrons, BCLC *continued to accept the cash that was the focus of its suspicions*. BCLC did not place a single patron on cash conditions until November 2014,<sup>241</sup> several months after it first approached CFSEU, and did not expand the program beyond two patrons until August 2015, more than a year after this initial overture.<sup>242</sup> How BCLC could have been

236 Evidence of T. Towns, Transcript, January 29, 2021, p 151.

237 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 8–14; Exhibit 505, Lightbody #1, paras 40–56 and exhibit 22.

238 Exhibit 148, Tottenham #1, paras 102–18; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 65–68; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 88–89; Exhibit 522, Desmarais #1, para 70; Evidence of R. Alderson, Transcript, September 9, 2021, p 125.

239 Exhibit 148, Tottenham #1, paras 118–22.

240 Ibid, paras 124–25; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 119–20; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 118–20; Exhibit 522, Desmarais #1, para 76; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 62–66.

241 Evidence of D. Tottenham, Transcript, November 4, 2020, pp 80–82; Exhibit 148, Tottenham #1, para 79.

242 Exhibit 148, Tottenham #1, paras 79–83; Exhibit 522, Desmarais #1, para 39 and exhibits 11 and 12; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 80–82, 117–18 and Transcript, November 10, 2020, pp 85–86; Evidence of R. Alderson, Transcript, September 9, 2021, p 133; Evidence of S. Beeksma, Transcript, October 26, 2020, p 80.

so convinced that these funds were of criminal origin that they required urgent police attention and yet thought it appropriate to permit casino patrons to continue to use them to gamble is incomprehensible.

BCLC's failure to ensure that casinos ceased accepting this suspicious cash came despite the receipt of a myriad of recommendations as to how this might be accomplished, primarily from GPEB. There is no one single measure that was the only adequate solution to this problem and that BCLC was required to implement. Put simply, based on the information available to BCLC and the warnings it had received from multiple sources, it simply had to stop accepting this highly suspicious cash. It is possible that this could have been accomplished through limits on the size of cash transactions, through a requirement that patrons provide proof of the legitimate source of their funds or through other measures. BCLC did not fall short because it failed to implement one of these measures in particular, it fell short because it implemented none of them and, in failing to do so, allowed money laundering in the province's gaming industry to flourish unabated.

### ***Explanations for Inaction***

Representatives of BCLC put forward at the time, and in evidence before me, two explanations for its inaction during this time period. The first of these was that because patrons were putting their money at risk and often losing, they could not have been laundering money.<sup>243</sup> The second was that BCLC required proof that suspicious funds were the proceeds of crime before it could take action.<sup>244</sup> Neither of these explanations withstand scrutiny.

### ***Patrons Were Putting Funds at Risk and Losing***

The notion that suspicious cash transactions could not amount to money laundering because patrons were putting their funds at risk and often losing was advanced by BCLC in response to warnings from GPEB and in its communications with its own staff.<sup>245</sup> As outlined above, however, senior members of BCLC's corporate security and compliance unit *did* recognize that there was a real risk that the cash used in these transactions was the proceeds of crime.<sup>246</sup> Further, GPEB and Mr. Hiller explained to BCLC precisely how

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243 Evidence of T. Towns, Transcript, January 29, 2021, pp 147–49 and 166; Exhibit 166, Hiller #1, para 84; Exhibit 111, Karlovcec Letter December 2010; Exhibit 522, Desmarais #1, exhibit 37; Exhibit 78, Beeksma #1, para 53; Evidence of S. Beeksma, Transcript, October 26, 2020, p 75; Evidence of G. Friesen, Transcript October 29, 2020, p 4; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 105–6, 111–12 and Transcript, October 30, 2020, pp 196–97; Evidence of M. Hiller, Transcript, November 9, 2020, pp 27–29; Exhibit 141, Summary Review 2011, p 3.

244 Exhibit 517, Towns #1, para 59; Evidence of T. Towns, Transcript, January 29, 2021, pp 145–47, 165–66; Evidence of G. Friesen, Transcript, October 28, 2020, pp 57–58, 89–91, 145–46, 166–67 and Transcript, October 29, 2020, p 11; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 106–10, 118–19, 126–27, 131–32 and Transcript, October 30, 2020, pp 177–78.

245 Exhibit 166, Hiller #1, para 84; Exhibit 111, Karlovcec Letter December 2010; Exhibit 78, Beeksma #1, para 53; Evidence of S. Beeksma, Transcript, October 26, 2020, p 75; Evidence of M. Hiller, November 9, 2020, pp 27–29.

246 Evidence of T. Towns, Transcript, January 29, 2021, pp 145–47, 152, 160–61, 167; Exhibit 517, Towns #1, para 59; Exhibit 522, Desmarais #1, para 35; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 73, 87, 90, 97, 103; Evidence of G. Friesen, Transcript, October 28, 2020, pp 57–58, 88, 100, 132, 140–41; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 99, 109, 118, 126, 132.

this activity could be part of a money laundering scheme, even if the funds used to buy-in at the casino were lost.<sup>247</sup> This message was further reinforced in Mr. Kroeker's 2011 report, in which he provided the following advice to BCLC:<sup>248</sup>

BCLC holds the view that gaming losses on the part of a patron provide evidence that the patron is not involved in money laundering or other related criminal activity. This interpretation of money laundering is not consistent with that of law enforcement or regulatory authorities. BCLC should better align its corporate view and staff training on what constitutes money laundering with that of enforcement agencies and the provisions of the relevant statutes.

The evidence of these senior BCLC security and compliance personnel suggests that BCLC viewed there to be a significant distinction between the simple acceptance of proceeds of crime and the laundering of those proceeds on site at a casino. BCLC clearly recognized there was a risk that these funds were the proceeds of crime but was prepared to tolerate this risk, provided it had some confidence that, if in fact they were, these illicit funds were not being laundered entirely within the four walls of a casino. Clearly, this is misguided. It is never acceptable for a Crown corporation to accept funds that it has strong reasons to suspect are the proceeds of crime. Whether those funds are being laundered on site at a casino or off, or whether they are being laundered at all, is distinct from the issue of whether it is appropriate that they be accepted.

#### ***Requirement of Proof that Funds Were Proceeds of Crime***

The second justification offered for BCLC's inaction was that BCLC required proof that funds were the proceeds of crime before they could be refused – mere suspicion was not enough. This explanation was put forward in the evidence of several former BCLC employees with responsibility for management of the corporate security and compliance department, including Mr. Towns, Mr. Karlovcec, and Mr. Friesen.<sup>249</sup> Mr. Karlovcec's evidence included the following exchange:<sup>250</sup>

A Well, as I've indicated, you can suspect all you want, but having the evidence or the proof is what was necessary for us to be able to do anything or the authorities to do anything, so ...

...

Q What level of proof did you consider was required before you could take some action to restrict the flow of \$20 bills into BC casinos?

247 Exhibit 112, Schalk Letter February 2011; Evidence of M. Hiller, Transcript, November 9, 2020, pp 22–23; Exhibit 166, Hiller #1, paras 74–75, 84.

248 Exhibit 141, Summary Review 2011, p 3.

249 Exhibit 517, Towns #1, para 59; Evidence of T. Towns, Transcript, January 29, 2021, pp 145–47, 165–66; Evidence of G. Friesen, Transcript, October 28, 2020, pp 57–58, 89–91, 145–46, 166–67 and Transcript, October 29, 2020, p 11; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 106–10, 118–19, 126–27, 131–32 and Transcript, October 30, 2020, pp 177–78.

250 Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 108–9.

A Well, there was – all we had was cash. We had no idea the source of the cash or where it was coming from, so again, I think it would be difficult to start approaching patrons that are known that have been identified and start challenging people as to where that cash came from before accusing without any level of proof or evidence provided by a policing authority.

Q You had your own suspicions that the money was proceeds of crime; correct?

A It was suspicious for sure.

In my view, this explanation has no more validity than the one discussed above regarding patrons putting their funds at risk and often losing. The fallacy of this view, and perhaps some indication as to its source, is exposed in the following excerpt from the evidence of Mr. Friesen, given in response to a question as to whether he and his colleagues had considered whether they had the option, or an obligation, “to step in and stop transactions that [they] suspected to be bringing proceeds of crime into British Columbia casinos”:<sup>251</sup>

One of the problems with that is that what you suspect and what actually is can be two different things. Even as a police officer for nearly 35 years, I may suspect something, but until such time as I have proof that it actually is what I suspect, I can’t accuse people of it; I wouldn’t accuse people of it. I would have to be very, very careful.

And until such time as the British Columbia Lottery Corporation had some level of proof that this was actually proceeds of crime or money laundering, I don’t see how we could have accused people of those types of crimes.

This response demonstrates a troubling misunderstanding of the differences between the role of law enforcement and that of BCLC. Mr. Friesen is correct that – and there is good reason why – a police officer should not accuse a person of a crime based on mere suspicion. A criminal charge, let alone a trial and conviction, has very serious implications for the person charged. As such, it is vital to have compelling evidence of a crime before taking that step. The same cannot be said of refusing a person the opportunity to gamble in a British Columbia casino. The impact of denying an individual the opportunity to play games in a casino is minimal in comparison to an arrest, criminal charge, trial, and possible conviction. As such, the level of certainty required before a person can be denied service in a casino (or is required to pay for the service with something other than cash) is likewise far below that required to charge a person with a criminal offence.

Further, there was no suggestion in the question put to Mr. Friesen that the appropriate action in response to these transactions was to accuse individual patrons

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<sup>251</sup> Evidence of G. Friesen, Transcript, October 28, 2020, p 90.

of criminal activity, nor would it have been necessary to do so in order to stem the flow of suspicious cash into the province's casinos. The issue was not whether there was proof sufficient to brand individual patrons as criminals. Rather, the question BCLC ought to have considered at the time was whether activity it knew to be occurring in the province's casinos fell within a reasonable tolerance for risk. It is abundantly clear that the answer to that question should have been "no." That BCLC seems to have been of the view that it required proof on a criminal standard that cash brought into casinos was the proceeds of crime before those transactions could be refused reveals a completely unacceptable and unreasonable risk tolerance and a failure on the part of BCLC to live up to its mandate to act in the public interest.

### ***Contribution of BCLC's Actions Prior to Implementation of the Cash Conditions Program***

In my view, for the reasons outlined above, the actions and inaction of BCLC prior to the formalization of the cash conditions program in 2015 were a significant contributing factor in the growth and perpetuation of money laundering in the province's gaming industry during this time period. BCLC had access to ample information that should have been more than sufficient to put it on notice that significant action to address suspicious activity in the industry was necessary. Moreover, it received repeated warnings from multiple sources, including the industry's regulator and one of its own investigators, regarding the severity of the risk associated with the suspicious activity rapidly growing within the industry, along with detailed descriptions of precisely how that activity could be related to money laundering. Rather than heeding these warnings and taking action to address the problem, BCLC argued with GPEB and sought to persuade its own staff that the large and obviously suspicious cash transactions occurring with increasing regulatory in the province's casinos were not connected to money laundering. It should have been clear to BCLC – as it was to others – not only that the industry was at high risk for money laundering, but that substantial amounts of illicit funds were actually being accepted in British Columbia casinos and that decisive and immediate action in response was necessary.

No such action was taken, and the volume of criminal proceeds accepted in the province's casinos grew virtually unabated for years. By the middle of the decade, the industry reached had a crisis of rampant, unchecked money laundering. At this point, BCLC finally began to take meaningful action to address this problem. While the actions it took at this time eventually had a significant impact on the volume of suspicious cash entering the province's casinos, as is discussed below, both the pace and substance of this response were insufficient given the scale of the crisis facing the industry.

### ***Contribution of BCLC's Actions Following Implementation of the Cash Conditions Program and Related Measures***

Beginning in the spring and summer of 2015, the indifference and inaction that characterized the previous era was replaced with the beginning of a genuine effort

on the part of BCLC to limit acceptance of suspicious cash and, by extension, money laundering in the province's casinos. Unfortunately, given the vast sums of illicit cash entering casinos by this point in time, the actions taken by BCLC during this time period came too late and were implemented with far too much timidity to amount to an adequate response to the crisis then facing the industry. Further, even as it began to take some meaningful action to respond to this issue, BCLC continued to resist calls to take additional steps that would have bolstered its nascent response.

### ***Implementation and Impact of the Cash Conditions Program and Related Measures***

In Chapter 11, I described in detail the nature and impact of the cash conditions program formalized by BCLC in 2015. In submissions before me, it was emphasized that this was an innovative strategy at the time that exceeded industry norms.<sup>252</sup> It is important, as described previously, to acknowledge the meaningful impact that this and related measures eventually had in reducing suspicious cash transactions and, ultimately, money laundering in the province's casinos. Between 2014, the final full year before the cash conditions program was formalized, and 2017, the total annual value of suspicious transactions reported by BCLC declined by nearly \$150 million.<sup>253</sup> I note as well that the impact of these measures seems to have focused on the transactions of greatest concern, with suspicious transactions of \$100,000 or more falling significantly from 2015 to 2017. While it is not possible to say with certainty that this was entirely the result of BCLC's efforts, it is clear, in my view, that these substantial reductions in suspicious cash entering the province's casinos were, in large part, the result of BCLC beginning to refuse a subset of suspicious cash transactions.

While these data demonstrate the ultimate impact of these measures, they also reveal their inadequacy, particularly in the initial stages of the program. In 2014, the final full year before the program was formalized, and during which only one patron was placed on conditions, BCLC reported 1,631 suspicious transactions with a total value of \$195,282,332.<sup>254</sup> While I accept that not all of this cash was actually the proceeds of crime, and not all of these transactions involved the use of cash in casinos, it is nevertheless a very large volume of suspicious funds that should have made clear to any reasonable observer the depths of the crisis facing the industry at this time. While the value of suspicious funds began to fall in the years that followed, it remained extremely high. In 2015, the province's casinos reported \$183,811,853 in 1,737 suspicious transactions.<sup>255</sup> In 2016 it reported \$79,458,118 in 1,649 transactions<sup>256</sup> and in 2017 it reported \$45,300,463 in 1,045 transactions.<sup>257</sup> While the reduced 2017 value may look

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252 Closing submissions, British Columbia Lottery Corporation, para 72; Exhibit 1038, Report on AML Practices by Ernst & Young LLP, April 28, 2021, pp 20, 24, 26, 27; Evidence of R. Boyle, Transcript, September 13, 2021, pp 72–73, 98–100; Evidence of P. Ennis, Transcript, February 4, 2021, pp 3–4.

253 Exhibit 482, Cuglietta #1, exhibit A; Exhibit 784, Affidavit #2 of Cathy Cuglietta, sworn on March 8, 2021 [Cuglietta #2], exhibit A.

254 Exhibit 784, Cuglietta #2, exhibit A.

255 Ibid.

256 Ibid.

257 Ibid.

like progress relative to previous years, it remains an enormously troubling volume of suspicious funds that belies the notion that this problem had in any way been solved. Put simply, despite having recognized by 2015 that there was a need to refuse at least some suspicious cash, BCLC continued to accept it in substantial quantities over the next three years.

Looking ahead only one year further, it is possible to see what decisive action and true progress looks like and what would have been possible had a more appropriate response been implemented earlier. In 2018, the year in which, following Dr. German's recommendation, BCLC began to require proof of the source of funds for transactions of \$10,000 or more in cash or other bearer monetary instruments, a total of just over \$5 million in suspicious transactions was reported by BCLC.<sup>258</sup> The value of suspicious transactions reported by BCLC remained at these low levels through most of 2019, with the exception of the anomalous months of October and November 2019, as discussed in Chapter 12.<sup>259</sup> I note, as discussed above, that the annual values of suspicious transactions mentioned above are not strictly limited to suspicious transactions occurring in casinos, as they also include eGaming and "external request" suspicious transaction reports.<sup>260</sup> However, given how these trends correlate closely to changes in anti-money laundering efforts in casinos, including the expansion of the cash conditions program and the implementation of Dr. German's recommendation, I have confidence that these trends are reflective of the impact of these measures.<sup>261</sup>

It is unsurprising, in my view, that the value of suspicious transactions remained at elevated levels following the implementation of the cash conditions program, given the timidity of this action. In addition to two individuals placed on conditions in late 2014 and early 2015, prior to the formalization of the program,<sup>262</sup> the initial group of patrons placed on cash conditions in August 2015 consisted of only 10 individuals.<sup>263</sup> By the end of 2015, a year in which BCLC reported \$183,841,853 in suspicious transactions, only 42 patrons had been placed on conditions.<sup>264</sup> At this point, with the exception of these 42 individuals, casino patrons could generally continue to buy-in at the province's casinos with hundreds of thousands of dollars in \$20 bills, delivered on demand in the middle of the night, bound with elastics, and carried in grocery bags, cardboard boxes, or knapsacks. The reach of

<sup>258</sup> Ibid.

<sup>259</sup> Exhibit 482, Cuglietta #1, exhibit A. As discussed in Chapter 12, significant increases in the value of transactions reported as suspicious were observed in October and November 2019. While the cause of these increases is not apparent from the evidence before me, no similar increases were observed in large cash transaction reporting, indicating that the elevated levels of suspicious transactions reported in those months were not the result of an increase in cash transactions.

<sup>260</sup> Ibid.

<sup>261</sup> Further support for this conclusion that the trends in these data are reflective of changes in the rate at which suspicious cash was entering casinos is found in similar trends observed in GPEB data for suspicious currency transactions reported under s. 86 of the Gaming Control Act during this period: Exhibit 587, Meilleur #1, exhibit UUU; Exhibit 505, Lightbody #1, exhibit 57.

<sup>262</sup> Exhibit 148, Tottenham #1, paras 79–84; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 80–82, 117–18.

<sup>263</sup> Evidence of D. Tottenham, Transcript, November 4, 2020, p 177.

<sup>264</sup> Exhibit 482, Cuglietta #1, exhibit A.

the program continued to expand in the years that followed, with an additional 61 patrons placed on conditions in 2016 and a further 107 in 2017.<sup>265</sup> I accept that the first patrons captured by the program were those engaged in the most suspicious activity including, significantly, patrons identified by police in the course of the E-Pirate investigation,<sup>266</sup> and that, as a result, the transactions affected included those of greatest concern. However, even as the program expanded in these years, it remained the case that it applied only to a limited group of patrons, targeting the individuals engaged in suspicious activity rather than the activity itself.<sup>267</sup> By 2015 it should have been abundantly apparent to BCLC that decisive across-the-board action, such as the source-of-funds rule implemented following Dr. German's recommendation, was needed and long overdue.

I do not mean to suggest that the source-of-funds rule implemented in response to Dr. German's recommendation was the only adequate means of responding to the crisis faced by the industry by 2015. It ought to have been clear at the time, however, that any approach that allowed some patrons to continue to buy-in using hundreds of thousands of dollars in cash of unknown origin was inadequate. The cash conditions program was certainly an improvement on BCLC's previous response to suspicious cash transactions. Had it been implemented years earlier, at a time that bet limits and levels of play were much lower, it might have altered the evolution of this issue such that it would never have reached the heights observed in 2014 and 2015. Given the scale of the crisis in the gaming industry by the time it was rolled out, however, it was simply too little and far too late.

### ***Advice and Recommendations to Take Further Action***

I am not the first to point out that the actions taken by BCLC during this time period were insufficient. The urgency of the situation and the need for further action was raised with BCLC repeatedly during these years as the cash conditions program was expanding. If the need for more urgent action was not apparent from BCLC's direct knowledge of suspicious activity in casinos, which it should have been, it should have been clear from communications including Minister de Jong's letter of October 1, 2015,<sup>268</sup> from subsequent mandate letters sent by Mr. de Jong,<sup>269</sup> and from correspondence between 2015 and 2017 from John Mazure, general manager of GPEB from 2013 to 2018,<sup>270</sup> all of which are discussed in detail in Chapter 11.

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265 Ibid, exhibit A.

266 Evidence of D. Tottenham, Transcript, November 4, 2020, p 177 and Transcript, November 10, 2020, p 143; Evidence of R. Alderson, Transcript, September 9, 2021, pp 132–33.

267 In its reply submissions, BCLC argues that this program applied to all patrons in the sense that "all patrons were considered for conditions based on their behaviour and level of risk" and in that sense, "any patron could become subject to conditions." I accept that all patrons were, in theory, eligible to be placed on conditions, but it remains the case that not all were. In this sense, the conditions imposed on patrons as part of the program did not apply to all patrons: Reply submissions, British Columbia Lottery Corporation, para 74.

268 Exhibit 900, Letter from Michael de Jong, Providing BCLC with Direction on Phase Three of the AML Strategy (October 1, 2015) [de Jong Letter 2015].

269 Exhibit 892, Mandate Letter to BCLC for the 2016–2017 Fiscal Year (January 29, 2016); Exhibit 893, Mandate Letter to BCLC for the 2017–2018 Fiscal Year (December 2016).

270 Exhibit 505, Lightbody #1, exhibits 54, 55, 57.

As was the case prior to the initiation of the cash conditions program, it does not appear that these communications prompted any genuine reflection within BCLC as to whether it was responding appropriately to suspicious activity within the industry. Instead, these communications and other signals that further action was necessary prompted defensive responses from BCLC rather than good faith consideration as to whether there was a need to recalibrate its risk assessment or reconsider its actions. BCLC almost invariably responded by insisting that the actions it was taking were already sufficient. The responses to Mr. de Jong's letter of October 1, 2015, Mr. Mazure's letters to Mr. Lightbody between 2015 and 2017, and the 2016 Meyers Norris Penney report, discussed below, are illustrative.

As discussed in Chapter 11, the direction issued in Mr. de Jong's October 1, 2015, letter did not identify specific actions to be implemented by BCLC. With respect to source of funds and source of wealth inquiries, Mr. de Jong directed only that BCLC:<sup>271</sup>

[e]nhance customer due diligence to mitigate the risk of money laundering in British Columbia gaming facilities through the implementation of AML compliance best practices including processes for evaluating the source of wealth and source of funds prior to cash acceptance.

Although Mr. de Jong's direction lacked specifics, some within BCLC interpreted his letter to require broad source-of-funds requirements. As described in Chapter 11, this prompted BCLC to draft a letter to Mr. de Jong, in the name of Mr. Smith, arguing against the imposition of more stringent measures and asserting that broad requirements to evaluate source of funds and source of wealth "would result in widespread business disruption."<sup>272</sup> The reaction reflected in this draft letter is consistent with the minutes of a board meeting in which Mr. de Jong's direction was discussed.<sup>273</sup> Due to a chance meeting between Mr. de Jong and Mr. Smith, this letter was never finalized and never sent.<sup>274</sup> In my view, however, it is illustrative of BCLC's resistance to external recommendations to take further action throughout this time period.

A similar dynamic is observed in correspondence between Mr. Mazure and Mr. Lightbody between 2015 and 2017,<sup>275</sup> and in a letter Mr. Lightbody sent to Mr. de Jong in response to a letter from Mr. Mazure.<sup>276</sup> As described in Chapter 11, Mr. Mazure sent Mr. Lightbody a series of letters during this time period urging him to take additional action to stem the flow of suspicious transactions in the province's casinos. In a July 2016 letter, Mr. Mazure made specific recommendations for measures to limit suspicious transactions such as a "source of funds questionnaire and a threshold amount over which BCLC would require service providers to refuse to accept unsourced funds, or a maximum number

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271 Exhibit 900, de Jong Letter 2015.

272 Exhibit 538, Lightbody Email October 2015, p 4.

273 Exhibit 513, BCLC Minutes of the Meeting of the Board of Directors (October 29, 2015), p 7.

274 Evidence of B. Smith, Transcript, February 4, 2021, pp 75–76.

275 Exhibit 505, Lightbody #1, exhibits 48, 52, 54, 55, 56, 57, 58.

276 Ibid, exhibit 49.

of instances where unsourced funds would be accepted from a patron before refusal.”<sup>277</sup> In a May 2017 letter, Mr. Mazure noted that despite some success in reducing suspicious transactions in casinos, the value of such transactions in 2016 – \$72 million – remained “significant” and called for further action.<sup>278</sup> Mr. Lightbody responded to these letters, but in doing so, did not meaningfully engage with Mr. Mazure’s concerns or suggestions.<sup>279</sup> Instead, Mr. Lightbody consistently advised that the actions already being undertaken by BCLC were sufficient, when it should have been obvious, based on the volume of suspicious transactions that continued in the gaming industry, that they were not.

A third example of BCLC’s resistance to external advice during this time period is found in its response to the recommendation contained in the 2016 Meyers Norris Penney report that GPEB, at the direction of the responsible minister, issue “a directive pertaining to the rejection of funds where the source of cash cannot be determined or verified at specific thresholds.”<sup>280</sup> While I accept that BCLC did take action on other recommendations made in the same report,<sup>281</sup> it raised concerns that this recommendation might be inconsistent with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, or that it might lead to legal action by service providers.<sup>282</sup>

Further, as discussed in Chapter 11, after receiving the Meyers Norris Penney report, BCLC retained an external consulting firm to conduct an analysis of the financial impact of a cash cap of \$10,000.<sup>283</sup> Based on emails between Mr. Desmarais and the consulting firm subsequent to the completion of this analysis, it is apparent that this analysis was conducted for the purpose of arming BCLC to argue against the imposition of such measures in the event that GPEB sought to implement them.<sup>284</sup>

I do not mean to suggest that BCLC never genuinely considered recommendations or guidance from any external source. As noted above, for example, BCLC did implement most of the recommendations in the Meyers Norris Penney report and it did generally follow FINTRAC guidance.<sup>285</sup> As the above examples illustrate, however, BCLC was

<sup>277</sup> Ibid, exhibit 55.

<sup>278</sup> Ibid, exhibit 57.

<sup>279</sup> Ibid, exhibits 52, 56, 58.

<sup>280</sup> Exhibit 73, Overview Report: Past Reports and Recommendations Related to the Gaming Sector in British Columbia, Appendix J, MNP LLP, *British Columbia Gaming Policy Enforcement Branch: AML Report* (July 26, 2016) [OR: Gaming Reports and Recommendations, Appendix J], para 5.52.

<sup>281</sup> Exhibit 490, Kroeker #1, para 124 and exhibit 51; Exhibit 711, Table of Response to Recommendations in MNP Report; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 137.

<sup>282</sup> Exhibit 556, MOF Briefing Document, Minister’s Direction to Manage Source of Funds in BC Gambling Facilities (February 2017) [February 2017 MOF Briefing Document], p 7; Exhibit 490, Kroeker #1, exhibit 51.

<sup>283</sup> Exhibit 490, Kroeker #1, exhibit 109.

<sup>284</sup> Exhibit 526, Email exchange between Brad Desmarais to Robert Scarpelli, Re SP Job Loss in the Event of Reduction of High Limit Rooms and/or Elimination of Cash Buy-Ins over \$10K (October 12, 2017) [Scarpelli Email].

<sup>285</sup> Evidence of B. Desmarais, Transcript, February 2, 2021, pp 2, 75–76, 80; Exhibit 490, Kroeker #1, paras 33, 44, 216, 246–54, 280; Exhibit 148, Tottenham #1, paras 64, 66 and exhibit 107; Exhibit 505, Lightbody #1, paras 176–78, 295; Exhibit 522, Desmarais #1, para 36; Evidence of G. Friesen, Transcript, October 28, 2020, pp 127–28, 146–47; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 83–84, 90, 134; Evidence of R. Kroeker, Transcript, January 25, 2021, p 190; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 31–32, 36–37 and Transcript, January 29, 2021, pp 2–3, 71, 98–99, 120–21; Evidence of T. Towns, Transcript, January 29, 2021, pp 183–84.

particularly resistant to any external suggestion that it implement measures limiting the acceptance of cash by casinos. One of the unfortunate consequences of this resistance to external advice is that it resulted in BCLC refusing advice urging it to put in place measures that it would eventually go on to implement – or attempt to implement – years later. This includes advice from FINTRAC and GPEB that BCLC take steps to verify the source of funds used in large cash transactions, years before the cash conditions program was implemented.<sup>286</sup> BCLC's resistance, prior to the implementation of Dr. German's source-of-funds recommendation, to requiring all patrons to declare or provide proof of the source of funds for all transactions over an identified threshold is observed, among other instances, in its response to the recommendation referred to above in the 2016 Meyers Norris Penney report, in an August 2015 letter from Mr. Lightbody to Mr. de Jong,<sup>287</sup> and in the draft letter to Mr. de Jong from Mr. Smith in response to Mr. de Jong's letter of October 1, 2015 (which did not actually propose such a measure).<sup>288</sup> In each of these cases, it is evident that BCLC eventually came to see the wisdom of the ideas it initially rejected and that these measures had a significant positive impact in reducing suspicious cash and preventing money laundering in the province's casinos. Had BCLC been willing to genuinely consider ideas generated outside of the organization, it is possible that these or other measures could have been implemented years earlier and that hundreds of millions of dollars in illicit funds accepted by the province's casinos could have been turned away.

### ***Commitment to a Risk-Based Approach***

One of the rationales offered for the nature of BCLC's response to suspicious transactions during this time period was a commitment to a "risk-based approach."<sup>289</sup> In his evidence, Mr. Lightbody relied on BCLC's adherence to this approach as justification for not applying source-of-funds requirements to all patrons, as was eventually implemented in response to Dr. German's first interim recommendation.<sup>290</sup>

The nature of a risk-based approach was addressed in the Province's examination of Mr. Desmarais.<sup>291</sup> Mr. Desmarais agreed that such an approach is one in which an organization's resources are focused where they are needed to manage risk within an organization's tolerance level; that once risks are identified, the measures used to address those risks must be commensurate with the risks identified; and that resources must be directed so that the greatest risks faced by an organization receive the greatest

286 Exhibit 181, Vander Graaf #1, para 116; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 84–85; Exhibit 557, Scott #1, paras 73–74; Evidence of D. Scott, Transcript, February 8, 2021, pp 53–56; Exhibit 578, Hodgkin Letter December 2012.

287 Exhibit 505, Lightbody #1, exhibit 49.

288 Exhibit 538, Lightbody Email October 2015, p 4.

289 Exhibit 505, Lightbody #1, para 193; Evidence of B. Desmarais, Transcript, February 1, 2021, p 73; Evidence of T. Towns, Transcript, February 2, 2021, pp 1–6; Evidence of R. Kroeker, Transcript, January 26, 2021, pp 102–3, 198; Evidence of B. Smith, Transcript, February 4, 2021, pp 120–21.

290 Evidence of J. Lightbody, Transcript, January 28, 2021, pp 45–46, 60–63.

291 Evidence of B. Desmarais, Transcript, February 2, 2021, pp 1–6.

attention.<sup>292</sup> Mr. Desmarais also agreed that a risk-based approach is not static and that it is important to continually assess vulnerabilities and address them accordingly.<sup>293</sup>

I accept that BCLC had a legitimate interest in adhering to a risk-based approach. Such an approach is consistent with guidance issued by the Financial Action Task Force and FINTRAC<sup>294</sup> and Mr. de Jong specifically directed the application of a risk-based approach in his letter of October 1, 2015.<sup>295</sup> I do not accept, however, that this interest in adhering to a risk-based approach justifies or even explains the inadequacy of BCLC's action during this time period, as I do not accept that, even within a risk-based framework, BCLC was limited to the actions that it took.

BCLC could have taken much more aggressive action to address suspicious cash transactions during this time period, without straying outside of a risk-based approach. Most obviously, the cash conditions program, which was implemented within what BCLC understood to be a risk-based framework, could have been rolled out much more rapidly and aggressively, targeting many more patrons in its initial stages and moving on to additional patrons more quickly. This may have required additional resources but does not seem inconsistent with a risk-based approach. Secondly, Mr. Desmarais agreed in his evidence that prescriptive elements are not inconsistent with and can be incorporated into a risk-based approach.<sup>296</sup> Thus, it does not seem that it would have been inconsistent with a risk-based approach to incorporate more wide-reaching and universally applicable measures, such as hard caps on cash transactions or universal requirements for proof of the source of funds used in transactions over an identified threshold. Accordingly, I do not accept that adherence to a risk-based framework precluded BCLC from adopting these kinds of measures. A properly calibrated assessment of the money laundering risks faced by BCLC should have resulted in the identification of very large cash transactions as being beyond BCLC's risk tolerance. BCLC's failure to identify these kinds of more prescriptive measures as necessary reflects an inappropriate tolerance for risk.

Although I understand its interest in using a risk-based framework, I am not persuaded that adherence to such an approach precluded the possibility of BCLC adopting prescriptive elements in order to properly respond to suspicious activity and associated money laundering risks in the industry at this time. BCLC's tolerance for money laundering risk in the industry was unacceptably high and its failure to adapt its approach despite obvious evidence of money laundering in the province's casinos is troubling. Even if the measures required to properly respond to this issue were inconsistent with a risk-based approach, and BCLC understood that it had been directed

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292 Ibid, pp 2–4.

293 Ibid, p 4.

294 Ibid, pp 2, 114; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 120–21 and Transcript, January 26, 2021, p 102; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 2–3, 120–21 and Transcript, January 29, 2021, pp 120–21; Exhibit 490, Kroeker #1, para 198.

295 Exhibit 900, de Jong Letter 2015.

296 Evidence of B. Desmarais, Transcript, February 2, 2021, pp 4–5.

to adhere to such an approach by Mr. de Jong, I can see no reason why BCLC could not have advised the minister that such an approach did not allow BCLC to adequately respond to the suspicious activity rampant in the province's casinos and sought the minister's blessing to vary its approach. BCLC never did so, and as such, I see no merit to the notion that expectations or preferences for a risk-based approach were an insurmountable hurdle to implementing the kind of measures necessary to stop the money laundering I have found was prevalent in the gaming industry prior to 2018.

I pause here to note that, in its closing submissions, BCLC sought a recommendation for “the continuation of a risk-based approach to [anti-money laundering] in the casino sector.”<sup>297</sup> While I have no concern, in principle, with a risk-based approach and, for the reasons set out above, do not believe that adherence to this approach foreclosed an effective response to suspicious cash transactions, I decline to make such a recommendation. It is apparent from the evidence before me that the effect of the devotion to this particular regulatory philosophy was, in part, to close the mind of those responsible for overseeing the gaming industry to more decisive and more effective responses to suspicious activity. It is vital that regulatory and other authorities remain open to any and all responses to future risks to the integrity of the industry, whether or not they are perceived to be consistent with any particular regulatory philosophy.

### ***Contribution of BCLC's Actions Following Implementation of the Cash Conditions Program***

For the reasons outlined above, the formalization of BCLC's cash conditions program marked an important shift in the manner in which BCLC's actions impacted money laundering in the gaming industry. After several years in which BCLC took no meaningful steps to address rising suspicious transactions in the province's casinos, it finally began taking action that would eventually have a significant impact on the rate at which casinos were accepting suspicious cash. Unfortunately, by the time BCLC began taking this action, the industry had reached a crisis point that saw it accept nearly \$200 million in suspicious transactions in 2014 and only slightly less than that in 2015. The actions that BCLC took, initially focused on a narrow set of individual patrons rather than on suspicious activity itself, were inadequate to meet this challenge. While the cash conditions program was undoubtedly a positive step, the failure of BCLC to recognize and take action commensurate with the scale of the challenge at this time led to the continued acceptance of substantial quantities of proceeds of crime even after BCLC finally recognized the need to begin refusing at least some suspicious transactions.

### ***Contribution of BCLC's Actions Following Implementation of Dr. German's Source-of-Funds Recommendations***

At the end of 2017, there was a second substantial shift in BCLC's efforts to respond to suspicious cash transactions in the province's casinos. During this time period, BCLC

<sup>297</sup> Closing submissions, British Columbia Lottery Corporation, para 132.

finally moved beyond the initial inaction and subsequent timidity that characterized its previous efforts and began to make significant and appropriate efforts to address suspicious transactions and money laundering in the province's casinos.

### **Implementation of Dr. German's Source-of-Funds Recommendations**

The most significant measure implemented by BCLC during this time period was the introduction of mandatory inquiries into the source of funds used in all transactions of \$10,000 or more made using cash or other bearer monetary instruments, as recommended by Dr. German.<sup>298</sup> BCLC implemented Dr. German's recommendation, at the urging of the responsible minister, on an urgent basis.<sup>299</sup> As discussed in detail earlier in this Report, BCLC's contribution in this regard was not limited to simply following the letter of Dr. German's recommendation. Instead, it clearly took to heart the spirit of the recommendation and the outcomes it was intended to achieve and, on the advice of Mr. Kroeker, made two critical additions to the recommended measure that significantly enhanced its effectiveness. These changes included a requirement that patrons not just declare but provide proof of the source of funds used in transactions over \$10,000<sup>300</sup> and the elimination of an exemption from this requirement for new patrons, which was suggested by Dr. German.<sup>301</sup>

The impact of Dr. German's recommendation was referred to above and discussed at length in Chapter 12. It is at this point, in my view, that the gaming industry finally implemented measures commensurate with the nature and scale of the money laundering problem that it faced. The additional changes recommended by Mr. Kroeker and implemented by BCLC, particularly the requirement that proof of the source of funds used in a transaction be provided before the transaction could be accepted, were crucial to the success of this measure. This is precisely the sort of action that would have prevented the rise of money laundering to the extraordinary heights it reached by the middle of the decade, had it been implemented when the issue first became apparent years earlier.

### **Continuation of the Cash Conditions Program**

In addition to the above-noted enhancements to Dr. German's recommendation, Mr. Kroeker also recommended that BCLC continue the cash conditions program formalized in 2015.<sup>302</sup> In 2018, the year that Dr. German's recommendation was implemented, an additional 209 patrons were placed on cash conditions, and in 2019, 179 further patrons were added.<sup>303</sup> The decision to continue the program ensured that,

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298 Exhibit 832, Peter German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia*, March 31, 2018 [*Dirty Money 1*], p 247.

299 Exhibit 505, Lightbody #1, para 258–76.

300 Exhibit 490, Kroeker #1, para 228; Exhibit 78, Beeksma #1, para 82; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 75–76.

301 Exhibit 490, Kroeker #1, paras 226–27.

302 Ibid, paras 225–27.

303 Exhibit 482, Cuglietta #1, exhibit A.

while the source of funds used by any patron in transactions over \$10,000 conducted in cash or bearer monetary instruments would be scrutinized in accordance with Dr. German's recommendation, for patrons identified by BCLC as higher risk, all transactions, regardless of amount, would receive this same level of scrutiny.<sup>304</sup>

### ***Additional Anti-Money Laundering Proposals***

Finally, in addition to its improvement upon and implementation of Dr. German's recommendation, and the continued expansion of the cash conditions program, BCLC proposed the introduction of several additional anti-money laundering measures aimed squarely at suspicious cash during this time period. These measures, described in detail in Chapter 12, included a proposed cap on cash transactions,<sup>305</sup> limits on cash pay-outs,<sup>306</sup> and the "de-risking" of funds obtained from money services businesses,<sup>307</sup> among others. While some of these measures were not ultimately implemented,<sup>308</sup> they represent an important shift in BCLC's approach to this issue.

Further, in my view, the decision to de-risk money services businesses, which was implemented, was a significant advancement in efforts to remove suspicious cash from casinos. As outlined in Mr. Kroeker's evidence, based on its own inquiries, BCLC concluded that it could not be confident that funds obtained from money services businesses would not be tainted by criminality.<sup>309</sup> In light of this information, had BCLC continued to accept money obtained from money services businesses as sourced funds, the cash conditions program and Dr. German's source-of-funds recommendation could have been severely undermined, as the proceeds of crime sourced from these businesses could have continued to make their way into casinos. As such, in my view, this measure significantly improved the effectiveness of the cash conditions program and the measures implemented in response to Dr. German's recommendation and represents an important step toward the removal of illicit funds from the province's gaming industry.

### ***Contribution of BCLC's Actions Following Dr. German's Recommendation***

For the reasons discussed above, the period of time beginning with the delivery of Dr. German's first interim recommendations marks a second important shift in the impact of BCLC's actions on money laundering in the province's gaming industry. With the formalization of the cash conditions program, BCLC moved from near-complete abdication of its responsibility to prevent the acceptance of illicit funds to taking positive, but obviously inadequate, action toward this end. Beginning with its embrace

304 Exhibit 490, Kroeker #1, paras 224–27.

305 Ibid, para 201; Evidence of R. Kroeker, Transcript, January 25, 2021, p 144; Exhibit 505, Lightbody #1, paras 290–93.

306 Exhibit 490, Kroeker #1, paras 145–46; Exhibit 148, Tottenham #1, para 178 and exhibit 66.

307 Exhibit 148, Tottenham #1, exhibit 54.

308 Exhibit 505, Lightbody #1, paras 304–12; Exhibit 148, Tottenham #1, paras 175–82; Exhibit 490, Kroeker #1, paras 139–54, 202–8.

309 Exhibit 490, Kroeker #1, paras 209–21; Evidence of D. Tottenham, Transcript, November 5, 2020, p 27; Exhibit 505, Lightbody #1, paras 313–19.

of Dr. German's recommendation, BCLC began to play a significant and positive role in finally addressing this problem in a manner commensurate with its severity and BCLC's role in the gaming industry. While it could be argued that, given the political dynamics at the time, it had little practical choice but to implement Dr. German's recommendation, BCLC went well beyond the bare minimum required to demonstrate compliance. On its own initiative, BCLC made significant enhancements to Dr. German's recommendation, continued to expand the cash conditions program, and sought to introduce additional measures aimed at further reducing suspicious cash in the industry. These are not the actions of an organization seeking to do only the bare minimum out of a sense of political necessity. Rather, during this time period, I accept that BCLC finally embraced the potential offered by its role in the gaming industry to address the long-standing problem of suspicious cash in the industry and took meaningful action to resolve the issue. It is regrettable that it took BCLC so long to do so. I do acknowledge, however, that after many years of insufficient action, we have finally reached a point in this province where the issue of illicit cash being accepted by casinos is being taken seriously and adequately addressed by BCLC.

## **Understanding BCLC's Inaction**

In order to fully understand the factors that contributed to the rise and perpetuation of money laundering in the gaming industry over so many years, it is useful to consider not only *how* the actions of BCLC contributed to the growth of this problem, but *why* BCLC conducted itself as it did. First, however, it is important to note the inherent limitations in this analysis. BCLC is comprised of many individuals, each with their own motivations for their actions. It is neither possible nor necessary to address all of these individual motivations and I do not suggest that the issues identified below were the basis for the conduct of each individual BCLC employee that played a role in the corporation's response to the growth of suspicious cash in the industry. In my view, however, there are three underlying themes that pervade BCLC's response to this issue, and which assist in understanding why it took the actions that it did: an undue concern about revenue losses; skepticism of external viewpoints; and a failure to give due regard to local conditions.

### ***Undue Concern About Revenue Losses***

The evidence before me demonstrates that BCLC's initial inaction and subsequent failure to take adequate action was motivated in part by a concern about the impact that more aggressive action may have had on BCLC and service provider revenue. There is nothing at all improper about a concern on the part of BCLC about maintaining revenue. Gaming is not a social service. It is offered by the Province through BCLC for the purpose of generating revenue for the provincial government. As discussed in the Commission's hearings, this revenue is used for any number of

important public functions, including education and health care.<sup>310</sup> A concern for revenue generation on the part of BCLC is not unseemly and, provided it is properly infused with BCLC's mandate to operate in the public interest, entirely appropriate.

Concern arises, however, where a focus on revenue generation overshadows concern for ensuring that revenue is generated in a socially responsible way. Unfortunately, during the time period at issue here, prior to 2018, this is precisely what occurred. This is evident from Mr. Graydon's evidence that his response to proposals to limit acceptance of \$20 bills was influenced by possible "severe negative financial impact to BCLC's business,"<sup>311</sup> from Mr. Friesen's acknowledgment in a 2012 meeting that directions issued by Mr. Towns to three BCLC investigators not to speak to patrons was motivated by revenue considerations,<sup>312</sup> from internal BCLC communications identifying the impact on revenue as a possible factor in decision-making about how to treat VIP patrons engaged in suspicious activity,<sup>313</sup> and in the evidence of BCLC employees who acknowledged that the Lottery Corporation, at times, took less aggressive action to address suspicious cash transactions because of revenue considerations.<sup>314</sup> It is also apparent in preparations undertaken by BCLC in anticipation of advocating against the imposition of aggressive anti-money laundering measures by government. Examples of this include the draft letter prepared to respond to Mr. de Jong's October 1, 2015, letter to Mr. Smith, which emphasized possible revenue implications in arguing against the imposition of a universal requirement to verify the source of funds used in transactions over \$10,000,<sup>315</sup> as well as BCLC's preparation to advocate against the imposition of a cash cap by retaining an external consulting firm to examine the revenue implications of such a policy.<sup>316</sup>

It is not at all inappropriate for BCLC to advise government about the possible impact of changes to policy, including anti-money laundering policy, on revenue. Doing so is a vital part of BCLC's responsibilities. In these instances, however, BCLC was not simply preparing to provide neutral advice about the impact of these policies. Rather, it clearly intended to advocate against them by emphasizing possible negative revenue impact, without giving due regard to the significant potential the policies held to advance efforts to combat criminal activity.

310 Exhibit 522, Desmarais #1, para 28; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 70–72; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 40–41, 103–4, 125–26; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 201–2; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 190–91.

311 Exhibit 576, Graydon #1, para 33.

312 Evidence of R. Alderson, Transcript, September 9, 2021, p 22; Exhibit 1035, Ross Alderson Notes – January 2011–January 2013, p 8.

313 Evidence of R. Alderson, Transcript, September 10, 2021, pp 56–60; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 27–29, 94–101, 112–16, 120–31, 140–43 and Transcript, November 10, 2020, pp 34–39; Evidence of B. Smith, Transcript, February 4, 2021, pp 119–20; Exhibit 538, Lightbody Email October 2015; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 57–59; Exhibit 148, Tottenham #1, exhibit 7; Exhibit 130, Email from Ross Alderson re VVIP Players and Sanctions (May 14, 2015).

314 Evidence of M. Hiller, Transcript, November 9, 2020, p 124; Evidence of J. Karlovcec, Transcript, October 29, 2020, p 94; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 114–16, 130, 141 and Transcript, November 10, 2020, p 32; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 48–49, 191.

315 Exhibit 538, Lightbody Email October 2015, p 4.

316 Exhibit 526, Scarpelli Email; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 40–41.

I note that, in their closing submissions, both BCLC and Mr. Lightbody denied that revenue considerations played any part in decision-making regarding anti-money laundering measures,<sup>317</sup> with Mr. Lightbody emphasizing the resources dedicated to anti-money laundering compliance and other initiatives.<sup>318</sup> I accept that BCLC's anti-money laundering unit and the initiatives that it oversaw were generally well resourced. I accept as well that little expense was spared by BCLC in pursuit of anti-money laundering compliance. It is clear from the evidence before me, however, that in responding to the issue of large and suspicious cash transactions in particular, BCLC took the revenue impacts of possible actions or measures into account and adjusted its efforts in order to minimize impacts on revenue.

### ***Skepticism of External Viewpoints***

The second theme arising from this review of the impact of BCLC's actions on money laundering in the province's gaming industry is its aversion to external viewpoints. As discussed briefly above, BCLC's actions demonstrate a repeated pattern of skepticism towards advice and recommendations generated outside of the BC Lottery Corporation itself, to the point where it repeatedly resisted policy proposals originating from external sources, only to implement or attempt to implement similar policies on its own initiative years later, often to great effect. Given the eventual success of many of these initiatives, it seems plausible that they would have had similar results if implemented when initially proposed.

This hostility to external viewpoints is apparent from the early stages of the rise of suspicious cash in the province's casinos throughout the evolution of BCLC's approach to money laundering. It is evident in BCLC's response to recommendations made in a 2009 memorandum prepared by the GPEB audit, registration and investigation divisions;<sup>319</sup> in responses to the letters sent by GPEB's investigation division between 2010 and 2012;<sup>320</sup> in reactions to suggestions made by FINTRAC and by Mr. Scott during his tenure as general manager of GPEB in or around 2012 that BCLC make inquiries into the source of funds used in large cash transactions;<sup>321</sup> in the reactions to Mr. de Jong's October 2015 letter<sup>322</sup> and the source-of-funds requirements proposed in the 2016 Meyers Norris Penney report;<sup>323</sup> and in Mr. Lightbody's responses to Mr. Mazure's letters in 2015, 2016, and 2017.<sup>324</sup>

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317 Closing submissions, British Columbia Lottery Corporation, para 15; Closing submissions, Jim Lightbody, paras 9, 26.

318 Closing submissions, Jim Lightbody, para 9.

319 Exhibit 511, Emails from Bill McCrea, re BCLC Money Management Material (July 8, 2009), with attachment.

320 Exhibit 108, Dickson Letter April 2010; Exhibit 109, Letter from Gordon Friesen re Loan Sharking / Suspicious Currency and Chip Passing (May 4, 2010) [Friesen Letter 2010]; Exhibit 110, Dickson Letter November 2010; Exhibit 112, Schalk Letter February 2011; Exhibit 488, Schalk Letter December 2012; Exhibit 576, Graydon #1, paras 42–48 and exhibit D; Exhibit 557, Scott #1, paras 69–70; Evidence of M. Graydon, Transcript, February 11, 2021, pp 44–45.

321 Exhibit 181, Vander Graaf #1, para 116; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 84–85; Exhibit 557, Scott #1, paras 73–74; Evidence of D. Scott, Transcript, February 8, 2021, pp 53–56; Evidence of M. Graydon, Transcript, February 11, 2021, pp 75–77; Exhibit 578, Hodgkin letter December 2012.

322 Exhibit 538, Lightbody Email October 2015; Exhibit 513, BCLC Minutes of the Meeting of the Board of Directors (October 29, 2015), p 7.

323 Exhibit 556, February 2017 MOF Briefing Document, p 7; Exhibit 490, Kroeker #1, exhibit 51; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 137.

324 Exhibit 505, Lightbody #1, exhibits 49, 52, 56, 58.

BCLC plays a leading role in the province's efforts to combat money laundering in the gaming industry and has developed significant internal experience and expertise in this area. This does not mean, however, that it has a monopoly on good ideas or that it cannot benefit from the input of GPEB or others. The history recounted in this report shows just the opposite: that ignoring the advice and warnings of others led BCLC astray and contributed to the growth of money laundering in the gaming industry. I am encouraged by the evidence that I have heard about the co-operation and productivity that characterizes the current relationship between BCLC and GPEB.<sup>325</sup> I am hopeful that, moving forward, both organizations will work together in a spirit of collaboration, giving due consideration to the perspectives of all stakeholders with an interest in eliminating criminality from the province's gaming industry. This is not to suggest that there can never be disagreement or that BCLC must reflexively adopt any and all recommendations regardless of their content, but it is imperative that it also not immediately reject any external suggestions simply because they originate outside of BCLC.

### ***Failure to Give Due Regard to Local Conditions***

One of the exceptions to this general hostility toward external advice and perspectives on the part of BCLC relates to guidance from national and international bodies, particularly FINTRAC. Despite its failure to act on a 2012 FINTRAC suggestion<sup>326</sup> to verify the source of funds used in large cash transactions, BCLC generally adhered closely to FINTRAC guidance in directing its anti-money laundering efforts<sup>327</sup> and clearly took pride in its record of positive feedback from FINTRAC.<sup>328</sup>

In its communications with GPEB and government and in response to calls to take further action, BCLC frequently cited its compliance with FINTRAC requirements, positive record in FINTRAC audits, and favourable comparisons with actions taken by gaming operators in other jurisdictions as evidence that the efforts it was already taking were both adequate and appropriate.<sup>329</sup>

325 Exhibit 485, Affidavit #3 of Kevin deBruyckere, sworn on January 19, 2021 [deBruyckere #1], para 19; Evidence of K. deBruyckere, Transcript, January 21, 2021, p 98; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 157–58; Evidence of C. Skrine, Transcript, January 27, 2021, pp 35–36, 48, 58–59; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 91, 113–15.

326 Evidence of M. Graydon, Transcript, February 11, 2021, pp 75–77; Exhibit 578, Hodgkin Letter December 2012.

327 Evidence of B. Desmarais, Transcript, February 2, 2021, pp 2, 75–76, 80; Exhibit 490, Kroeker #1, paras 33, 44, 216, 246–54, 280; Exhibit 148, Tottenham #1, paras 64, 66 and exhibit 107; Exhibit 505, Lightbody #1, paras 176–78, 295; Exhibit 522, Desmarais #1, para 36; Evidence of G. Friesen, Transcript, October 28, 2020, pp 127–28, 146–47; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 83–84, 90, 134; Evidence of R. Kroeker, Transcript, January 25, 2021, p 190; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 31–32, 36–37 and Transcript, January 29, 2021, pp 2–3, 71, 98–99, 120–21; Evidence of T. Towns, Transcript, January 29, 2021, pp 183–84.

328 Exhibit 490, Kroeker #1, paras 44, 248–49; Exhibit 505, Lightbody #1, paras 176–77; Evidence of B. Desmarais, Transcript, February 2, 2021, pp 75–76, 80; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 134; Evidence of J. Lightbody, Transcript, January 29, 2021, pp 71, 98–99.

329 Exhibit 490, Kroeker #1, para 249 and exhibit 148; Exhibit 505, Lightbody #1, exhibits 52, 56, 58; Evidence of D. Eby, Transcript, April 26, 2021, pp 31–34; Exhibit 905, BCLC Briefing (July 31, 2017); Exhibit 511, McCrea Email 2009, pp 2, 6; Exhibit 111, Karlovcec Letter December 2010; Exhibit 927, Advice to Minister, Issues Note, re Large Cash Transaction Reporting (February 23, 2012) [Advice to Minister February 2012]; Exhibit 922, Affidavit #1 of Cheryl Wenezenki-Yolland, sworn on April 8, 2021 [Wenezenki-Yolland #1], para 177.

It is important that BCLC ensure that it is, at least, keeping pace with developments in anti-money laundering in the gaming industry nationally and globally. It appears, however, based on the record before me, that BCLC has relied too heavily on international standards and best practices, and that its belief that it was a leader in anti-money laundering nationally and globally led to a troubling level of complacency that caused it to ignore conditions on the ground that were clearly indicative of extensive money laundering in the province's casinos.

This dynamic is evident throughout the time period of concern. It appears in its response to a 2011 letter from the GPEB investigation division, in which BCLC rejected the notion that large cash transactions could be tied to money laundering because it did not appear that traditional and widely understood methods of casino-based money laundering were possible given the controls in place.<sup>330</sup> BCLC's focus on established anti-money laundering orthodoxy appears to have blinded it to the possibility that this obviously suspicious activity was tied to a new and less familiar typology even when directly brought to its attention by the GPEB investigation division and Mr. Hiller. Further evidence of this over-reliance on national and international standards is observed in BCLC's reliance on its successful FINTRAC audits and complimentary comments made by FINTRAC as evidence that its anti-money laundering regime was effective, observed in communications with government and GPEB.<sup>331</sup> Given the conditions on the ground in the province's casinos, it seems that BCLC was ignoring obvious signs of money laundering simply because FINTRAC said that it was doing a good job. Finally, this over-reliance on international standards and best practices was apparent in the evidence and arguments put forward during the Commission's hearings. In particular, as the Commission's hearings were ongoing, BCLC obtained two reports from Bob Boyle, an international anti-money laundering expert based in the New York office of Ernst & Young, who has extensive experience in the gaming sector and was subsequently called as a witness.<sup>332</sup> Mr. Boyle's evidence indicated that BCLC is doing, and for some time has been doing, more than casino operators in a range of other major gaming jurisdictions around the world to respond to the threat of money laundering. My concern, however, is not whether BCLC is or historically has been a leader or a laggard relative to its Canadian and global peers. My concern is that, over the course of a nearly a decade, hundreds of millions of dollars were laundered through casinos for which BCLC was responsible. BCLC's focus on the opinions of people like Mr. Boyle rather than this undeniable reality is emblematic of the kind of thinking that led to this problem in the first place.

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330 Exhibit 111, Karlovcec Letter December 2010.

331 Exhibit 490, Kroeker #1, para 249 and exhibit 148; Exhibit 505, Lightbody #1, exhibits 52, 56, 58; Evidence of D. Eby, Transcript, April 26, 2021, pp 31–34; Exhibit 905, BCLC Briefing (July 31, 2017); Exhibit 511, McCrea Email 2009, pp 2, 6; Exhibit 111, Karlovcec letter December 2010; Exhibit 927, Advice to Minister February 2012; Exhibit 922, Wenezenki-Yolland #1, para 177.

332 Evidence of B. Boyle, Transcript, September 13, 2021; Evidence of B. Boyle, Transcript, September 14, 2021; Exhibit 1037, Report on Known Play by Ernst & Young LLP (April 30, 2021); Exhibit 1038, Report on AML Practices by Ernst & Young LLP (April 28, 2021); Closing submissions, British Columbia Lottery Corporation, paras 29, 102, 118–19.

It is appropriate for BCLC to be concerned about compliance with its obligations to FINTRAC. It is also appropriate for it to take guidance from national and international anti-money laundering organizations and experts to ensure that it is keeping up with global standards and best practices. In doing so, however, BCLC must not lose sight of the fact that it operates in British Columbia, for the benefit of British Columbians. I strongly suspect that the people of this province care far less about the results of FINTRAC audits and the approval of Mr. Boyle than they do about whether money is being laundered through their casinos. The primary goals of BCLC's anti-money laundering efforts must be to prevent money laundering in the gaming industry and to keep the proceeds of crime out of the province's casinos. I do not believe that these goals are inconsistent with compliance with FINTRAC standards or adherence to international best practices. It is evident from the record before me, however, that risk arises if concern for compliance causes BCLC to lose sight of what is occurring on the ground in the casinos or the fact that British Columbia is, for many reasons, a unique environment and that anti-money laundering measures that may be sufficient elsewhere in the world will not always meet the needs of this province.

## **Conclusion**

While these dynamics may provide a partial explanation for BCLC's inadequate response to obvious money laundering in the gaming industry over the course of a decade, they clearly do not justify it. Despite access to detailed information regarding obviously suspicious activity occurring in the province's casinos, a high degree of control over the gaming industry, and repeated warnings that this activity was likely connected to money laundering, BCLC persistently failed to take action commensurate with the severity of the suspicious activity that became commonplace in the industry. As a result of this inaction, money laundering flourished in this province's casinos for years, and BCLC accordingly bears significant responsibility for the growth and perpetuation of the money laundering crisis that afflicted the industry for so long. Following Dr. German's first interim recommendations, BCLC finally began to take action commensurate with the nature and scale of money laundering in casinos and, in doing so, has played a significant and important role in finally bringing the money laundering crisis in British Columbia casinos under control.

## **Actions and Omissions of the Gaming Policy and Enforcement Branch**

Like those of BCLC, the actions of GPEB played a significant contributing role in the growth and perpetuation of money laundering in British Columbia's gaming industry between 2008 and 2018. Like BCLC, the Branch had both the information necessary to recognize the need for action throughout this time period and the responsibility to act in the public interest to respond to obvious indicators that substantial amounts of illicit funds were being accepted in the province's casinos. Where GPEB differed from

BCLC, at least prior to 2018, was in its level of control over activity taking place within the gaming industry. Due to the structure of the *Gaming Control Act* prior to 2018,<sup>333</sup> its lack of a “conduct and manage” mandate,<sup>334</sup> and the fact that it was not a party to operational services agreements with service providers,<sup>335</sup> GPEB did not have the same level of direct control over the industry as BCLC and, as a result, did not have the same capacity to independently respond to rising levels of illicit cash.

This does not mean, however, that GPEB had no responsibility or ability to respond to this problem. Rather, it clearly did have the mandate and capacity to take significant action to address rising levels of suspicious cash in the province’s casinos. As will be discussed below, throughout the time period that I have found that money laundering was occurring in the province’s gaming industry, GPEB fell well short of doing all that it could to respond to the growing crisis in the gaming industry and, as a result, its actions and omissions played a significant role in the perpetuation of money laundering in the industry that it was responsible for regulating.

It is useful to consider the role played by GPEB in multiple, distinct time periods, roughly correlating to those considered with respect to BCLC. During the first of these time periods, ending in the summer of 2015, GPEB, with the notable exception of its investigation division, failed to appreciate the urgency of the growing crisis in the province’s gaming industry and consequently, failed to take any meaningful action in response.

Contrary to the rest of GPEB, the investigation division, under the leadership of Mr. Schalk and Mr. Vander Graaf, clearly understood both the nature and severity of the suspicious activity occurring in the province’s casinos<sup>336</sup> and went to great effort to convince others, both within GPEB and beyond,<sup>337</sup> of the urgency of the situation until late 2014, when Mr. Vander Graaf and Mr. Schalk were terminated<sup>338</sup> and the investigation division merged into GPEB’s compliance division as part of a reorganization of the Branch.<sup>339</sup>

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333 *Gaming Control Act*, s 28; Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

334 *Gaming Control Act*, s 27(4)(a).

335 Exhibit 76, OR: BCLC Standards and Service Agreements; Exhibit 572, Services Agreement 2005.

336 Exhibit 507, Sturko #1, exhibit E; Exhibit 112, Schalk Letter February 2011; Exhibit 108, Dickson Letter April 2010; Exhibit 110, Dickson Letter November 2010; Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12, 174–75; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–15, 97–100; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–14; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 54; Exhibit 145, Barber #1, paras 29–30.

337 Exhibit 108, Dickson Letter April 2010; Exhibit 110, Dickson Letter November 2010; Exhibit 112, Schalk Letter February 2011; Exhibit 488, Schalk Letter December 2012; Exhibit 181, Vander Graaf #1, paras 37–38, 101, 113, 132–38 and exhibits G–R; Evidence of D. Sturko, Transcript, January 28, 2021, p 120; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 104–7; Exhibit 507, Sturko #1, exhibit E; Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8, 28; Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–15; Evidence of S. Birge, Transcript, February 3, 2021, pp 16–24; Evidence of J. Schalk, Transcript, January 22, 2021, pp 149–52; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–20; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Exhibit 587, Meilleur #1, para 24.

338 Exhibit 181, Vander Graaf #1, paras 140–44 and exhibit QQ; Evidence of J. Schalk, Transcript, pp 152–53.

339 Exhibit 587, Meilleur #1, para 29.

Ironically, mere months after the investigation division was eliminated and its leadership terminated, those who remained in relevant leadership positions within GPEB developed an appreciation of the urgency of the money laundering crisis facing the industry.<sup>340</sup> Apparently recognizing the limits of its own authority, GPEB took action to bring the volume of illicit funds accepted by the province's casinos to the attention of the responsible minister,<sup>341</sup> resulting in provincial government action to respond to the problem.<sup>342</sup> Unfortunately, the action taken by government at this time proved inadequate, and GPEB failed to seek further necessary intervention from the responsible minister.

Dr. German's review marked an important turning point for the GPEB and its efforts to respond to money laundering in the gaming industry. GPEB had limited involvement in the implementation of Dr. German's source-of-funds recommendation and, as such, cannot be said to have played a pivotal role in finally resolving the issue of money laundering through large cash transactions. However, following the delivery of Dr. German's first interim recommendations, GPEB began to finally implement meaningful changes that, in my view, will serve the industry and the province well moving forward. Accordingly, there is reason for optimism that GPEB – or its successor agency – will be well positioned to contribute to addressing the risk of money laundering in the industry moving forward.

## **Role of GPEB in the Province's Gaming Industry**

While distinct from BCLC's function, GPEB's role in the gaming industry and its place in government meant that, at all times, it was well positioned to respond to money laundering in the province's casinos. Throughout the rise and perpetuation of money laundering in the industry, GPEB had access to ample information necessary to understand the nature and extent of the problem as it grew, as well as a public interest mandate giving it clear responsibility to act in response to this information. Though it did not, prior to 2018,<sup>343</sup> have direct authority over BCLC, it nevertheless had significant influence over activities in the province's casinos as well as the capacity to seek the intervention of the responsible minister in the event it was not able to adequately address the issue using its own authority.

<sup>340</sup> Evidence of K. Ackles, Transcript, November 2, 2020, p 47; Exhibit 587, Meilleur #1, paras 86–92; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 72–73; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 45–47; Exhibit 541, Mazure #1, paras 146–51; Evidence of J. Mazure, Transcript, February 5, 2021, pp 113–14; Exhibit 541, Mazure #1, paras 146–47; Exhibit 922, Wenezenki-Yolland #1, paras 103–14.

<sup>341</sup> Evidence of M. de Jong, Transcript, April 23, 2021, pp 66–69; Exhibit 541, Mazure #1, para 181; Evidence of J. Mazure, Transcript, February 5, 2021, pp 114–18; Exhibit 922, Wenezenki-Yolland #1, paras 119–20; Exhibit 552, MOF Strategy; Exhibit 553, MOF Briefing Document, Options for Issuing Anti-Money Laundering Directives to BCLC (September 1, 2015) [MOF Briefing Document].

<sup>342</sup> Exhibit 541, Mazure #1, para 199; Exhibit 900, de Jong Letter 2015.

<sup>343</sup> *Gaming Control Act*, s 28; Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

## Information Available to GPEB

From the very beginning of the rise of suspicious transactions in British Columbia’s gaming industry, GPEB had access to a wealth of information allowing it to identify the nature and extent of the money laundering crisis emerging in the province’s casinos. At all relevant times, service providers, registered gaming workers, and BCLC were obligated, under section 86 of the *Gaming Control Act*, to report to GPEB events related to the commission of offences under the *Criminal Code*, if those events were relevant to a lottery scheme or horse racing, or the *Gaming Control Act*. As indicated in a series of notices issued by GPEB,<sup>344</sup> this included activity related to money laundering. Consequently, GPEB received a significant volume of reports about suspicious transactions in the province’s casinos.

Statistics compiled by GPEB’s investigation and compliance divisions offer some insight into the volume of reporting about suspicious cash transactions received by the Branch pursuant to section 86 – and the growth in those reports over time. In 2008–09, the Branch received 103 such reports,<sup>345</sup> growing to 117, 459, and 861 in 2009–10, 2010–11, and 2011–12, respectively,<sup>346</sup> before increasing to 1,062 reports in 2012–13,<sup>347</sup> 1,382 reports in 2013–14,<sup>348</sup> and peaking at 1,889 in 2014–15.<sup>349</sup> While the section 86 reports themselves included very little information,<sup>350</sup> it is clear that GPEB investigators could – and routinely did – seek additional information from service providers and BCLC about these transactions.<sup>351</sup> The level of information available to GPEB investigators is evident from the reports of findings compiled by these investigators and forwarded to investigation division management and, ultimately, the general managers of the Branch.<sup>352</sup> These reports set out highly detailed information about individual suspicious transactions occurring in the province’s casinos and trends in these transactions over time, demonstrating the level of insight that GPEB had into these activities.

Outside of the casino environment, GPEB had access to law enforcement information not available to BCLC. As discussed previously, the status of GPEB’s investigators as special provincial constables allowed them some access to police databases.<sup>353</sup> The GPEB investigation division also had a relationship with law enforcement that permitted it to consult with police about the significance of suspicious transactions, as is reflected in the

344 Exhibit 181, Vander Graaf #1, exhibit A; Exhibit 587, Meilleur #1, exhibit H; Exhibit 144, Ackles #3, exhibit A.

345 Exhibit 181, Vander Graaf #1, exhibit O.

346 Ibid.

347 Ibid.

348 Ibid, exhibit Q.

349 Exhibit 587, Meilleur #1, exhibit UUU.

350 Exhibit 144, Ackles #3, exhibit B.

351 Ibid, paras 10–17; Exhibit 145, Barber #1, paras 28–35; Evidence of D. Dickson, Transcript, January 22, 2021, pp 7–8.

352 Exhibit 181, Vander Graaf #1, exhibits G–H, J–Q; Exhibit 507, Sturko #1, exhibit E.

353 Evidence of R. Barber, Transcript, November 3, 2020, p 17; Evidence of G. Friesen, Transcript, October 29, 2020, pp 8–9; Evidence of S. Lee, Transcript, October 27, pp 60–61; Evidence of K. Ackles, Transcript, November 2, 2020, pp 14–15.

division's correspondence with BCLC,<sup>354</sup> and which resulted in GPEB playing a role in the IPOC intelligence probe into suspicious activity in casinos that commenced in 2010.<sup>355</sup> While GPEB does not appear to have had access to the information gleaned from that probe,<sup>356</sup> it was aware, at the very least, that it was occurring.

In light of the foregoing, it is obvious that GPEB had the information necessary to recognize the seriousness of the money laundering crisis emerging in the province's casinos and the urgency of the need for action in response to this brewing crisis. Indeed, based on this information, members of the GPEB investigation division clearly *did* recognize the significance of the obviously suspicious activity taking place in the industry and went to great effort to warn others within the Branch – and outside of it – of their grave concerns about this activity.<sup>357</sup>

### ***GPEB's Public Interest Mandate***

In addition to having the information necessary to identify the presence and scale of money laundering in the gaming industry, GPEB's mandate clearly establishes that it had a responsibility to take action in response. During the Commission's hearings, significant attention was devoted to the question of whether GPEB had an "anti-money laundering mandate." In my view, the Branch's statutory mandate set out in section 23 of the *Gaming Control Act*, which provides that GPEB "is responsible for the overall integrity of gaming and horse racing," establishes that it does. It is difficult to envision a clearer threat to the integrity of gaming than rampant money laundering in the province's casinos and, as such, I conclude that responding to money laundering fell squarely within GPEB's mandate. I do not view this, in principle, as an area of serious dispute. While there was some debate about what the Branch could do in furtherance of this mandate, neither GPEB itself nor any of its current or former employees suggested that money laundering was not the Branch's concern or that it had no responsibility to respond to this issue to the extent that it could.

I recognize that the question of whether GPEB had a mandate to act is distinct from the extent of its authority and capacity to take specific actions in response to this issue, which I will address later in this chapter. However, I am satisfied that, in principle,

354 Evidence of J. Schalk, Transcript, January 22, 2021, pp 181–82; Exhibit 110, Dickson Letter November 2010; Exhibit 112, Schalk Letter February 2011; Evidence of R. Barber, Transcript, November 3, 2020, pp 39–40.

355 Evidence of R. Barber, Transcript, November 3, 2020, pp 40–43.

356 *Ibid*, p 43.

357 Exhibit 507, Sturko #1, exhibit E; Exhibit 112, Schalk Letter February 2011; Exhibit 108, Dickson Letter April 2010; Exhibit 110, Dickson Letter November 2010; Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12, 174–75; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–15, 97–100; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–14, 149–52; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 37–38, 54, 101, 113, 132–38 and exhibits G–R; Exhibit 145, Barber #1, paras 29–30; Exhibit 488, Schalk Letter December 2012; Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8, 28; Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–15; Evidence of S. Birge, Transcript, February 3, 2021, pp 16–24; Evidence of J. Schalk, Transcript, January 22, 2021, pp 149–52; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–20; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Exhibit 587, Meilleur #1, para 24.

GPEB had – and continues to have – a mandate to respond to money laundering in the gaming industry to the extent that it is able. Accordingly, at all times, it had a clear responsibility to respond to this growing crisis. The extent to which the Branch’s actions contributed to the growth and perpetuation of money laundering in the gaming industry must be considered in the context of this clear mandate to act.

### ***GPEB’s Control over the Gaming Industry***

GPEB did not, prior to 2018, have a level of direct control over activity in British Columbia’s casinos that matched that of BCLC. However, it is clear, in my view, that it nevertheless had significant influence over the province’s gaming industry and the capacity to take meaningful action to address the suspicious transactions prevalent in the industry between 2008 and 2018.

GPEB is not a party to operational services agreements with service providers<sup>358</sup> and does not have a mandate to conduct and manage gaming in British Columbia.<sup>359</sup> In fact, section 27(4)(a) of the *Gaming Control Act* provides that the general manager of the Branch “must *not* conduct, manage, operate or present gaming or horse races” [emphasis added]. In addition, until 2018, the general manager did not have the authority to issue directives to BCLC without the consent of the responsible minister.<sup>360</sup> These features of the legislative regime governing gaming make clear not only that GPEB was intended to play a different, and less direct, role in the day-to-day operation of the industry from that contemplated for BCLC, but also that it was not, prior to 2018, expected to fulfill a unilateral supervisory role with respect to BCLC.

This does not mean, however, that GPEB had no influence over the industry or BCLC. At all relevant times, GPEB had the capacity to set terms and conditions of registration for service providers and registered gaming workers and to issue public interest standards, either of which would have been binding on service providers and/or their employees. While there was clearly some uncertainty as to the extent of these authorities, the general manager of GPEB always had the option of seeking the responsible minister’s consent to issue a directive to BCLC (or a directive directly from the minister). That the general manager could seek such consent is a clear indication that the legislation contemplated that she or he, in conjunction with the responsible minister, was expected to fulfill an oversight role in respect of BCLC, including intervention as necessary to safeguard the integrity of gaming.

### ***Public Interest Standards, Terms and Conditions of Registration, and Directives to BCLC***

Section 27(2)(d) of the *Gaming Control Act* authorizes the general manager of the Branch to establish public interest standards “including but not limited to extension

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358 Exhibit 572, Services Agreement 2005; Exhibit 76, OR: BCLC Standards and Service Agreements.

359 *Gaming Control Act*, s 27(4)(a).

360 *Ibid*, s 28; Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20; Exhibit 144.

of credit, advertising, types of activities allowed, and policies to address problem gambling...”, with which service providers must comply. Section 56(3) of the Act empowers the general manager to set terms and conditions of registration, provided they do not conflict with the conditions set out in the *Gaming Control Regulation*, BC Reg 208/2002.

Viewed in isolation, these provisions would seem to offer the general manager broad latitude to provide binding direction to service providers with respect to the treatment of suspicious cash transactions or any number of other matters. The precise authority granted by these provisions is complicated, however, when considered alongside the requirement set out in section 27(4)(a) of the Act that the general manager not “conduct, manage, operate, or present gaming or horse races.” The purpose of this provision seems to be to create distinct and separate spheres of authority for GPEB and BCLC. Precisely where the divide lies between the roles of the two organizations is not at all clear from the legislation, nor does it appear to have been resolved by the courts.

The use of these authorities to respond to the issue of large and suspicious cash transactions was proposed on multiple occasions within GPEB.<sup>361</sup> It is apparent from the evidence before me that those working within GPEB during the relevant time period, including Mr. Mazure, ultimately concluded that these powers could not be exercised in this way.<sup>362</sup> The evidentiary record as to the basis for this conclusion is not entirely satisfactory,<sup>363</sup> but I note that the current director of GPEB’s corporate registration unit gave evidence that he did not understand it to be within his authority to impose “conditions on a facility operator relating to suspicious cash transactions.”<sup>364</sup>

Because the general manager of GPEB always had the ability to seek the intervention of the responsible minister, however, it is not necessary to resolve this issue in order to understand the authority of the general manager to take action in response to suspicious transactions in the province’s casinos. There is no ambiguity in GPEB’s authority – and responsibility – to seek the minister’s intervention where it is required. Section 27(2) of the *Gaming Control Act* clearly charges the general manager with the responsibility to “advise the minister on broad policy, standards and regulatory issues” and to “develop, manage and maintain the government’s gaming policy” under the

361 Evidence of L. Meilleur, Transcript, March 10, 2021, pp 178–80; Exhibit 712, Email from Len Meilleur to Bill McCrea re Personal Notes of Len Meilleur (June 4, 2013) [Meilleur Email 2013]; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 92–93; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 46–51, 97–99, 116–17; Exhibit 181, Vander Graaf #1, paras 60–64, exhibit S; Evidence of J. Mazure, Transcript, February 5, 2021, pp 46–55; Evidence of D. Sturko, Transcript, January 28, 2021, pp 120–22.

362 Evidence of J. Mazure, Transcript, February 5, 2021, pp 53–55; Evidence of L. Meilleur, Transcript, March 10, 2021, pp 26–27, 178–80; Exhibit 712, Meilleur Email 2013.

363 Evidence of J. Mazure, Transcript, February 5, 2021, pp 53–55; Evidence of L. Meilleur, Transcript, March 10, 2021, pp 26–27, 178–80; Exhibit 712, Meilleur Email 2013; Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 97–98, 116–17; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 221, 223–24; Exhibit 922, Wenezenki-Yolland #1, para 93; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 85–86.

364 Exhibit 782, Affidavit #1 of Robin Jomha, made on March 24, 2021, para 42.

minister's direction. In my view, these provisions clearly require the Branch to seek the minister's involvement on pressing policy and regulatory matters facing the industry. Further section 28 of the Act empowers the general manager to issue binding directives to BCLC. Prior to 2018, the general manager required the consent of the minister to issue such a directive,<sup>365</sup> but it is clear that the Act contemplated the general manager seeking such consent and, in my view, this option must be taken into account in considering the extent of GPEB's influence over the industry and the extent to which its actions contributed to the growth and perpetuation of money laundering in the gaming industry. As such, I do not accept that the limits of the general manager's authorities to issue public interest standards or set terms and conditions of registration, whatever they may have been, imposed meaningful limits on the action open to the general manager of GPEB. The general manager always had the option of seeking the intervention of the minister and in the absence of an attempt to do so – a step not taken until September 2015 – he or she cannot be said to have exhausted all avenues of intervention.

## **Contribution of GPEB's Actions to Money Laundering in BC's Gaming Industry Prior to the Summer of 2015**

In considering the extent to which the actions of GPEB contributed to the rise of money laundering in the gaming industry prior to the summer of 2015, it is necessary to consider the role of the investigation division separately from that of GPEB generally and, in particular, the three permanent general managers who led GPEB during this time period. With the possible exception of isolated individuals in other organizations, the investigation division was unique in the speed and accuracy with which it identified the nature and severity of the crisis developing in the industry. In response, it made extensive, though ultimately unsuccessful, efforts to persuade others to take action to address the suspicious transactions taking place with increasing regularity in the province's casinos.

The investigation division's efforts in this regard far exceeded those of GPEB generally. It is clear that the three permanent general managers who led the Branch during this time period failed to appreciate the urgency of the growing prevalence of illicit cash in the province's gaming industry. This is particularly troubling given that members of GPEB's own investigation division had identified and were reporting on the growing problem of illicit cash in Lower Mainland casinos. While GPEB took some limited action during this period to bolster the industry's anti-money laundering regime, this action was largely limited to collaborating with BCLC to develop and promote voluntary cash alternatives, and fell far short of what was called for in the circumstances.

### ***Actions of the GPEB Investigation Division***

Under the leadership of Mr. Vander Graaf, the investigation division recognized the emerging money laundering crisis early in its evolution and made significant efforts to warn

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<sup>365</sup> *Gaming Control Act*, s 28; Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

GPEB's leadership, law enforcement, BCLC, and government of the risk facing the industry. Mr. Vander Graaf and Mr. Schalk both gave evidence that the division identified an increase in large and suspicious cash transactions in the province's casinos in 2007 or 2008 and that this issue became a focus for the division around this time.<sup>366</sup> By 2008, the investigation division was in contact with the RCMP IPOC unit about this issue and had begun to receive advice from this unit bolstering the division's concerns.<sup>367</sup> From this point forward, the investigation division seems to have voiced its concerns about suspicious transactions in the gaming industry internally within GPEB and externally at every opportunity.<sup>368</sup>

The evidence before me indicates that most of the division's efforts to raise concerns about suspicious cash within the gaming industry were focused internally within GPEB. The impression one gets from the evidentiary record before the Commission is that it was rare for a day to go by that Mr. Vander Graaf, Mr. Schalk, or their colleagues in the division did not raise these concerns with their colleagues and superiors elsewhere in GPEB. As early as 2008, members of the division were raising these concerns in meetings and conversations with the succession of general managers under whom Mr. Vander Graaf served<sup>369</sup> and in writing through memoranda, emails, reports of findings, and other documents.<sup>370</sup> In addition to identifying the problem as understood by the division, these communications also regularly proposed solutions that, unlike the measures introduced by BCLC during this period, were aimed directly at reducing the volume of suspicious cash being accepted in the province's casinos. The measures proposed by the division included, for example, barring patrons from obtaining funds from cash facilitators,<sup>371</sup> enhanced due diligence on the "origin of funds" at the time of acceptance,<sup>372</sup> and mandatory refusal of cash transactions in specific amounts and/or denominations.<sup>373</sup>

366 Exhibit 181, Vander Graaf #1, paras 35–38 and exhibit G; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 48, 51–52, 165–66 and Transcript, November 13, 2020, p 39.

367 Evidence of J. Schalk, Transcript, January 22, 2021, pp 181–82.

368 Exhibit 507, Sturko #1, exhibit E; Exhibit 112, Schalk Letter February 2011; Exhibit 108, Dickson Letter April 2010; Exhibit 110, Dickson Letter November 2010; Evidence of K. Ackles, Transcript, November 2, 2020, pp 11–12, 174–75; Evidence of R. Barber, Transcript, November 3, 2020, pp 13–15, 97–100; Evidence of D. Dickson, Transcript, January 22, 2021, p 6; Evidence of J. Schalk, Transcript, January 22, 2021, pp 111–14, 149–52; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 56, 114, 173; Exhibit 181, Vander Graaf #1, para 37–38, 54, 101, 113, 132–38 and exhibits G–R; Exhibit 145, Barber #1, paras 29–30; Exhibit 488, Schalk Letter December 2012; Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8, 28; Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–15; Evidence of S. Birge, Transcript, February 3, 2021, pp 16–24; Evidence of J. Schalk, Transcript, January 22, 2021, pp 149–52; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–20; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Exhibit 587, Meilleur #1, para 24.

369 Exhibit 181, Vander Graaf #1, paras 35–38; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54; Evidence of D. Scott, Transcript, February 8, 2021, pp 6–7, 14–15, 17–18; Evidence of D. Sturko, Transcript, January 28, 2021, p 120; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–41, 149–52.

370 Exhibit 181, Vander Graaf #1, paras 34, 41–52, 82–84 and exhibits G–S, Y; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–18; Exhibit 507, Sturko #1, exhibit E; Evidence of D. Dickson, Transcript, January 22, 2021, p 11; Evidence of J. Schalk, Transcript, January 2021, pp 140–41.

371 Exhibit 181, Vander Graaf #1, exhibit H.

372 Ibid, exhibit Q.

373 Ibid, exhibits R, Y, Z.

The investigation division raised similar concerns with BCLC directly, primarily in a series of letters between members of the investigation division and members of BCLC's corporate security and compliance unit between 2010 and 2012.<sup>374</sup> These letters, discussed in detail in Chapter 10, described obviously suspicious activity occurring in the province's casinos, identified the investigation division's concerns that this activity was connected to money laundering, and indicated that law enforcement shared these concerns. As with its efforts to raise these issues within GPEB, these letters also identified recommendations for addressing these concerns, typically focused directly at reducing the volume of suspicious cash being accepted by casinos. Further, as discussed previously, this correspondence also specifically identified the money laundering typology at issue in casinos,<sup>375</sup> which should, but clearly did not, have had the effect of refuting BCLC's repeated contention that the patrons putting their funds at risk and often losing it indicated that this activity did not amount to money laundering.<sup>376</sup>

The investigation division's efforts to inspire action in response to suspicious activity in the province's casinos also extended to law enforcement. As indicated above, the division had begun discussing its concerns about suspicious activity in casinos with the RCMP IPOC unit by 2008<sup>377</sup> and routinely forwarded reports of suspicious activity in casinos to the unit in the years that followed.<sup>378</sup> It appears that, in 2010, these efforts were having their intended effect, as the IPOC unit commenced a probe focused on suspicious transactions in casinos, to which GPEB assigned three investigators.<sup>379</sup> Despite the promising initial results of the probe,<sup>380</sup> as I discuss in Chapter 39, it was terminated when IPOC was disbanded and did not achieve the results the division clearly hoped for.

Finally, while the opportunities to do so were rare, Mr. Vander Graaf and his colleagues also took advantage of opportunities to raise their concerns directly with senior government officials. In 2008, a GPEB investigator voiced his belief that the province's casinos had a "money laundering problem" at a meeting attended by a deputy minister.<sup>381</sup> In 2010, Mr. Vander Graaf expressed his concerns in a meeting with Mr. Coleman, then the minister responsible for gaming, and Lori Wanamaker, Mr. Coleman's deputy

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374 Exhibit 108, Dickson Letter April 2010; Exhibit 109, Friesen Letter 2010; Exhibit 110, Dickson Letter November 2010; Exhibit 111, Karlovcec Letter December 2010; Exhibit 112, Schalk Letter February 2011; Exhibit 488, Schalk Letter December 2012.

375 Exhibit 112, Schalk Letter February 2011.

376 Evidence of T. Towns, Transcript, January 29, 2021, pp 147–49, 166; Exhibit 166, Hiller #1, para 84; Exhibit 111, Karlovcec Letter December 2010; Exhibit 522, Desmarais #1, exhibit 37; Exhibit 78, Beeksma #1, para 53; Evidence of S. Beeksma, Transcript, October 26, 2020, p 75; Evidence of G. Friesen, Transcript October 29, 2020, p 4; Evidence of J. Karlovcec, Transcript, October 29, 2020, pp 105–6, 111–12; Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 196–97; Evidence of M. Hiller, Transcript, November 9, 2020, pp 27–29; Exhibit 141, Summary Review 2011, p 3.

377 Evidence of J. Schalk, Transcript, January 22, 2021, p 181.

378 Evidence of D. Dickson, Transcript, January 22, 2021, p 12.

379 Evidence of R. Barber, Transcript, November 3, 2021, pp 40–42; Exhibit 145, Barber #1, paras 51–57.

380 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–18.

381 Exhibit 181, Vander Graaf #1, para 37; Evidence of J. Schalk, Transcript, January 22, 2021, p 141.

minister.<sup>382</sup> This meeting with Mr. Vander Graaf prompted Mr. Coleman to engage Mr. Kroeker to conduct an independent review of anti-money laundering measures in the gaming industry.<sup>383</sup> When Mr. Vander Graaf met with Mr. Kroeker as part of this review, Mr. Vander Graaf again shared his concerns and his recommendations and subsequently provided feedback on a draft of Mr. Kroeker's report,<sup>384</sup> clearly in the hope that they would be reflected in his report when presented to government. Similarly, when asked by interim general manager Sue Birge to prepare a "Q&A" document intended to assist in briefing the responsible minister, Mr. Vander Graaf instead prepared a lengthy summary of his concerns about money laundering in the industry, again clearly in the hope these would be provided to the minister.<sup>385</sup> These instances of the investigation division communicating directly to government are rare, as it does not appear to have been within the normal duties of Mr. Vander Graaf or his subordinates to regularly engage with government officials above the rank of the general manager. That they seem to have unfailingly taken the few opportunities they did have to speak with senior government officials to press their concerns about money laundering speaks to their persistence in raising the alarm about these issues.

Regrettably, these efforts did not result in meaningful action to address the growing suspicious activity in the province's casinos during this time period. Still, the significance of the division's efforts to raise the alarm about money laundering in the industry should not be overlooked. Mr. Vander Graaf and his colleagues recognized the magnitude of the emerging money laundering crisis virtually at the moment it began and soon identified the precise money laundering typology connected to the suspicious activity in casinos. They offered recommendations that, if implemented, would have likely brought the problem to a halt before it flourished. By identifying for GPEB and BCLC both the problem and the solution, Mr. Vander Graaf and his colleagues provided the industry with the road map it needed to navigate its way, unharmed, out of the hazardous territory it had entered. Mr. Vander Graaf and the investigation division did so without access to any special information or intelligence that gave them an enhanced opportunity to identify the emerging and growing problem with illicit cash and money laundering in casinos. They were simply seeing and reporting on patterns and trends that should have alerted anyone connected to the industry that a serious problem was emerging.

### ***Actions of GPEB Generally***

Leaving aside the distinct actions of the investigation division, the actions of GPEB during this period played a significant contributing role in enabling the growth and

382 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 104–7; Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–15; Exhibit 181, Vander Graaf #1, paras 132–35; Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8.

383 Evidence of R. Coleman, Transcript, April 28, 2021, pp 114, 141–42.

384 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 141–47 and Transcript, November 13, 2020, pp 120–22; Exhibit 181, Vander Graaf #1, paras 71–76 and exhibit V; Exhibit 490, Kroeker #1, paras 25–26 and exhibit 3; Evidence of R. Kroeker, Transcript, January 25, 2021, pp 82–87.

385 Exhibit 181, Vander Graaf #1, paras 82–84 and exhibits Y, Z; Evidence of S. Birge, Transcript, February 3, 2021, p 16–20; Exhibit 527, Birge #1, paras 38–39.

perpetuation of money laundering in the province’s casinos. As noted above, the Branch’s leadership, including successive general managers, received nearly constant warnings from the investigation division as to the severity of the money laundering crisis building in the industry that GPEB was responsible for regulating.<sup>386</sup> Rather than following the recommendations that accompanied these warnings or otherwise taking action to address the concerns raised by Mr. Vander Graaf and his colleagues, GPEB focused its efforts during this time period primarily on the introduction of voluntary cash alternatives.

## Focus on Introduction of Voluntary Cash Alternatives

As the investigation division repeatedly raised the alarm about growing money laundering in the gaming industry and recommended meaningful action to reduce suspicious cash in the province’s casinos, the anti-money laundering efforts of the remainder of GPEB were focused primarily on the development of voluntary cash alternatives.<sup>387</sup> As discussed in Chapter 12, GPEB renewed its efforts to respond to the risk of money laundering in the gaming industry in the wake of Mr. Kroeker’s 2011 report.<sup>388</sup> In September 2011, GPEB formed a cross-divisional working group with the following strategic focus:<sup>389</sup>

The gaming industry will prevent money laundering in gaming by moving from a cash-based industry as quickly as possible and scrutinizing the remaining cash for appropriate action. This shift will respect or enhance our responsible gambling practices and the health of the industry.

Over the course of the remainder of 2011 and beginning of 2012, this group developed a three-phase anti-money laundering strategy.<sup>390</sup> The first phase involved the introduction and promotion of cash alternatives as GPEB continued to gather information on the nature of cash being used in the industry.<sup>391</sup> The second involved BCLC and service providers more actively engaging in the promotion of cash alternatives with “high-volume patrons” and the introduction of enhanced customer

386 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54, 66–67; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–20, 36–37; Evidence of D. Sturko, Transcript, January 28, 2021, p 120; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Exhibit 144, Ackles #3, para 21; Exhibit 181, Vander Graaf #1, paras 37–41, 60–64, 82–84, 136–39 and exhibits G–S, X, Y, Z, OO, PP; Evidence of D. Dickson, Transcript, January 22, 2021, pp 79–82; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–43, 149–52, 163; Exhibit 557, Scott #1, paras 34–37; Exhibit 507, Sturko #1, paras 92–95 and exhibit E.

387 Evidence of D. Scott, Transcript, February 8, 2021, pp 28–32, 38–43, 97, 107–8; Evidence of M. de Jong, Transcript, April 23, 2021, pp 23–24, 46–48; Evidence of J. Mazure, Transcript, February 5, 2021, pp 18–19, 30–31; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 82–83, 118–19; Exhibit 557, Scott #1, paras 40–42.

388 Evidence of L. Vander Graaf, Transcript, November 13, 2020, pp 164–67; Exhibit 557, Scott #1, paras 27–31; Exhibit 181, Vander Graaf #1, paras 77–81; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 82–83, 117–19.

389 Exhibit 181, Vander Graaf #1, paras 77–81 and exhibit O; Exhibit 557, Scott #1, paras 27–33.

390 Evidence of D. Scott, Transcript, February 8, 2021, p 28; Exhibit 557, Scott #1, para 40.

391 Evidence of D. Scott, Transcript, February 8, 2021, pp 32–33; Exhibit 557, Scott #1, para 40.

due diligence and analytical capacity.<sup>392</sup> The third, which Mr. Scott testified would have been necessary only if the first two phases did not achieve the desired outcomes,<sup>393</sup> involved direct regulatory action by GPEB to prevent money laundering.<sup>394</sup> Phase one was intended to commence in April 2012, phase two in May 2013, and phase three, if required, in December 2013.<sup>395</sup>

In their evidence, Mr. Scott, who served as the general manager of GPEB when this strategy was developed, and Mr. Mazure, who succeeded him, both agreed that, in retrospect, this strategy should have been rolled out more quickly.<sup>396</sup> I agree with this assessment. Moreover, in my view, this should have been clear at the time that the strategy was developed. The investigation division, by this point, had been warning GPEB for years about the growth of suspicious cash and – in the view of the division – the certainty that it was connected to money laundering.<sup>397</sup> Despite these warnings, GPEB made a plan that contemplated no action at all to require that even the most suspicious transactions be turned away for nearly two years following its initiation. While I acknowledge Mr. Scott's evidence that he anticipated concurrent intervention with high-risk patrons by BCLC in the form of interviews about the source of the funds those patrons were using to gamble, it is clear from his evidence that it soon became apparent to him that BCLC was unwilling to take this step. He did not, in response, accelerate plans to have GPEB intervene more directly in suspicious activity in casinos, including by conducting such interviews themselves.<sup>398</sup> I note as well that even if BCLC had taken the step of interviewing patrons, as suggested by Mr. Scott, this action would have been targeted specifically at high-risk patrons and not broadly applicable to all suspicious transactions.

Instead, the focus of the first two phases of this strategy was on the introduction and promotion of voluntary alternatives to the use of cash.<sup>399</sup> There is nothing wrong with the inclusion of cash alternatives as part of a strategy for addressing suspicious cash in the industry. If the industry was intent on moving players away from cash, there would be an obvious need to provide alternative means by which they could buy in and gamble. The evidence demonstrates, however, that GPEB was under no illusion that

392 Exhibit 557, Scott #1, para 40.

393 Ibid, para 40; Evidence of D. Scott, Transcript, February 8, 2021, pp 29–30, 170–71.

394 Exhibit 557, Scott #1, para 40.

395 Ibid.

396 Evidence of D. Scott, Transcript, February 8, 2021, pp 40–41, 90; Evidence of J. Mazure, Transcript, February 5, 2021, pp 33–34.

397 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54, 66–67; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–20, 36–37; Evidence of D. Sturko, Transcript, January 28, 2021, p 120; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Exhibit 144, Ackles #3, para 21; Exhibit 181, Vander Graaf #1, paras 37–41, 60–64, 82–84, 136–39, and exhibits G–S, X, Y, Z, OO, PP; Evidence of D. Dickson, Transcript, January 22, 2021, pp 79–82; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–43, 149–52, 163; Exhibit 557, Scott #1, paras 34–37; Exhibit 507, Sturko #1, paras 92–95 and exhibit E.

398 Exhibit 557, Scott #1, paras 73–74; Evidence of D. Scott, Transcript, February 8, 2021, pp 53–56.

399 Evidence of D. Scott, Transcript, February 8, 2021, pp 28–32, 38–43, 97, 107–8; Evidence of M. de Jong, Transcript, April 23, 2021, pp 23–24, 46–48; Evidence of J. Mazure, Transcript, February 5, 2021, pp 18–19, 30–31; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 82–83, 118–19; Exhibit 557, Scott #1, paras 40–42.

voluntary cash alternatives would be sufficient to resolve this issue, even at the time that the strategy was adopted. Mr. Vander Graaf gave evidence that he did not believe this approach was adequate,<sup>400</sup> and even Mr. Scott acknowledged that it did not surprise him “at all” that cash alternatives “didn’t change the amount of suspicious cash coming in [to casinos].”<sup>401</sup> Given the rate at which suspicious cash was entering the gaming industry at this time, it was incumbent on GPEB to ensure that immediate action was taken to prevent that cash from being accepted. Trying to entice patrons to move to strictly voluntary cash alternatives without even the expectation that it would stem the flow of suspicious cash was obviously insufficient.

The third phase of the strategy was not implemented in December 2013 as scheduled.<sup>402</sup> By 2015, GPEB was still trying to identify precisely what this phase of the strategy would involve.<sup>403</sup> Based on the evidence before me, it appears that this delay was, in part, the result of GPEB’s failure to begin planning for phase three while phases one and two were being deployed.<sup>404</sup> Mr. Scott gave evidence that, being new to government at the time, he failed to appreciate the pace at which government action moved and, as such, did not commence preparations for phase three early enough.<sup>405</sup> Following Mr. Scott’s departure from GPEB, it appears this phase of the strategy was further delayed at the outset of Mr. Mazure’s tenure due to a review and reorganization of the Branch that he initiated shortly after his appointment.<sup>406</sup> These delays exacerbated the impact of the initial decision to delay implementation of phase three, effectively limiting the industry’s efforts to reduce suspicious cash to voluntary cash alternatives until 2015, as the rate at which suspicious cash entered the industry grew, largely without interference, until this time.

### ***Succession of General Managers***

Before moving on to the impact of its actions in and following the summer of 2015, it is necessary to comment briefly on the succession of four general managers (three permanent and one interim) that led GPEB over the span of three years. In my view, the turnover in GPEB’s leadership provides important context for its actions and omissions during this period and causes me to temper any criticism of the individuals that held these positions. It does not, however, in my view, significantly mitigate GPEB’s responsibility for the money laundering crisis that arose during this period.

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400 Exhibit 181, Vander Graaf #1, para 67; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 118–19.

401 Evidence of D. Scott, Transcript, February 8, 2021, pp 30–32; Exhibit 557, Scott #1, paras 42.

402 Evidence of J. Mazure, Transcript, February 5, 2021, pp 34, 184–85 and Transcript, February 11, 2021, pp 111–12, 169; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 40–42, 48, 116–22; Exhibit 922, Wenezenki-Yolland #1, paras 82, 88–93.

403 Evidence of J. Mazure, Transcript, February 5, 2021, pp 34, 184–85 and Transcript, February 11, 2021, pp 111–12, 169; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 40–42, 48, 116–22; Exhibit 922, Wenezenki-Yolland #1, paras 82, 88–93.

404 Evidence of D. Scott, Transcript, February 8, 2021, pp 38–41.

405 Ibid.

406 Exhibit 541, Mazure #1, paras 78–124; Exhibit 922, Wenezenki-Yolland #1, paras 59–63; Evidence of J. Mazure, Transcript, February 5, 2021, pp 85–107.

Mr. Sturko, the founding general manager of GPEB,<sup>407</sup> left the Branch for another position in government in December 2010.<sup>408</sup> When Mr. Mazure was appointed to the general manager role in September 2013,<sup>409</sup> he was the third person to occupy the position in less than three years since Mr. Sturko's departure.<sup>410</sup> This high rate of turnover was undoubtedly disruptive to GPEB, and I have no doubt that there was a steep learning curve for each new general manager, particularly Mr. Mazure, who was new to the gaming industry,<sup>411</sup> and Mr. Scott, who was new to the public service entirely.<sup>412</sup> I accept that this turnover mitigates the responsibility borne by each individual general manager, particularly at the beginning of their tenures.

With respect to GPEB generally, had these transitions resulted in delays of a few weeks or even months in actions taken by the Branch to address suspicious transactions, this would be understandable. The failure of GPEB to take any meaningful action until 2015, seven years after the investigation division began to issue warnings about the emerging crisis, simply cannot be explained by staff turnover. While I do not mean to minimize the importance of the role of the general manager, two of the most critical staff members during this period – Mr. Vander Graaf and Mr. Schalk – who were responsible for monitoring suspicious activity in casinos and therefore best positioned to advise the general managers as to the necessary action, were present and forcefully voicing their views throughout this time period.<sup>413</sup> Mr. Sturko,<sup>414</sup> Mr. Scott,<sup>415</sup> and Mr. Mazure<sup>416</sup> were each well aware of these views and had ample time to act on Mr. Vander Graaf's concerns and recommendations. That no meaningful action was taken until 2015, approximately six months after Mr. Vander Graaf and Mr. Schalk had been terminated from their positions, simply cannot be explained by changes in personnel.

407 Exhibit 507, Sturko #1, para 21.

408 Ibid, para 111.

409 Exhibit 541, Mazure #1, para 5.

410 Exhibit 557, Scott #1, para 13; Exhibit 527, Birge #1, para 8.

411 Exhibit 541, Mazure #1, para 9.

412 Evidence of D. Scott, Transcript, February 8, 2021, p 2; Evidence of L. Wanamaker, Transcript, April 22, 2021, p 9.

413 Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54, 66–67; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–20, 36–37; Evidence of D. Sturko, Transcript, January 28, 2021, p 120; Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–11; Exhibit 144, Ackles #3, para 21; Exhibit 181, Vander Graaf #1, paras 37–41, 60–64, 82–84, 136–39 and exhibits G–S, X, Y, Z, OO, PP; Evidence of D. Dickson, Transcript, January 22, 2021, pp 79–82; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–43, 149–52, 163; Exhibit 557, Scott #1, paras 34–37; Exhibit 507, Sturko #1, paras 92–95 and exhibit E.

414 Evidence of D. Sturko, Transcript, January 28, 2021, pp 115, 120–29; Exhibit 181, Vander Graaf #1, exhibit H; Evidence of L. Vander Graaf, Transcript, November 12, 2020, p 67; Exhibit 507, Sturko #1, paras 92–95 and exhibit E; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–41, 149–52.

415 Evidence of D. Scott, Transcript, February 8, 2021, pp 7, 11, 15, 17–20, 37; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–41, 149–52.

416 Evidence of J. Mazure, Transcript, February 5, 2021, pp 8–15; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140–41, 149–52.

## **Contribution of GPEB's Actions Following the Summer of 2015**

The efforts of GPEB to respond to suspicious cash transactions in the gaming industry underwent a noteworthy shift around the summer of 2015. This was marked by efforts to persuade government and BCLC to take meaningful action and represented a substantial increase in the efforts of the general manager, relative to his predecessors and his own previous actions, to address the flood of illicit funds then flowing into the province's casinos. While an improvement on previous inaction, these efforts continued to fall short of what was necessary to respond to the magnitude of the crisis facing the gaming industry. In particular, after initially making appropriate and effective efforts to inspire government action, GPEB failed to seek further government intervention when these initial actions failed to achieve the desired results.

### ***Actions Taken in Response to the 2015 Spreadsheet***

As described at length in Chapter 11, the summer of 2015 marked an important turning point for efforts to address money laundering in British Columbia's gaming industry. As BCLC formalized and expanded the cash conditions program and related measures, GPEB likewise began to improve upon the minimal efforts described above. In the Branch's case, this improvement primarily took the form of efforts on the part of the general manager, Mr. Mazure, to prompt action from BCLC<sup>417</sup> and Mr. de Jong, then the minister responsible for gaming.<sup>418</sup>

A spreadsheet produced by GPEB investigators Rob Barber and Ken Ackles, discussed in Chapter 11 seems to have been a critical catalyst for this change. This spreadsheet was provided to Len Meilleur, then the executive director of GPEB's compliance division; Cheryl Wenezenki-Yolland, an associate deputy minister within the Ministry of Finance, with responsibility for the gaming portfolio; and Mr. Mazure.<sup>419</sup> It identified all suspicious cash transactions of \$50,000 or more (as well as two transactions just below \$50,000) that took place in Lower Mainland casinos in the month of July 2015. In total, it indicated that more than \$20 million, including over \$14 million in \$20 bills, had been accepted in such transactions. While the contents of the spreadsheet largely replicated the type of information found in earlier reports of findings and contained minimal analysis, it appears to have had its intended effect of persuading GPEB's leadership of the urgency of the situation and the need for further action.<sup>420</sup> Most significantly, it prompted GPEB

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417 Exhibit 505, Lightbody #1, p 35, para 180 and exhibits 48, 54, 55 and 57; Exhibit 541, Mazure #1, paras 152–56; Evidence of J. Mazure, Transcript, February 5, 2021, pp 124–28, 130–32 and 198–201.

418 Evidence of M. de Jong, Transcript, April 23, 2021, pp 66–70; Exhibit 541, Mazure #1, para 181; Evidence of J. Mazure, Transcript, February 5, 2021, pp 114–21; Exhibit 922, Wenezenki-Yolland #1, paras 119–20, 134–40; Exhibit 552, MOF Strategy; Exhibit 553, MOF Briefing Document; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 49–52; Exhibit 587, Meilleur #1, paras 86–90.

419 Exhibit 145, Barber #1, paras 92–95 and exhibit F; Exhibit 144, Ackles #3, paras 23–24 and exhibit D; Exhibit 587, Meilleur #1, paras 86–99; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 72–73; Exhibit 541, Mazure #1, paras 142–51; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 45–47.

420 Exhibit 145, Barber #1, paras 92–95; Exhibit 587, Meilleur #1, paras 86–99; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 68–73; Exhibit 541, Mazure #1, paras 142–51; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 45–47; Exhibit 922, Wenezenki-Yolland #1, paras 103–20.

to initiate a briefing with Mr. de Jong.<sup>421</sup> In sharp contrast to the message delivered to government previously,<sup>422</sup> this briefing, which followed closely on the heels of a very limited briefing of Mr. de Jong regarding the E-Pirate investigation,<sup>423</sup> impressed upon Mr. de Jong the urgency and scale of the money laundering crisis facing the industry and sought his direct intervention.<sup>424</sup>

The most significant results of this briefing included the establishment of the Joint Illegal Gaming Investigation Team<sup>425</sup> (the creation of a similar unit had also been recommended separately by Mr. Lightbody shortly before the briefing),<sup>426</sup> and a letter from Mr. de Jong to the BCLC board chair directing the BC Lottery Corporation to take the following actions including, critically, enhancement of processes for evaluating the source of funds prior to cash acceptance.<sup>427</sup>

1. Ensure that BCLC's [anti-money laundering] compliance regime is focused on preserving the integrity and reputation of British Columbia's gaming industry in the public interest, including those actions set out in [Mr. Mazure's] letter of August 7 ... and any subsequent actions or standards that may follow;
2. Participate in the development of a coordinated enforcement approach with the Gaming Policy and Enforcement Branch (GPEB), the RCMP, and local police to mitigate the risks of criminal activities in the gaming industry; and
3. Enhance customer due diligence to mitigate the risk of money laundering in British Columbia gaming facilities through the implementation of [anti-money laundering] compliance best practices including processes for evaluating the source of wealth and source of funds prior to cash acceptance.

Alongside these efforts to encourage Mr. de Jong to take action, GPEB's appreciation for the magnitude of the challenge confronting the gaming industry was also reflected

421 Evidence of M. de Jong, Transcript, April 23, 2021, pp 66–70; Exhibit 541, Mazure #1, para 181; Evidence of J. Mazure, Transcript, February 5, 2021, pp 114–21; Exhibit 922, Wenezenki-Yolland #1, paras 119–20, 134–40; Exhibit 552, MOF Strategy; Exhibit 553, MOF Briefing Document; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 49–52; Exhibit 587, Meilleur #1, paras 86–90.

422 Evidence of J. Mazure, Transcript, February 11, 2021, pp 219–222; Evidence of M. de Jong, Transcript, April 23, 2021, pp 124–27, 131–32, 143–44; Exhibit 541, Mazure #1, paras 41–45; Exhibit 899, Confidential Information Note, re AML (August 24, 2015); Evidence of S. Bond, Transcript, April 22, 2021, pp 69, 79–86; Evidence of D. Scott, Transcript, February 8, 2021, pp 56, 65–75, 77; Exhibit 557, Scott #1, exhibits 27, 31; Exhibit 928, Advice to Minister, Confidential Issues Note, re Anti-Money-Laundering Strategy Update (February 23, 2012) [Advice to Minister Issues Note]; Exhibit 931, Advice to Minister, re Anti Money-Laundering and FINTRAC Compliance (June 14, 2013) [June 14 2013 Briefing Document]; Evidence of R. Coleman, Transcript, April 28, 2021, pp 72–74.

423 Evidence of M. de Jong, Transcript, April 23, 2021, pp 67–71.

424 Ibid, pp 66–69.

425 Evidence of M. de Jong, Transcript, April 23, 2021, pp 31, 80–82, 98–100; Exhibit 902, Morris Letter; Evidence of K. Ackles, Transcript, November 2, 2020, pp 48–52.

426 Exhibit 505, Lightbody #1, p 296 and exhibit 49.

427 Exhibit 900, de Jong Letter 2015.

in other ways. Most significantly, this included GPEB engaging Meyers Norris Penny, an external consulting firm, to conduct a review of the industry’s anti–money laundering measures<sup>428</sup> and a series of letters written by Mr. Mazure to Mr. Lightbody between 2015 and 2017, in which Mr. Mazure repeatedly urged Mr. Lightbody to ensure that BCLC take further action to reduce the volume of suspicious cash accepted by casinos.<sup>429</sup>

### ***Limited Impact of Measures in Response to the 2015 Spreadsheet***

Based on the actions taken in response to the spreadsheet produced by Mr. Barber and Mr. Ackles, I have no doubt that, by this point, Mr. Mazure had come to appreciate that illicit funds were entering the province’s casinos on a massive scale. I accept as well that these actions had some ameliorating effect on this problem. The creation of JIGIT was undoubtedly a significant step for an industry that had long suffered from neglect by law enforcement, and the report prepared by Meyers Norris Penney included several recommendations that were quickly implemented.<sup>430</sup>

It is clear, however, that, like the efforts made by BCLC during this time period, GPEB’s response was not commensurate with the scale of the problem. As discussed previously, the number and value of suspicious transactions accepted by the province’s casinos remained at alarming levels for years following the September 2015 briefing of Mr. de Jong and as such, GPEB’s efforts were clearly insufficient to bring the volume of suspicious cash accepted by casinos down to anything approaching a reasonable level.

It is clear from his evidence and from his persistence in urging Mr. Lightbody to take additional action that Mr. Mazure recognized that the measures implemented at this time were not having their desired effect. Asked whether, in his view, BCLC ever implemented measures that satisfied the requests made in his initial letter of August 7, 2015, Mr. Mazure responded “No. And that’s why I kept writing the letters.”<sup>431</sup>

### ***Failure to Seek Subsequent Intervention from the Minister***

The persistence of this suspicious activity and Mr. Mazure’s concerns about BCLC’s inaction called for further intervention on the part of the minister in the form of a directive to BCLC from the minister directly or from Mr. Mazure with the minister’s consent. In my view, GPEB did not take adequate steps to seek this intervention. Mr. Mazure testified that he believed Mr. de Jong understood his concern that BCLC was not taking appropriate action,<sup>432</sup> and there is evidence that supports that Mr. Mazure endeavoured to communicate this message to Mr. de Jong. It is clear from the evidence of Ms. Wenezenki-Yolland, to whom Mr. Mazure reported, that he had

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428 Exhibit 73, OR: Gaming Reports and Recommendations, Appendix J.

429 Exhibit 505, Lightbody #1, exhibits 48, 54, 55, 57.

430 Exhibit 490, Kroeker #1, para 124 and exhibit 51; Exhibit 711, Table of Response to Recommendations in MNP Report; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, p 137.

431 Evidence of J. Mazure, Transcript, February 5, 2021, p 132.

432 Ibid, pp 132–34.

communicated his concerns to her.<sup>433</sup> Ms. Wenezenki-Yolland also gave evidence of a “pre-briefing” on October 12, 2016, in which Mr. Mazure “advise[d] the minister candidly about his disagreements and concerns with BCLC,”<sup>434</sup> as well as a briefing that took place the following day, in which both she and Mr. Mazure advised Mr. de Jong that BCLC was not taking adequate action to determine the source of funds used in large cash buy-ins.<sup>435</sup>

Given this evidence, I accept that Mr. Mazure sought to impress upon Mr. de Jong his concerns about the adequacy of BCLC’s response to suspicious cash transactions. What Mr. Mazure did not do, and which in my view was clearly required, was take adequate steps to explicitly seek the minister’s direct intervention through a ministerial directive or the minister’s consent to a directive from Mr. Mazure. Mr. Mazure gave evidence that he “took every opportunity [he] could to put forward the idea of a directive”<sup>436</sup> at least “where it made sense to do so.”<sup>437</sup> I do not accept this evidence. Rather, it is clear from the record before me that he attempted to do so only twice, once in the September 2015 briefing prompted by the spreadsheet prepared by Mr. Barber and Mr. Ackles, and once just prior to the 2017 provincial election.<sup>438</sup>

It should have been apparent to Mr. Mazure that he needed to seek the minister’s intervention long before he attempted to do so for the second time prior to that election. Mr. de Jong wrote to BCLC on October 1, 2015, seeking action in response to the volume of suspicious transactions in the province’s casinos. Mr. Mazure, who had previously communicated a similar message in an August 2015 letter to Mr. Lightbody, followed up to the minister’s letter the following January, expressing concern about the continued prevalence of suspicious cash transactions in the province’s casinos and reiterating the need, among other things, to “develop and implement additional Customer Due Diligence ... policies and practices ... with a focus on identifying source of wealth and funds as integral components to client risk assessment.”<sup>439</sup> The following July, Mr. Mazure wrote to Mr. Lightbody again, reminding him that “[t]he Province has previously provided written direction to BCLC to establish the source of funds prior to accepting cash at gaming facilities.”<sup>440</sup>

Mr. Mazure testified that he continued to write to Mr. Lightbody because he did not believe that BCLC had taken actions that satisfied his requests or the direction from the minister’s October 2015 letter.<sup>441</sup> In my view, it should have been apparent to Mr. Mazure by the time he wrote his January 2016 letter that there was a need for further ministerial

433 Exhibit 922, Wenezenki-Yolland #1, paras 160, 175–80.

434 Ibid, para 175.

435 Ibid, paras 176–80.

436 Evidence of J. Mazure, Transcript, February 5, 2021, p 144.

437 Ibid, pp 147–48.

438 Ibid, pp 143–49; Exhibit 556, February 2017 MOF Briefing Document; Exhibit 922, Wenezenki-Yolland #1, paras 194–210.

439 Exhibit 505, Lightbody #1, exhibit 54.

440 Ibid, exhibit 55.

441 Evidence of J. Mazure, Transcript, February 5, 2021, pp 130–34.

intervention. In the absence of a rapid and significant reversal of BCLC's failure to take the action Mr. Mazure thought necessary, he should have immediately sought such intervention. Instead, he waited nearly a year before attempting to do so (by which time he was told it was not possible due to the upcoming provincial election), as suspicious cash continued to flow into the province's casinos at unacceptable levels.

While the need to seek direct intervention from the minister should have been clear long before the briefing on October 13, 2016, referred to above, this briefing represented an opportunity for Mr. Mazure to have sought a directive and is illustrative of his continued failure to do so. By the time of this briefing, BCLC had been in receipt of Mr. de Jong's letter of October 1, 2015, for over a year and Mr. Mazure had written to Mr. Lightbody on three occasions urging him to ensure that BCLC take more decisive action to reduce the volume of suspicious cash accepted by the province's casinos. Yet, the "next steps" identified in the briefing document presented to Mr. de Jong at this briefing<sup>442</sup> included only that "GPEB and BCLC have established an executive working group that will carefully consider the recommendations and work on next steps."<sup>443</sup> In his evidence, Mr. Mazure described his level of confidence at that point that this "executive working group" would succeed in prompting BCLC to take the action he believed was required as "little to none" but that, in his words "that was the direction given."<sup>444</sup>

I understand the "direction" referred to by Mr. Mazure here was a direction he testified he had been given by Ms. Wenezenki-Yolland that GPEB and BCLC "were to work together on issues."<sup>445</sup> He described his understanding of this direction in his affidavit as follows:<sup>446</sup>

It was made clear to me by Ms. Wenezenki-Yolland that there was an expectation that I would be expected to work with BCLC to resolve issues and that even though both organizations reported to the Ministry of Finance at the time, issues between the two organizations were not routinely going to be resolved at the Ministerial level. This expectation that GPEB and BCLC were to resolve issues between themselves without the Minister's intervention was consistent throughout my tenure with GPEB.

In her evidence, Ms. Wenezenki-Yolland disputed that this direction precluded Mr. Mazure from raising concerns with Mr. de Jong without the agreement of BCLC. She testified that, at the time she joined the ministry, there was a pre-existing practice in place that BCLC and GPEB would "present joint briefing notes on issues where they had shared accountability."<sup>447</sup> Ms. Wenezenki-Yolland's evidence was that, while this practice continued during her tenure, it "did not apply to very many

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442 Exhibit 922, Wenezenki-Yolland #1, para 176.

443 Exhibit 555, MOF Briefing Document, 2016 MNP Report on Anti-Money Laundering Practices in Gaming Facilities (September 30, 2016).

444 Evidence of J. Mazure, Transcript, February 5, 2021, p 139.

445 Ibid, p 25.

446 Exhibit 541, Mazure #1, para 15.

447 Exhibit 922, Wenezenki-Yolland #1, para 185.

briefing documents.”<sup>448</sup> Ms. Wenezenki-Yolland disputed that there was any direction or expectation that disagreements between the two organizations be downplayed. When Mr. Mazure advised her that GPEB and BCLC had differences of opinion, she directed that each organization “set out their respective positions and rationales” in briefing notes provided to the minister “so that the minister could weigh the different perspectives.”<sup>449</sup> Ms. Wenezenki-Yolland went on in her evidence to explain that Mr. Mazure also had opportunities to express his views in telephone and in-person briefings, many of which did not include BCLC representatives; that she had few briefings with the minister on matters related to gaming without Mr. Mazure (or someone acting in his stead) present; and that her practice was to have Mr. Mazure lead those briefings.<sup>450</sup> Mr. Mazure himself gave evidence that he could “speak freely” in oral briefings with Mr. de Jong.<sup>451</sup>

I accept Ms. Wenezenki-Yolland’s evidence in this regard and reject the notion that Mr. Mazure was somehow prohibited from seeking the minister’s direct intervention at or before the October 13, 2016, briefing. It is difficult to understand how, charged with regulating an industry he believed to be rife with criminal activity and illicit funds, Mr. Mazure would have been expected to remain silent about those matters unless BCLC – whom he believed to be the barrier to effective action in response to this problem – agreed that he could raise them. Mr. Mazure had not been restrained by any such direction in raising his concerns about suspicious transactions in the September 2015 briefing prompted by the spreadsheet prepared by Mr. Barber and Mr. Ackles, and it is clear from Ms. Wenezenki-Yolland’s evidence that, in the October 13 briefing, both Mr. Mazure and Ms. Wenezenki-Yolland *did* voice their disagreements with BCLC. I do not accept that Mr. Mazure was restricted from seeking a direction from the minister or the minister’s consent to issue a direction himself. Further support for the conclusion that Mr. Mazure was able to seek a direction from the minister at or before this briefing is found in the evidence that he, in fact, *did* attempt to seek such a direction in the months that followed (but was told that he could not do so because of the upcoming provincial election).

Further, it is clear in my view that Mr. Mazure had particular reason to raise the prospect of a ministerial directive at the October 13 briefing, which focused on the Meyers Norris Penney report. As discussed at length in Chapter 11, this report contained the following recommendation:<sup>452</sup>

GPEB, at the direction of the Minister responsible for gaming, should consider issuing a directive pertaining to the rejection of funds where the source of cash cannot be determined or verified at specific thresholds. This would then provide specific guidance for BCLC to create policies and procedures for compliance by all operators.

<sup>448</sup> Ibid, para 187.

<sup>449</sup> Ibid, para 190.

<sup>450</sup> Exhibit 922, Wenezenki-Yolland #1, paras 191–92.

<sup>451</sup> Evidence of J. Mazure, Transcript, February 5, 2021, p 142.

<sup>452</sup> Exhibit 73 OR: Gaming Reports and Recommendations, Appendix J, para 5.52.

For the reasons set out in Chapter 11, I reject the contention that this recommendation was misdirected at GPEB and that it should have instead been directed at BCLC. While I accept that BCLC could have – and, in my view, should have – implemented a measure of this sort far earlier than it did, the recommendation clearly anticipates a direction from GPEB with the consent of the responsible minister, which was entirely consistent with the *Gaming Control Act* at that time. Given Mr. Mazure’s reservations about the efforts of BCLC, I cannot understand why, armed with this recommendation, he did not leap at the opportunity to seek a direction empowering GPEB to impose upon the industry precisely the sort of measure Mr. Mazure had been urging BCLC to implement for nearly a year and which would eventually resolve the industry’s problems with suspicious cash 18 months later when implemented in response to a recommendation from Dr. German.

Following the 2017 election, Mr. Mazure again raised his concerns to the ministerial level in GPEB’s initial briefing with Mr. Eby<sup>453</sup> but again failed to seek a directive from the minister. As they had done in 2015 with Mr. de Jong, Mr. Mazure and Mr. Meilleur successfully impressed upon Mr. Eby their ongoing concerns about suspicious cash in the gaming industry and ultimately inspired him to take action, this time in the form of Dr. German’s review.<sup>454</sup> As noted previously, this briefing was incomplete, failing to properly represent the actions taken by BCLC in the preceding years,<sup>455</sup> but it seems clear that these failings did not interfere with GPEB’s ability to convey to the new minister the urgency of the situation facing the industry.

Where this briefing was lacking in a material way was in the inexplicable decision not to present to Mr. Eby the direction that Mr. Mazure had intended to seek from Mr. de Jong prior to the election.<sup>456</sup> While Mr. Mazure could not recall whether or not he sought this direction from Mr. Eby,<sup>457</sup> I am satisfied, based on Mr. Eby’s evidence, Mr. Fyfe’s evidence, and the absence of any evidence suggesting a briefing note recommending the direction was put before the new minister, that he did not.<sup>458</sup> This represents a further missed opportunity on the part of Mr. Mazure to seek much-needed ministerial intervention into an issue that, by that time, was abundantly clear GPEB and BCLC were unable to resolve themselves. While it is uncertain that Mr. Eby would have issued this direction if sought by GPEB, given the gravity of GPEB’s continued concern about the issue, it was, in my view, incumbent upon the Branch to ensure that Mr. Eby at least had the opportunity to do so.

### **Deployment of GPEB’s Investigators**

In considering the extent of GPEB’s contribution to the growth and perpetuation of money laundering in the gaming industry prior to 2018, it is necessary to comment briefly on the deployment of GPEB’s casino investigators. This issue attracted

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453 Evidence of D. Eby, Transcript, April 26, 2021, pp 34–35.

454 Ibid, pp 65–66; Evidence of R. Fyfe, Transcript, April 29, 2021, pp 26–27, 99–100.

455 Evidence of D. Eby, Transcript, April 26, 2021, pp 149–59.

456 Ibid, pp 54–55; Evidence of R. Fyfe, Transcript, April 29, 2021, p 14.

457 Evidence of J. Mazure, Transcript, February 5, 2021, pp 145–47.

458 Evidence of D. Eby, Transcript, April 26, 2021, pp 54–55; Evidence of R. Fyfe, Transcript, April 29, 2021, p 14.

significant attention during the Commission's hearings. Various current and former GPEB staff members were questioned as to what GPEB investigators were doing themselves to respond to suspicious cash transactions and, in particular, why investigators were not present in casinos and interviewing patrons as to the source of the substantial volumes of suspicious cash with which they were gambling.

Prior to recent changes to the deployment of GPEB investigators referred to below and discussed in detail in Chapter 12, the role of GPEB's casino investigators with respect to suspicious transactions was largely limited to preparing reports about those transactions based on second-hand information supplied by service providers, BCLC, and, in some instances, law enforcement databases.<sup>459</sup> These reports were not without value. They were used in the efforts made by the investigation division to persuade BCLC and the Branch's general managers to take action in response to this activity, and they were provided to law enforcement, including during the probe into suspicious transactions commenced by the IPOC unit in 2010.<sup>460</sup> It appears, however, that these efforts closely mirrored those of BCLC investigators<sup>461</sup> and do not seem to have been a particularly effective use of the time and skills of the GPEB investigators, many of whom had significant law enforcement experience.<sup>462</sup>

These past functions can be contrasted with the current role of investigators in the GPEB enforcement division. As discussed in Chapter 12, GPEB investigators now maintain a regular physical presence in the province's casinos during peak hours,<sup>463</sup> rather than attending occasionally during standard business hours only to collect materials and speak with staff, as was the case previously. While present in casinos, investigators are now empowered to intervene directly in suspicious transactions by interviewing patrons<sup>464</sup> and, where justified, seizing suspicious cash while waiting for police attendance and directing service provider staff to refuse transactions.<sup>465</sup> It is important to acknowledge, however, that this expanded role for investigators has been

459 Evidence of R. Barber, Transcript, November 3, 2020, pp 15–18; Evidence of K. Ackles, Transcript, November 2, 2020, pp 12–18; Exhibit 144, Ackles #3, paras 8–17; Exhibit 145, Barber #1, paras 13–19; Evidence of D. Dickson, Transcript, January 22, 2021, pp 7–8.

460 Evidence of R. Barber, Transcript, November 3, 2020, pp 40–41; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 53–54, 67, 158–60; Evidence of D. Scott, Transcript, February 8, 2021, pp 17–18, 25; Evidence of J. Mazure, Transcript, February 5, 2021, p 82; Exhibit 181, Vander Graaf #1, para 41 and exhibits G–Q; Evidence of D. Dickson, Transcript, January 22, 2021, pp 79–82; Evidence of J. Schalk, Transcript, January 22, 2021, pp 140; Exhibit 557, Scott #1, paras 34–37; Exhibit 541, Mazure #1, para 31.

461 Evidence of R. Barber, Transcript, November 3, 2020, pp 16–17; Evidence of K. Ackles, Transcript, November 2, 2020, pp 12–18; Exhibit 78, Beeksma #1, paras 38, 51; Exhibit 148, Tottenham #1, paras 8, 9 and exhibit 87; Exhibit 87, S. Lee #1, paras 26–27; Exhibit 166, Hiller #1, paras 11–20; Evidence of S. Beeksma, Transcript, October 26, 2020, pp 35–37; Evidence of M. Hiller, Transcript, November 9, 2020, pp 5–6; Evidence of D. Tottenham, Transcript, November 4, 2020, pp 44–45.

462 Evidence of D. Dickson, Transcript, January 22, 2021, p 2; Exhibit 144, Ackles #3, paras 4–7; Exhibit 145, Barber #1, paras 5–8; Evidence of T. Robertson, Transcript, November 6, 2020, p 29.

463 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 43–45.

464 Evidence of C. Skrine, Transcript, January 27, 2021, pp 16, 55, 127–28; Evidence of S. MacLeod, Transcript, April 19, 2021, p 45.

465 Evidence of C. Skrine, Transcript, January 27, 2021, pp 23–24, 26–27, 56, 125–26, 131–33; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 46–47.

implemented in a context that differs in some ways from that which existed in the past. Presently, there is a relatively harmonious relationship between relevant units within GPEB and BCLC;<sup>466</sup> the BC Lottery Corporation seems to have a genuine commitment to addressing suspicious transactions; the Branch's general manager is supportive of an expanded role for investigators;<sup>467</sup> and there is an engaged law enforcement unit in the form of the JIGIT that can be counted on to respond to suspicious activity in casinos when law enforcement involvement is needed.

I am encouraged that GPEB appears to have found ways to make better use of its investigative resources than it did in the past. The contrast between the current deployment of GPEB investigators and their past role gives rise to the questions of why these investigators were not more effectively deployed previously and, if they had been, whether doing so could have enhanced GPEB's response to the money laundering that was prevalent in the province's casinos for at least a decade. The different context referred to above is a partial answer to the first of these questions. GPEB investigators, for example, could not have seized suspicious cash while waiting for police attendance without the existence of an engaged law enforcement unit that could be counted on to attend urgently. Less clear, however, is why GPEB investigators could not previously have at least taken the step of approaching patrons engaged in suspicious cash transactions, asking them questions about the source of their funds and warning them that the funds they were receiving were likely illicit in origin. Based on the record before me, it appears there are two reasons why the role of GPEB investigators in responding to suspicious transactions was previously limited in the way that it was: perceived limits on the authority of GPEB investigators and concerns for investigator safety. As I discuss below, I am skeptical that either was truly a barrier to more direct intervention by GPEB investigators in suspicious transactions.

There is evidence before me that perceived limits on the legal authority of GPEB investigators prevented Mr. Vander Graaf and subsequently Mr. Meilleur from instructing the investigators under their direction to interview casino patrons about the source of their funds. During his tenure as executive director of the GPEB compliance division, Mr. Meilleur received legal advice that he understood to preclude GPEB investigators from conducting such interviews.<sup>468</sup> Similarly, Mr. Scott testified that when he raised the prospect of GPEB investigators conducting such interviews with Mr. Vander Graaf, he was told that investigators lacked the authority to conduct such interviews.<sup>469</sup> While I do not question the sincerity of these beliefs, there is, in my view, reason to question whether they were objectively accurate. Some of the legal advice

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466 Exhibit 485, deBruyckere #1, para 19; Evidence of K. deBruyckere, Transcript, January 21, 2021, p 98; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 157–58; Evidence of C. Skrine, Transcript, January 27, 2021, pp 35–36, 48, 58–59; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 91, 113–15.

467 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 91–92; Evidence of C. Skrine, Transcript, January 27, 2021, pp 28–29.

468 Exhibit 586, Dr. Peter German, Compliance Under the Gaming Control Act – An Opinion Prepared for BC GPEB and BCLC (December 4, 2016); Exhibit 587, Meilleur #1, paras 67–73; Exhibit 1058, Affidavit #3 of Joseph Emile Leonard Meilleur, made on September 17, 2021, exhibits A, B; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 39–40.

469 Evidence of D. Scott, Transcript, February 8, 2021, p 34.

relied on by Mr. Meilleur is in evidence before me in the form of written legal opinions. These opinions do not refer specifically to patron interviews, but rather indicate that GPEB investigators could not *enforce* legislation outside of the *Gaming Control Act*, such as the *Criminal Code* of Canada, or identify limits on the authority of GPEB investigators to conduct investigations under the *Criminal Code* or exercise *Criminal Code* investigative powers.<sup>470</sup> While I understand that these opinions do not represent the entirety of relevant legal advice received by GPEB<sup>471</sup> it seems that there is a significant difference between the enforcement of the *Criminal Code* or exercise of investigative powers under the *Code* and asking casino patrons where they obtained their money. I note as well that Dr. German, the author of one of the opinions in evidence, agreed in his testimony that GPEB investigators *could* have questioned patrons about their source of funds.<sup>472</sup> Perhaps most significantly, GPEB investigators have now begun conducting interviews of precisely this sort despite the absence of any relevant legislative changes.

There is also, in my view, reason to question the objective validity of the safety concerns cited as a second reason why GPEB investigators could not interview casino patrons. These are described in detail in Chapter 10. While, again, I do not doubt the sincerity of these concerns, I am skeptical of their legitimacy. There may have been isolated incidents in which genuinely dangerous individuals brought suspicious cash into casinos and it would not have been safe to approach them. The prevailing theory of the money laundering typology at issue, however, was that the patrons buying-in with this suspicious cash were not themselves responsible for the criminal activity from which it was derived, but rather that the patrons obtained their funds directly or indirectly from those who were, perhaps, in some cases, without realizing that the funds had criminal origins.<sup>473</sup> That these patrons, in the secure environment of a casino, posed such a threat to GPEB investigators that it was unsafe to even speak with them seems implausible. Further undermining the legitimacy of this concern is evidence that interviews of patrons have and continue to be conducted, seemingly without incident. BCLC began routinely interviewing patrons as part of its cash conditions program in 2015, and GPEB itself has now decided that its investigators can begin conducting patron interviews. In light of this evidence, it is difficult to accept that GPEB investigators could not have done the same in previous time periods.

I cannot say with certainty how these actions might have affected the trajectory of the money laundering crisis that emerged in the gaming industry. While, in my view, additional information was not necessary to understand the urgency of the situation facing the industry, it is possible that further information gleaned through such interviews would have persuaded GPEB's general managers, BCLC, government, or law enforcement

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470 Exhibit 586, Dr. Peter German, Compliance Under the Gaming Control Act – An Opinion Prepared for BC GPEB and BCLC (December 4, 2016); Exhibit 587, Meilleur #1, paras 66–67; Exhibit 1058, Affidavit #3 of Joseph Emile Leonard Meilleur, made on September 17, 2021, exhibits A, B; Evidence of L. Meilleur, Transcript, February 12, 2021, pp 39–40.

471 Evidence of L. Meilleur, Transcript, March 10, 2021, p 100.

472 Evidence of P. German, Transcript, April 12, 2021, p 121.

473 Exhibit 112, Schalk Letter February 2011.

to take more aggressive action to combat money laundering. These interviews could also have offered an opportunity for direct intervention by GPEB investigators with patrons engaged in cash transactions, allowing them to warn patrons about the likely sources of the cash they were using to gamble and the risks associated with those sources. GPEB investigators issuing such warnings and asking patrons questions about the source of the cash they were using to buy-in may well have served to deter this conduct. While it is not possible to determine whether these benefits would have materialized had GPEB investigators been directed to interview patrons, the possibility that they could have suggests that the failure to do so represents a missed opportunity.

### **Contribution of GPEB’s Actions Following the Delivery of Dr. German’s First Interim Recommendations**

As was the case with BCLC, it is necessary to consider separately the extent to which GPEB’s actions contributed to money laundering in the gaming industry during a third time period, beginning at or around the time of the delivery of Dr. German’s first interim recommendations in late 2017. It is at this point that GPEB’s actions finally begin to resemble a response commensurate with the nature and scale of suspicious activity in the industry at that time.

The shift that occurred at this time within the two organizations is distinct, however, in that, except for the contribution it made to motivating Mr. Eby to initiate Dr. German’s review,<sup>474</sup> GPEB’s actions did not play a significant role in finally resolving the money laundering that had afflicted the industry for so many years. This was primarily the result of the actions of BCLC, prompted largely by Dr. German’s recommendations and the urging of the minister responsible for gaming. However, the positive shift in GPEB’s approach has contributed, in my view, to safeguarding the industry from the risk of future money laundering.

As discussed in Chapter 12, since the issuance of Dr. German’s first interim recommendations, GPEB has implemented important changes, including the creation of a new enforcement division,<sup>475</sup> the establishment of new mechanisms for working collaboratively with BCLC and law enforcement,<sup>476</sup> and crucially, the reimagined role for GPEB investigators referred to above.

These measures were not implemented in time to contribute to the significant progress made in the elimination of suspicious cash in the industry through the measures implemented by BCLC in response to Dr. German’s recommendation. However, these changes, alongside a legislative change eliminating the requirement for

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474 Evidence of D. Eby, Transcript, April 26, 2021, pp 65–66.

475 Exhibit 504, Affidavit #1 of Cary Skrine, made on January 15, 2021, para 18; Evidence of S. MacLeod, Transcript, April 19, 2021, pp 40–42.

476 Exhibit 504, Affidavit #1 of Cary Skrine, made on January 15, 2021, paras 57–79; Evidence of C. Skrine, Transcript, January 27, 2021, pp 75–77; Exhibit 144, Ackles #3, paras 46–49.

ministerial approval of directives to BCLC from the general manager,<sup>477</sup> will significantly enhance GPEB's capacity to contribute to the prevention of money laundering in the future. Accordingly, I view them as important steps forward for the industry's efforts to prevent money laundering and commend GPEB for taking them.

## Conclusion

Despite the repeated and forceful warnings issued by the investigation division, GPEB's general managers failed to act on this advice and, for several years, failed to take any meaningful action to address it, largely limiting GPEB's efforts to collaborating with BCLC in the development of voluntary cash alternatives. Once the industry reached the height of the money laundering crisis in 2015, Mr. Mazure seemed to have finally understood the urgency of the situation and took more meaningful action in response. While this action led to some positive results, GPEB failed to do all that it could to address the problem including, crucially, failing to seek further intervention from the minister. In recent years, however, as BCLC was taking action to finally resolve the crisis, GPEB likewise took steps that I believe will significantly enhance its ability to respond to the risk of money laundering in the future and help protect the industry and the people of British Columbia from this form of criminality going forward.

While their failings may have followed a similar trajectory, the underlying factors that contributed to BCLC's inaction do not seem to apply to GPEB. The Branch is not subject to revenue motivations; it did not seem hostile to external viewpoints; and while it had some level of commitment to risk-based approaches,<sup>478</sup> it does not appear that it maintained an undue faith in national and international standards and expert guidance. Rather, it seems that GPEB's contribution to the development of the money laundering crisis that afflicted the province's gaming industry was the result, in part, of a lack of certainty about and confidence in its role in the industry. At various times, and despite some level of recognition of the magnitude of the crisis facing the gaming industry, GPEB seemed to maintain a fixation on working collaboratively with BCLC to resolve issues by consensus and co-operation. During Mr. Scott's tenure, for example, he urged BCLC to take action to verify the source of funds used in suspicious transactions, but when BCLC refused to do so, he seemed willing to live with that refusal until phase three of the anti-money laundering strategy was implemented.<sup>479</sup> Similarly, despite agreeing on some level with the views of Mr. Vander Graaf and Mr. Schalk, Mr. Scott directed them to stop corresponding directly with BCLC and apologized to Mr. Graydon for that correspondence,<sup>480</sup> seemingly motivated by a desire to preserve a harmonious relationship between the two organizations. Likewise, Mr. Mazure indicated that he

477 *Gaming Control Act*, s 28; Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

478 Evidence of J. Mazure, Transcript, February 5, 2021, p 233; Exhibit 541, Mazure #1, paras 175–80.

479 Evidence of D. Scott, Transcript, February 8, 2021, pp 53–56.

480 *Ibid*, pp 95–96; Exhibit 557, Scott #1, paras 68–70 and exhibit 32.

had been directed to “work together” with BCLC to resolve issues<sup>481</sup> and, in the face of resistance to his efforts to convince Mr. Lightbody to take additional action, continued with an obviously hopeless campaign of persuasion for over a year<sup>482</sup> rather than seeking the minister’s intervention to force BCLC into action.

In an ideal world, GPEB – or its successor organization – and BCLC would work in harmony on appropriate and mutually agreed-upon efforts to prevent money laundering in the gaming industry. Where this is not possible, however, ensuring harmony between the two organizations should never be prioritized over ridding the industry of illicit cash or otherwise responding decisively to money laundering or other serious criminal activity in the gaming industry. GPEB, or divisions within GPEB, repeatedly identified as necessary the kinds of measures that would likely have eliminated widespread money laundering in the gaming industry, long before Dr. German’s review. And yet, when BCLC did not agree to implement them, GPEB seemed to accept this refusal out of fear that pressing the issue or seeking to force BCLC’s hand would damage the relationship between the two organizations.

This experience suggests that it is necessary for there to be a clear hierarchy within the industry. In my view, it is essential that the regulator be positioned at the top of that hierarchy. This does not mean that GPEB should abandon efforts to work collaboratively with BCLC, but where there are intractable differences, it must be the Branch – with its statutory mandate to safeguard the integrity of gaming<sup>483</sup> – that has final say. I am hopeful that GPEB’s new authority, established through legislative amendments in 2018, to issue directions to BCLC without ministerial consent<sup>484</sup> assists in establishing this clear hierarchy and that this needed structure for the industry will be reflected in the creation of the new, independent regulator, which I understand to be underway.<sup>485</sup> In order to preserve the advancements already made in establishing a clear hierarchy in the industry, I recommend that the new Independent Gaming Control Office maintain the authority to issue directives to BCLC without the consent of the minister or any other external authority.

**Recommendation 7:** I recommend that the Province ensure that the Independent Gaming Control Office, once established, maintain the authority to issue directives to the British Columbia Lottery Corporation without the consent of the Minister Responsible for Gaming or any other external authority.

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481 Evidence of J. Mazure, Transcript, February 5, 2021, pp 25–28.

482 Exhibit 505, Lightbody #1, exhibits 48, 54, 55, 57.

483 *Gaming Control Act*, s 23.

484 *Gaming Control Act*, s 28(3); Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

485 Evidence of S. MacLeod, Transcript, April 19, 2021, pp 68–73; Exhibit 875, Ministry of Attorney General & GPEB Briefing Note re Options for New Regulator Structure in Response to Dr. German’s Recommendations (December 5, 2018).

## Actions and Omissions of Elected Officials

As discussed in Chapter 9, Mr. Coleman was the minister responsible for gaming when the *Gaming Control Act* was enacted in 2002 and British Columbia's gaming industry began to assume its modern form. In remarks made in the Legislature at that time, and reiterated in his evidence before the Commission, Mr. Coleman explained that one of the objectives motivating the reform of the industry at that time was to remove the influence of members of the provincial cabinet from British Columbia's gaming industry.<sup>486</sup> While I have no reason to doubt Mr. Coleman's sincerity in this regard, it is clear from the evidence before me that the *Gaming Control Act* failed to achieve this objective.

To the contrary, elected officials – in particular the minister responsible for gaming – have held significant authority over the industry since 2002. While individual responsible ministers have not always actively exercised this authority, until 2018, the structure of the Act placed them in a critical position in which they were effectively the *only* external authority to which either BCLC or GPEB were answerable. Rather than take influence over the industry out of the hands of elected officials, the Act gave the responsible minister the authority to issue directives to both organizations<sup>487</sup> at the same time that, at least until 2018,<sup>488</sup> it denied either the authority to direct the other. In doing so, it not only granted the responsible minister the authority to direct both organizations but also placed the minister in the position of being the only authority that could resolve intractable conflicts between the two organizations.

Given this legislative structure, it is clear to me that even though the minister responsible for gaming – and by extension, government – does not have day-to-day involvement in the operation, conduct, management, or regulation of gaming in British Columbia, the minister continues to occupy a critical role in the gaming industry. As such, it is necessary to examine whether and to what extent the actions of elected officials within the provincial government contributed to the growth and perpetuation of money laundering in the industry.

It is essential, in my view, that “government” not be treated as a singular entity and that the actions of individual elected officials be considered on their own merits. This is so for two reasons. First, it does not seem as though the topics of money laundering, illicit funds, and suspicious transactions in the gaming industry were matters of significant discussion within cabinet or government caucus during the time period that I have found money laundering was occurring in the gaming industry. Accordingly, it would not be fair to paint the entirety of any cabinet or all members of the Legislative Assembly (MLAs) with a single brush in this regard. It seems likely that individual cabinet ministers and MLAs whose work did not lead them to have direct involvement with the gaming industry may well have had little reason to be aware of suspicious activity in casinos or the actions of government in response to these issues. As such, the focus ought to remain on the actions of those individuals that did have direct involvement with the gaming industry.

486 Exhibit 70, OR: Hansard, pp 3–6; Evidence of R. Coleman, Transcript, April 28, 2021, pp 24–27.

487 *Gaming Control Act*, ss 6, 26.

488 Ibid, s 28(3); Exhibit 541, Mazure #1, para 224; Evidence of S. MacLeod, Transcript, April 19, 2021, p 20.

Second, it is clear that even those individuals in relevant cabinet positions operated in significantly different contexts from one another. The circumstances within the industry and the information available to different individuals in cabinet varied over time. It is essential that the actions of those with relevant responsibilities be considered based on the circumstances that they faced and the information to which they had access, and not with the benefit of hindsight available to their successors or to this Commission. For these reasons, the analysis that follows will focus separately on the actions and omissions of four former ministers responsible for gaming – Mr. Coleman, Ms. Bond, Mr. de Jong, and Mr. Eby – and one former premier, Ms. Clark.

Despite the conclusion that it is necessary to consider the actions of individual elected officials independently, there is one matter that, in my view, is best addressed collectively and at the outset of this discussion. The Commission's Terms of Reference require that I consider whether actions that contributed to money laundering in this province amounted to corruption.<sup>489</sup> The Commission inquired thoroughly into the activities of government officials with authority and responsibility over the gaming industry during the relevant time. During the Commission's hearings, I did not hear any evidence that is capable of supporting a conclusion that any of the individuals discussed below – or any other government official – engaged in any form of corruption related to the gaming industry or, indeed, the Commission's mandate more generally. This finding should be understood to mean that, in my view, none of these individuals knowingly encouraged, facilitated, or permitted money laundering to occur in order to obtain personal benefit or advantage, be it financial, political, or otherwise.

I pause to emphasize this finding. Given my mandate, I looked for corruption in government, and specifically in relation to gaming. It is not possible to definitively conclude that any government is completely free of corruption. What I can say is that, after a thorough inquiry, *I found no evidence of corruption*. I think that residents of British Columbia should take comfort from the fact that, whatever political theories or accusations may be advanced, my examination of the evidence did not reveal corruption of any sort. To the extent there were failures or missed opportunities to prevent or respond to money laundering, my conclusion is that they were not motivated by any corrupt purpose.

This does not mean, of course, that there were no failings or shortcomings in the actions taken or decisions made by these elected officials. As I will discuss below, there were actions available to several that were not taken that could have furthered efforts to combat money laundering in the gaming industry.

## **Mr. Coleman**

Mr. Coleman served as an MLA for nearly 25 years, from 1996 until 2020.<sup>490</sup> During his time in elected office, Mr. Coleman held a number of cabinet posts, including minister

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489 Commission of Inquiry into Money Laundering in British Columbia Terms of Reference, para 4(1)(b).

490 Evidence of R. Coleman, Transcript, April 28, 2021, pp 2, 4.

of housing and social development,<sup>491</sup> minister of forests and range,<sup>492</sup> minister of energy and mines,<sup>493</sup> deputy premier,<sup>494</sup> and on multiple occasions, minister of public safety and solicitor general.<sup>495</sup> Alongside these portfolios, Mr. Coleman also served on three separate occasions as the minister responsible for gaming, the first from 2001–2005,<sup>496</sup> the second from 2008–2011<sup>497</sup> (during the first part of which he was responsible only for the “policy” aspects of the portfolio, as distinct from the “enforcement” aspects<sup>498</sup>), and the third from 2012–2013.<sup>499</sup> Given the manner in which the gaming industry changed over the course of these time periods, it is necessary, in my view, to consider Mr. Coleman’s tenure as minister responsible for gaming in two distinct blocks of time. The first of these includes his initial term from 2001–2005 and the second encompasses his second and third tenures from 2008–2013, recognizing that Mr. Coleman was not responsible for the industry for approximately one year during this second time span and that the scope of his authority during this period was initially limited to the policy aspects of the portfolio.

### 2001–2005

As discussed in Chapter 9, the first period in which Mr. Coleman served as minister responsible for gaming was a significant one for the industry. Following the 2001 election, the new government recognized that there was a need to modernize gaming in the province.<sup>500</sup> In response, the government, under Mr. Coleman’s leadership, developed and enacted the *Gaming Control Act*. Based on the evidence before me as to the operation of the industry before this time, I agree with the assessment of the government of the day that the province’s regulatory structure for gaming required an overhaul, and I accept that the new legislation streamlined and modernized the industry.

As discussed earlier in this chapter, however, the regulatory structure put in place in 2002 did, in my view, contribute to the growth and development of money laundering in the industry beginning later that decade. In particular, the Act failed to provide for any meaningful regulatory oversight of BCLC and, contrary to Mr. Coleman’s intentions,<sup>501</sup> established a central role for the responsible minister by ensuring that it was only the minister who could issue directions to either BCLC or GPEB.

While in hindsight this suggests that the regulatory structure of the industry embodied in the legislation spearheaded by Mr. Coleman contributed to the eventual growth of money laundering in the industry, it is not, in my view, reasonable to suggest that

491 Ibid, pp 5, 56, 95.

492 Ibid, pp 5, 55–56.

493 Ibid, pp 5–6, 126–27.

494 Ibid, p 6.

495 Ibid, pp 3–6, 8, 12.

496 Ibid pp 11–12, 21.

497 Ibid, pp 11–12, 95.

498 Ibid, pp 12–13.

499 Ibid, pp 11–12, 124.

500 Exhibit 70, OR: Hansard, pp 3–6; Evidence of R. Coleman, Transcript, April 28, 2021, pp 23–26.

501 Exhibit 70, OR: Hansard, pp 3–6; Evidence of R. Coleman, Transcript, April 28, 2021, pp 24–26.

Mr. Coleman is, on this basis, somehow responsible for the crisis that eventually emerged in the industry. This is so for several reasons. First, it is clear from Mr. Coleman's description of the process of developing the new *Gaming Control Act* that he was not directly responsible for developing the details of this regulatory structure, and that this task was appropriately assigned to professional public servants.<sup>502</sup> Second, there is no evidence that the shortcomings in this legislation were recognized at the time the legislation was enacted or that would support a conclusion that the problems that arose in time were predictable. There was no reason, for example, at the time the legislation was enacted, to suspect that BCLC would eventually require a level of regulatory oversight not provided for in the Act, and there is no basis, in my view, to suggest that Mr. Coleman should have anticipated that this would eventually come to pass. Finally, and most significantly, regardless of who was responsible for conceiving of, drafting, or tabling the legislation, it was ultimately passed by the Legislative Assembly as a whole, the intentions of which cannot fairly be attributed to a single member.

It is important to note here as well that Mr. Coleman's initial tenure as minister responsible for gaming concluded several years prior to the beginning of the period of time in which I have found that money laundering took place in the province's casinos. Mr. Coleman gave evidence that, while he was advised of issues at casinos related to thefts and loan sharking,<sup>503</sup> neither money laundering nor the acceptance of the proceeds of crime were ever raised to him as matters of concern during this period.<sup>504</sup> This is unsurprising, as the rapid growth of suspicious transactions did not commence until several years later.

Accordingly, I have little difficulty concluding that Mr. Coleman's actions during this period did not significantly contribute to the growth and perpetuation of money laundering in the province's casinos. Mr. Coleman did not act to curb large or suspicious transactions during this period because they simply were not an issue for the industry at the time. While certain features of the *Gaming Control Act* enacted under his leadership would play a role in the development of this crisis years later, there is no evidence that there was any basis at the time to foresee that this would be the case, let alone that any such concerns were brought to the attention of Mr. Coleman.

## **2008–2013**

Mr. Coleman resumed responsibility for gaming in 2008 at another critical time for the industry. Whereas his previous tenure in this role had ended years before initial concerns about suspicious transactions arose, his return coincided with the earliest concerns from the GPEB investigation division about the beginnings of what would become a money laundering crisis in the years ahead.<sup>505</sup> By the time Mr. Coleman was relieved of responsibility for the industry for the final time in 2013, the rate at

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502 Evidence of R. Coleman, Transcript, April 28, 2021, pp 27–29.

503 Ibid, p 31.

504 Ibid, pp 31, 44–45.

505 Exhibit 181, Vander Graaf #1, para 35–38 and exhibit G; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 48, 51–52, 165–66; Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 39.

which suspicious cash was being accepted in the province's casinos had accelerated to significant levels. According to a GPEB investigation division report of findings from October 2014, the Branch received 1,059 section 86 reports of suspicious cash transactions in 2012–13, with a total value of \$82,369,077.<sup>506</sup>

Given the authority of the responsible minister to direct both BCLC and GPEB, Mr. Coleman's return to the gaming portfolio in 2008 positioned him to respond to this burgeoning crisis from its earliest stages. Mr. Coleman had the authority to issue directions imposing limits on cash transactions, requiring proof of the source of funds used in suspicious transactions or to undertake any number of other measures that would have stemmed the flow of illicit cash into the province's casinos just as the rate of suspicious transactions was beginning to rise.

Mr. Coleman's legal authority to take this action, however, is not the equivalent of a genuine opportunity to do so. Based on the evidence before me, it is not at all clear that Mr. Coleman had the information required to recognize that there was a need for action until the very end of his second tenure as minister responsible for gaming in 2010. Prior to this time, there is simply no evidence that information about growing suspicious transactions or the emerging concerns of the GPEB investigation division were making their way to Mr. Coleman. While the concerns of the investigation division ultimately proved well founded, the rates of suspicious cash transactions at this time remained a fraction of what they would become by 2012–13. According to an October 2013 investigation division report of findings, the Branch received only 103 section 86 reports related to suspicious cash transactions in 2008–09 and only 117 such reports in 2009–10,<sup>507</sup> barely 10 percent of what they would become in the year that Mr. Coleman left the portfolio for the final time in 2013.

Despite the comparatively low volume of suspicious transactions, it is clear that, by December 2010, Mr. Coleman had some notice of the crisis developing in the industry for which he was responsible. As detailed in Chapter 10, Mr. Coleman met with Mr. Vander Graaf directly that month.<sup>508</sup> While there is some uncertainty as to the details of that conversation,<sup>509</sup> I accept that Mr. Vander Graaf raised with Mr. Coleman his concerns about suspicious transactions in the province's casinos. Given the evidence before the Commission of Mr. Vander Graaf's focus on this issue, it is difficult to imagine that he could have met with a sitting minister, or anyone else in a position of authority in the gaming industry, without doing so.

In addition to his conversation with Mr. Vander Graaf, Mr. Coleman was interviewed in January 2011 about media coverage of suspicious transactions in the province's

<sup>506</sup> Exhibit 181, Vander Graaf #1, exhibit Q.

<sup>507</sup> Ibid, exhibit O.

<sup>508</sup> Ibid, paras 132–35; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 104–7, Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–15; Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8.

<sup>509</sup> Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 104–7, Evidence of R. Coleman, Transcript, April 28, 2021, pp 110–15; Evidence of L. Wanamaker, Transcript, April 22, 2021, pp 6–8 and 28; Exhibit 181, Vander Graaf #1, paras 132–35.

casinos,<sup>510</sup> establishing that he was aware of this coverage. Of particular note, Mr. Coleman was asked in a CBC interview about the following comments made by Barry Baxter, then an Inspector with the RCMP IPOC unit:<sup>511</sup>

“Police became aware of the activities after the fact,” said Inspector Baxter with the RCMP’s Integrated Proceeds of Crime section. “We were suspicious that it’s dirty money,” Baxter told CBC. “The common person would say this stinks. There’s no doubt about it.” The casino industry in general was targeted during this time period for what may well be some very sophisticated money laundering activities by organized crime.

Accordingly, it is clear that by the end of his second stint as minister responsible for gaming, Mr. Coleman had received – or was at least aware of – the concerns of both the executive director of the GPEB investigation division and a senior officer with the RCMP IPOC unit that British Columbia casinos were accepting proceeds of crime.

At the same time, however, Mr. Coleman was also receiving information and advice from BCLC. Based on Mr. Coleman’s evidence, the message he was receiving from this source was that BCLC had industry-leading anti–money laundering strategies in place and that the players responsible for the large cash buy-ins of concern to Mr. Vander Graaf and Mr. Baxter had been “checked out.”<sup>512</sup>

Accordingly, just as Mr. Coleman was receiving warnings of serious criminal activity in an industry for which he was responsible, the Crown corporation charged with the “conduct and management” of that industry was delivering the message that there was nothing to be concerned about. Mr. Coleman responded by seeking out independent expert advice to assist him in understanding what was occurring in the industry and how to move forward. He did this by engaging Mr. Kroeker to conduct a review of anti–money laundering measures in the gaming industry.<sup>513</sup>

I can appreciate that there may be a temptation to suggest that Mr. Coleman should have simply acted on the information provided by Mr. Vander Graaf and Mr. Baxter, and that the time spent waiting for Mr. Kroeker to complete his review was additional time that illicit funds were flowing into the province’s casinos. While I understand this perspective, in my view, Mr. Coleman’s decision to seek out independent advice was prudent and appropriate. Given the comparatively low volume of suspicious transactions at the time, the conflicting advice that he was receiving, and the absence of evidence that Mr. Coleman had received any comprehensive or actionable policy recommendations alongside the warnings from Mr. Vander Graaf or Mr. Baxter, it was

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510 Exhibit 1024, CBC Interview with Rich Coleman (January 10, 2011); Evidence of R. Coleman, Transcript, April 28, 2021, pp 136–37; Evidence of R. Coleman, Transcript, May 14, 2021, pp 11–16.

511 Evidence of R. Coleman, Transcript, April 28, 2021, pp 132–33; Exhibit 1024, CBC Interview with Rich Coleman (January 10, 2011), p 7.

512 Evidence of R. Coleman, Transcript, April 28, 2021, pp 60–70, 137, 152–55; Exhibit 934, BCLC Minutes from the Board Meeting (July 23, 2010); Exhibit 935, BCLC Board Meeting July 23, 2010, Presentation regarding AML and FINTRAC.

513 Evidence of R. Coleman, Transcript, April 28, 2021, pp 114–15.

wise, in my view, for Mr. Coleman to take the time to try to understand the issue he was facing and identify the proper response before acting.

It is necessary to comment briefly here on the distinction between Mr. Coleman's private response to these warnings, described above, and his public response to Mr. Baxter's comments. Whereas Mr. Coleman's private reaction to the concerns expressed by Mr. Vander Graaf and by Mr. Baxter was measured and appropriate, the same cannot be said of his public reaction. Mr. Coleman's decision to engage Mr. Kroeker suggests that he was, at least, open to these concerns and genuinely interested in determining whether there was a real problem developing in the gaming industry. As discussed in Chapter 10, however, comments made by Mr. Coleman in the media at this time seem focused instead on quashing any public discussion of these issues and maintaining public confidence in the gaming industry, whether or not it was deserving of such confidence.

Responsibility for the gaming industry was transferred from Mr. Coleman to Ms. Bond around the time that Mr. Kroeker's review was completed.<sup>514</sup> Accordingly, Mr. Coleman had no role in determining whether and how Mr. Kroeker's recommendations would initially be implemented. By the time Mr. Coleman returned to the gaming portfolio in 2012, Ms. Bond, acting on the advice of the public service, had already decided that nine of Mr. Kroeker's 10 recommendations should be implemented immediately, while the final recommendation, which called for the creation of a "cross-agency task force to investigate and gather intelligence on suspicious activities and transactions at BC gaming facilities" would be delayed until the impact of the first nine recommendations were known.<sup>515</sup>

When Mr. Coleman returned to the gaming portfolio, he again received assurances that the anti-money laundering regime in place in British Columbia's gaming industry was highly effective and "among the most stringent of any jurisdiction in Canada."<sup>516</sup> This advice would have been bolstered by Mr. Kroeker's review, which concluded that BCLC had a robust anti-money laundering regime in place and that GPEB was capable of providing effective oversight of anti-money laundering and related criminal activity.<sup>517</sup> While Mr. Kroeker's report made recommendations for improving the industry's response to the risk of money laundering, it hardly raised the alarm about the illicit funds becoming increasingly prevalent in the province's casinos. Despite this advice, Mr. Coleman's evidence was that he did press the civil service to move forward with Mr. Kroeker's recommendation to establish a cross-agency task force.<sup>518</sup>

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514 Evidence of R. Coleman, Transcript, April 28, 2021, pp 114–15; Evidence of S. Bond, Transcript, April 22, 2021, pp 53–54.

515 Evidence of S. Bond, Transcript, April 22, 2021, pp 65–66.

516 Exhibit 927, Advice to Minister February 2012; Exhibit 928, Advice to Minister Issues Note; Exhibit 929, Advice to Minister, Issues Note, re Gaming Review AML Measures at BC Facilities (February 23, 2012); Exhibit 930, Advice to Minister, Issues Note, re BCLC's Anti-Money Laundering Measures (February 23, 2012); Evidence of R. Coleman, Transcript, April 28, 2021, pp 57–70, 72–84.

517 Evidence of R. Coleman, Transcript, April 28, 2021, pp 72–73; Exhibit 928, Advice to Minister Issues Note; Exhibit 141, Summary Review 2011, p 15.

518 Evidence of R. Coleman, Transcript, April 28, 2021, pp 124–25.

Given the warnings that Mr. Coleman had received at the end of his previous tenure as minister responsible for gaming, however, it was not enough for him to simply rely on the assurances of BCLC and GPEB and the conclusions set out in Mr. Kroeker's report. Mr. Coleman had been warned by Mr. Vander Graaf and Mr. Baxter of serious criminality in the industry for which he was responsible. Further, Mr. Kroeker's recommendation that "BCLC should better align its corporate view and staff training on what constitutes money laundering with that of enforcement agencies and the provisions of the relevant statutes"<sup>519</sup> ought to have given Mr. Coleman reason to take a cautious approach with advice from BCLC. While Mr. Kroeker's overall conclusions suggested that there was no great cause for concern regarding money laundering in the gaming industry at this time, given the information available to him suggesting otherwise, it was incumbent upon Mr. Coleman to continue to carefully monitor suspicious activity in the industry.

To Mr. Coleman's credit, it appears from his evidence that, to some extent, he did so. Mr. Coleman recalled that, in 2012, he had been informed that large cash transactions had increased and testified that he expected he would have been aware of the numbers of large cash transactions at the time.<sup>520</sup> If this is true, then Mr. Coleman would have had some awareness that such transactions had increased significantly since he was last responsible for the industry. Whereas only 117 section 86 reports related to suspicious cash transactions were reported to GPEB in 2009–10, the number of such reports increased rapidly to 459 in 2010–11, 861 in 2011–12, and 1,062 in 2012–13.<sup>521</sup> Mr. Coleman could not recall precisely what information he was given about these numbers at this time,<sup>522</sup> so it is not possible to say with certainty whether he was aware of these precise figures. However, in my view, given the warnings he had received from Mr. Vander Graaf and Mr. Baxter, he ought to have been. In response, he should have recognized that there was a need to take aggressive action to bring an immediate end to the suspicious activity that, by the end of his tenure, was clearly spiralling out of control. Mr. Coleman did not take such action. In this regard, in my view, a critical opportunity for decisive action was missed.

## **Ms. Bond**

Shirley Bond has served as a member of British Columbia's Legislative Assembly for approximately 20 years and has held a variety of cabinet posts.<sup>523</sup> Unlike Mr. Coleman, Ms. Bond served as minister responsible for gaming for only a single brief period from March 2011 to February 2012.<sup>524</sup> During the 11 months that she held this position, Ms. Bond also served as the minister of public safety and solicitor general.<sup>525</sup> The

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519 Exhibit 141, Summary Review 2011, p 3.

520 Evidence of R. Coleman, Transcript, April 28, 2021, p 190.

521 Exhibit 181, Vander Graaf #1, exhibit O.

522 Evidence of R. Coleman, Transcript, April 28, 2021, p 190.

523 Evidence of S. Bond, Transcript, April 22, 2021, pp 53–54.

524 Ibid, pp 53–54.

525 Ibid, p 53.

gaming portfolio was reassigned to Mr. Coleman in February 2012, when Ms. Bond was appointed minister of justice and attorney general, effectively unifying the portfolio of the solicitor general, which Ms. Bond already held, with that of the attorney general.<sup>526</sup>

While her tenure was brief, Ms. Bond served as Minister responsible for gaming at a critical time in the evolution of money laundering in the gaming industry. As indicated in the discussion of Mr. Coleman's tenure, suspicious transactions in the industry began to accelerate during this time period. A report of findings prepared by the GPEB investigation division in October 2013 reveals that, from 2010–11 to 2011–12, the number of section 86 reports related to suspicious cash transactions received by the Branch nearly doubled from 459 to 861.<sup>527</sup> The same report suggests that a similar increase was observed in the value of suspicious cash accepted in these transactions, indicating that while \$39,572,313 in suspicious cash was accepted in the one-year period between July 1, 2010, and June 30, 2011, ending a few months into Ms. Bond's tenure, \$87,435,297 was accepted between January 1 and December 31, 2012, which began just before Ms. Bond's tenure ended.<sup>528</sup> As Ms. Bond was in the role of minister responsible for gaming for only 11 months, none of these time periods precisely correspond to the dates of her tenure, and I do not suggest that her actions were responsible for this acceleration in suspicious transactions. However, these figures are indicative of the rate at which suspicious transactions in the industry were growing in and around the time that Ms. Bond was responsible for the portfolio.

These data also make clear that Ms. Bond's tenure was a pivotal opportunity for ministerial intervention. That the rate at which suspicious transactions and the volume of suspicious cash being accepted by casinos were both accelerating make it abundantly clear that there was a real need to look closely at what was taking place in the gaming industry at that time and to take more aggressive steps to curb suspicious activity. Further, knowing what we now know about how suspicious transactions continued to accelerate in the years that followed, there can be little doubt that had Ms. Bond, during her tenure, issued an appropriate ministerial directive to BCLC requiring meaningful limits on cash transactions or proof of the source of funds used in those transactions, she could have excluded vast quantities of illicit cash from the province's casinos in the years that followed. That Ms. Bond, like her predecessor and successor Mr. Coleman, did not issue such a directive represents an important missed opportunity to stop money laundering in the gaming industry just as it was reaching crisis levels.

As was the case with Mr. Coleman, however, it is essential that Ms. Bond's actions be considered in the context of the information available to her during the time of her tenure as minister responsible for gaming. When viewed in this light, it is not at all clear that Ms. Bond had a genuine opportunity to exercise her authority as suggested above, nor, in my view, is there a basis for faulting Ms. Bond for failing to do so.

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<sup>526</sup> Ibid, p 78; Evidence of C. Clark, Transcript, April 20, 2021, pp 14–16.

<sup>527</sup> Exhibit 181, Vander Graaf #1, exhibit O.

<sup>528</sup> Ibid.

Ms. Bond had no prior experience with the gaming industry before being assigned responsibility for this portfolio.<sup>529</sup> She testified that she received no briefings or directions from the previous minister or the premier as to issues of priority facing the gaming industry at this time.<sup>530</sup> Ms. Bond had no recollection of being briefed on the subject of large and suspicious cash transactions or money laundering in the province's casinos by BCLC<sup>531</sup> or GPEB.<sup>532</sup> She denied that she was ever advised that high-limit players were buying-in at the province's casinos for hundreds of thousands of dollars in cash, predominantly in \$20 bills,<sup>533</sup> that Lower Mainland casinos were accepting millions of dollars in cash that they were reporting as suspicious,<sup>534</sup> or that some GPEB staff were concerned that these transactions might consist of the proceeds of crime provided to patrons by criminal organizations as part of a money laundering scheme.<sup>535</sup>

While it is undoubtedly alarming that these matters were not brought to the attention of the minister responsible, it is unsurprising given the evidence before me regarding the attitudes of BCLC and the leadership of GPEB during this time period. Ms. Bond was appointed minister responsible for gaming at a time when the GPEB investigation division was struggling to persuade the Branch's general managers and BCLC of the urgency of the crisis facing the industry. BCLC, at this time, was actively denying that suspicious cash transactions presented a money laundering threat, because patrons were putting their funds at risk and often losing.<sup>536</sup> GPEB went through a leadership transition from Mr. Sturko to Mr. Scott during Ms. Bond's tenure. There is insufficient evidence to establish that Mr. Sturko made any significant efforts to raise this issue with government,<sup>537</sup> and Mr. Scott gave evidence that, at this time, he was engaged in developing GPEB's anti-money laundering strategy and that the message he was communicating to government was that the matter was "under control."<sup>538</sup> As such, Ms. Bond's evidence that she did not receive advice or warnings impressing upon her the nature and extent of the crisis emerging in the gaming industry that required her urgent attention is consistent with the evidence before me of the perspectives of GPEB and BCLC.

It is not the case, however, that Ms. Bond received no information about money laundering in the industry. While there is no evidence that Ms. Bond had the opportunity to meet with Mr. Vander Graaf as Mr. Coleman did, she testified that she was aware of media reporting on this subject<sup>539</sup> and had distinct recollections of Mr. Kroeker's report,

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529 Evidence of S. Bond, Transcript, April 22, 2021, p 55.

530 Ibid, p 55.

531 Ibid, pp 60, 79–80.

532 Ibid, pp 63, 79–80.

533 Ibid, p 80.

534 Ibid, p 80.

535 Ibid, p 81.

536 Exhibit 111, Karlovcec Letter December 2010.

537 Evidence of D. Sturko, Transcript, January 28, 2021, pp 122–27, 137–38, 158–60, 164–65.

538 Ibid, p 73.

539 Evidence of S. Bond, Transcript, April 22, 2021, pp 71–72.

which was completed around the time that she assumed responsibility for the gaming industry.<sup>540</sup> Her evidence was that implementation of Mr. Kroeker's report became the priority for her work within the gaming industry<sup>541</sup> and that, in accordance with the recommendations of the public service,<sup>542</sup> she accepted all 10 of the recommendations in Mr. Kroeker's report and directed that the first nine recommendations be implemented immediately, while the tenth would be delayed until such time that the impact of the first nine could be evaluated.<sup>543</sup> In Ms. Bond's words:<sup>544</sup>

I think that from the beginning there was agreement that ... we agreed to all of the recommendations. The question was about the timing and implementation. The advice that I received was that the first nine recommendations could be implemented in the short term and would make a material difference to enhancing anti-money laundering measures in British Columbia. So those moved forward immediately. We agreed with the tenth recommendation and it would be a matter of looking at the impact of the first nine before moving on to the tenth.

As discussed previously, the tenth recommendation involved the creation of “a cross-agency task force to investigate and gather intelligence on suspicious activities and transactions at B.C. gaming facilities.”<sup>545</sup> A “confidential issues note” addressed to Ms. Bond at this time reveals that the advice Ms. Bond received with respect to this recommendation was as follows:<sup>546</sup>

The Province believes action on other recommendations will significantly improve B.C.'s anti-money-laundering regime. Given that creating a cross-agency task force can be complex and costly, the Province will consider this recommendation only after GPEB has evaluated the effectiveness of responses to other recommendations.

It would be five years before any law enforcement unit that could be said to satisfy this recommendation was created. I am skeptical that JIGIT, which was established in 2016, was in any way motivated by this recommendation, but I do accept that, in effect, it did satisfy it. As discussed above, the creation of such a body was long overdue and filled a critical gap in the anti-money laundering apparatus surrounding the gaming industry.

Had Mr. Kroeker's recommendation been acted upon immediately, the existence of such a task force could have made a significant impact on money laundering in the gaming industry. While speculative, it is conceivable that such a task force could have taken up the operational plan developed by the RCMP IPOC unit in 2012, discussed earlier

540 Ibid, pp 56–57, 61, 63–64.

541 Ibid, pp 63–64.

542 Ibid, p 64.

543 Ibid, pp 65–66.

544 Ibid, pp 65–66.

545 Exhibit 141, Summary Review 2011, p 15.

546 Evidence of S. Bond, Transcript, April 22, 2021, pp 76–77; Exhibit 888, Advice to Minister, Confidential Issues Note, Anti-Money Laundering Review (August 24, 2011).

and in Chapter 39, when the IPOC unit was disbanded. Regardless, it seems clear that the existence of a force like the one proposed would have ensured much needed law enforcement engagement with the gaming industry, potentially disrupting the supply of suspicious cash and spurring enhancements to the anti-money laundering efforts of BCLC, GPEB, and other stakeholders, as the E-Pirate investigation would years later.

As such, in my view, had Ms. Bond directed the immediate implementation of this recommendation, it may well have advanced efforts to respond to money laundering in the gaming industry. In this sense, this too can be viewed as a missed opportunity during Ms. Bond's tenure as the responsible minister.

Again, however, it is difficult, in my view, to fault Ms. Bond for failing to take this action when viewed in the context of the information available to her. As noted above, Ms. Bond was not given an accurate picture of the urgency of the emerging money laundering crisis facing the industry during her tenure. Mr. Kroeker's report itself furthered the impression that there was no urgent need to take action with respect to money laundering in the industry. While making recommendations for improvement, it concluded that:<sup>547</sup>

BCLC, in terms of policies and procedures, has a robust anti-money laundering regime in place. Further, it was determined that GPEB has the required level of anti-money laundering expertise and is capable of discharging its responsibility to provide oversight as it relates to anti-money laundering and associated criminal activities at gaming facilities.

In my view, Ms. Bond's actions cannot be said to have significantly contributed to the growth and perpetuation of money laundering in this province's casinos. There were, undoubtedly, actions that Ms. Bond could have taken to address the burgeoning money laundering crisis in the industry during her tenure as minister responsible for gaming. These include issuing a directive to BCLC requiring meaningful limits on cash transactions, or that patrons present proof of the source of funds used in large or suspicious transactions prior to their acceptance or directing the immediate implementation of Mr. Kroeker's recommendation to create a cross-agency task force.

However, given the information available to Ms. Bond at this time, it is simply not reasonable to expect that she could have recognized the urgent need to take these actions. There is no evidence before me sufficient to establish that Ms. Bond was briefed on the rapid rise in suspicious transactions that occurred during her tenure, or of the details of those transactions. Further, Mr. Kroeker's report would have impressed upon her that there was no need for urgent measures as the anti-money laundering regime implemented by BCLC and GPEB was robust and adequate to address money laundering and associated criminal activities.

With respect to Mr. Kroeker's recommendation that a "cross-agency task force" be established, I can understand how the advice Ms. Bond received to implement

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<sup>547</sup> Exhibit 141, Summary Review 2011, p 15.

90 percent of the report's recommendations immediately, while evaluating the costliest and most complex recommendation once the impact of the first nine were known,<sup>548</sup> would have seemed entirely prudent. For a newly appointed responsible minister, with no background in the industry, it was not only reasonable but entirely prudent for Ms. Bond to have followed the advice she received from the civil service in this regard, and, in my view, she cannot be faulted for having done so.

## Mr. de Jong

Mr. de Jong was first elected to the Legislative Assembly in 1994.<sup>549</sup> Between 2001 and 2017, Mr. de Jong served in government, holding cabinet posts including minister of forests, minister of labour and citizen services, minister of aboriginal relations and reconciliation, attorney general, minister of health, and minister of finance.<sup>550</sup> Following the 2013 provincial election, while serving as minister of finance, Mr. de Jong was appointed the minister responsible for gaming, a position he held until the subsequent provincial election in 2017.<sup>551</sup>

While suspicious transactions had already accelerated to extreme levels by the time of his appointment, it was under Mr. de Jong's watch that the flood of suspicious cash entering the province's casinos reached its peak in 2014 and 2015. It was also during Mr. de Jong's tenure, however, that the industry finally began to see a reversal of this trend and, by the end of Mr. de Jong's term as the responsible minister, a significant decline in both the volume and value of suspicious transactions in the province's casinos had occurred.

In order to consider the significance of Mr. de Jong's conduct and the extent to which it contributed to money laundering in the province's gaming industry, it is necessary to divide his tenure into two time periods. The first of these spans the time from Mr. de Jong's appointment as responsible minister in 2013 to September 2015. During this period, despite the unprecedented volume of suspicious cash being accepted in the province's casinos, Mr. de Jong took no meaningful action in response. In my view, however, it does not appear that Mr. de Jong received information that would have led him to identify a need for action. In contrast, at the outset of the second period, beginning in September 2015 and continuing to the end of Mr. de Jong's tenure in 2017, Mr. de Jong finally received accurate information about the state of the crisis facing the gaming industry and took meaningful action in response. While significant, in my view, the actions taken by Mr. de Jong at that time – and in the years that followed – were not commensurate with the gravity of the crisis facing the industry. The inadequacy of these actions permitted money laundering to persist at unacceptable levels in the gaming industry for more than two additional years.

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548 Evidence of S. Bond, Transcript, April 22, 2021, p 76–77; Exhibit 888, Advice to Minister, Confidential Issues Note, Anti-Money Laundering Review, August 24, 2011.

549 Evidence of M. de Jong, Transcript, April 23, 2021, p 2.

550 Ibid, pp 2–3.

551 Ibid, pp 3–4.

## 2013–2015

During the first half of Mr. de Jong’s tenure as minister responsible for gaming, the rate at which suspicious cash was accepted in the province’s casinos accelerated beyond even that observed during the tenures of Mr. Coleman and Ms. Bond. In 2014, his first full year in the role and the final year before the formalization of BCLC’s cash conditions program, BCLC reported 1,631 suspicious transactions to FINTRAC with a total value of \$195,282,302<sup>552</sup> – an average of nearly 4.5 transactions and more than \$500,000 per day. Because these figures include eGaming and external request reports, it is not the case that each of these transactions occurred within a land-based casino.<sup>553</sup> Nevertheless, they all took place within the industry for which Mr. de Jong was responsible and offer insight into the volume of suspicious funds being accepted by the gaming industry at the outset of his tenure.

It is difficult to envision a stronger case for ministerial intervention than that presented by these figures alongside the descriptions of suspicious transactions discussed earlier in this Report. The absence of any such intervention by Mr. de Jong during the first half of his tenure can only be viewed as a missed opportunity to stem the flow of illicit funds into the gaming industry at a time when such intervention was essential.

As in the case of his predecessors, however, Mr. de Jong’s inaction during this period must be viewed in the context of the information that was provided to him. Despite the obvious urgency of the circumstances facing the gaming industry at this time, there is no evidence that anyone brought to Mr. de Jong’s attention the rate at which suspicious transactions were being accepted in the province’s casinos at the time. Rather, the evidence before me suggests that the message conveyed to Mr. de Jong at this time was that the province’s gaming industry had a robust anti-money laundering program,<sup>554</sup> that there was a strategy in place to enhance that program,<sup>555</sup> and that anti-money laundering was a priority for both BCLC and GPEB.<sup>556</sup> As an example, an “Estimates Note” dated June 14, 2013 – very early in Mr. de Jong’s tenure – signed by both Mr. Graydon and Mr. Scott indicated that “[t]he anti-money laundering policies and procedures in place at all BC casinos are among the most stringent of any jurisdiction in Canada.”<sup>557</sup> Similar messages continued to be conveyed to Mr. de Jong as late as April 2015<sup>558</sup> – mere months

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552 Exhibit 784, Cuglietta #2, exhibit A.

553 Exhibit 482, Cuglietta #1, exhibit A.

554 Exhibit 931, June 14 2013 Briefing Document; Exhibit 889, Advice to Minister, Draft GCPE-FIN Issue Notes, re GPEB Release of Section 86 reports (September 30, 2014); Exhibit 896, Advice to Minister Estimate Note (April 22, 2015) [Advice to Minister Estimate Note April 2015]; Evidence of M. De Jong, Transcript, April 23, 2021, pp 124–27.

555 Exhibit 931, June 14 2013 Briefing Document; Exhibit 896, Advice to Minister Estimate Note April 2015; Evidence, M. de Jong, Transcript, April 23, 2021, pp 14, 22–23, 48; Exhibit 889, Advice to Minister, Draft GCPE-FIN Issue Notes, re GPEB Release of Section 86 reports (September 30, 2014); Exhibit 894, BCLC Briefing June 2013.

556 Evidence, M. de Jong, Transcript, April 23, 2021, p 122.

557 Exhibit 931, June 14 2013 Briefing Document.

558 Exhibit 896, Advice to Minister Estimate Note April 2015.

before GPEB abruptly changed course and urgently sought his intervention.<sup>559</sup> The first bullet point in an “Estimates Note” dated April 22, 2015, stated that “British Columbia has a robust anti–money laundering program with significant investments in technology, training, and certification.”<sup>560</sup>

I do not mean to suggest that Mr. de Jong was an entirely passive recipient of information during this period. As the minister responsible for gaming, he, of course, had the capacity to seek out additional information and, had he done so, may well have discovered the crisis facing the industry long before it was brought to his attention in September 2015. In retrospect, it would have been highly beneficial if Mr. de Jong had done so. I am cognizant, however, of the reality that gaming was only a small part of Mr. de Jong’s very heavy portfolio as minister of finance. It is not realistic to have expected him to take the time to interrogate all of the advice he received on all aspects of his responsibilities. Absent some reason to doubt the information provided to him, it was, in my view, reasonable for Mr. de Jong to rely on that information. On that basis, I am unable to fault Mr. de Jong for failing to intervene to stop the flow of illicit funds into the province’s casinos during this period.

## 2015–2017

The informational deficit under which Mr. de Jong was operating through the first half of his tenure abruptly disappeared in September 2015. As described in Chapter 11, and in Mr. de Jong’s evidence, he received two briefings at this time, the first providing a basic overview of the E-Pirate investigation<sup>561</sup> and the second raising to the minister’s attention GPEB’s concern about the rate at which suspicious cash was entering the gaming industry.<sup>562</sup> That Mr. de Jong had not previously been made aware of the extent of this issue is underscored by his evidence that this information “sparked concern” and was “surprising.”<sup>563</sup>

Having received this information, Mr. de Jong developed an immediate appreciation for the urgency of the situation and clearly took the matter seriously. His response consisted principally of two actions: initiating the creation of JIGIT and issuing a letter containing directions to BCLC. While both positive, the second of these actions was not, in my view, commensurate with the scale of the crisis facing the industry.

The creation of JIGIT was a critical and long overdue step in resolving the deficiencies in the anti–money laundering apparatus surrounding the gaming industry. As discussed

559 Evidence of M. de Jong, Transcript, April 23, 2021, pp 66–70; Exhibit 541, Mazure #1, para 181; Evidence of J. Mazure, Transcript, February 5, 2021, pp 114–121; Exhibit 922, Wenezenki-Yolland #1, paras 119–120 and 134–140; Exhibit 552, MOF Strategy; Exhibit 553, MOF Briefing Document; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 49–52; Exhibit 587, Meilleur #1, paras 86–90.

560 Exhibit 896, Advice to Minister Estimate Note.

561 Evidence of M. De Jong, Transcript, April 23, 2021, pp 67–70.

562 Ibid, pp 66–70; Exhibit 541, Mazure #1, para 181; Evidence of J. Mazure, Transcript, February 5, 2021, pp 114–21; Exhibit 922, Wenezenki-Yolland #1, paras 119–20, 134–40; Exhibit 552, MOF Strategy; Exhibit 553, MOF Briefing Document; Evidence of C. Wenezenki-Yolland, Transcript, April 27, 2021, pp 49–52; Exhibit 587, Meilleur #1, paras 86–90.

563 Evidence of M. de Jong, Transcript, April 23, 2021, p 69.

above, the absence of law enforcement resources available to the industry had been recognized as a gap in enforcement for two decades prior to the creation of this team. In August and September 2015, both BCLC and GPEB raised their concerns about this gap directly to Mr. de Jong.<sup>564</sup> In response, Mr. de Jong spearheaded an effort to establish this new team within CFSEU with remarkable speed,<sup>565</sup> deliberately leveraging the weight of the offices of the Minister of Finance and the Government House Leader, both of which he held at the time, to lend momentum to the effort and make clear that any funds devoted to this effort must remain dedicated to their intended purpose.<sup>566</sup> In this regard, Mr. de Jong's efforts were appropriate and adequate and should be recognized as a critical contribution to eliminating money laundering from the gaming industry.

Regrettably, the same cannot be said of Mr. de Jong's second major act at this time, the issuance of directions to BCLC in the form of a letter to Mr. Smith dated October 1, 2015.<sup>567</sup> The contents of this direction were discussed in Chapter 11 and I will not address them in detail again here. My concern is not what was included in the direction, all of which I accept was helpful and appropriate, particularly Mr. de Jong's direction to BCLC to take further action to evaluate the source of funds prior to cash acceptance. Rather, my concern is that Mr. de Jong's direction failed to go far enough, in that it did not require that BCLC immediately cease accepting the highly suspicious cash that had become commonplace in the industry. I note that, at the September 2015 briefing, Mr. de Jong was presented with example directives that would have achieved this objective, including those requiring BCLC to:<sup>568</sup>

- enhance all anti-money laundering initiatives and measures, including ensuring legitimacy of all currency used for gaming in BC;
- determine all high-limit players' source of funds and source of wealth; and
- at a minimum and in all circumstances, determine source of funds and source of wealth as part of BCLC's existing Customer Due Diligence Program and its Know Your Customer policy and programs.

I understand and accept Mr. de Jong's evidence that he had been repeatedly advised to avoid prescriptive approaches to regulation and that he may have perceived measures such as those identified in the example directives as falling afoul of this advice.<sup>569</sup> While there may be room for debate as to whether these measures were actually incompatible with a risk-based approach, I accept Mr. de Jong's evidence that he understood this to be the case and was adverse to such measures for this reason.

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564 Exhibit 505, Lightbody #1, exhibit 49; Exhibit 552, MOF Strategy; Evidence of M. de Jong, Transcript, April 23, 2021, pp 99–100.

565 Evidence of C. Clark, Transcript, April 20, 2021, p 56; Exhibit 922, Wenezenki-Yolland #1, paras 141–48; Exhibit 541, Mazure #1, paras 199–207; Evidence of M. de Jong, Transcript, April 23, 2021, pp 31, 67–68, 79–83.

566 Evidence of M. de Jong, Transcript, April 23, 2021, pp 82–83.

567 Exhibit 900, de Jong Letter 2015.

568 Exhibit 553, MOF Briefing Document.

569 Evidence of M. de Jong, Transcript, April 23, 2021, pp 1–13, 35–37, 87–92, 139–40, 144–49.

However, the urgency of the crisis facing the gaming industry at this time was, in my view, so great that it required that philosophical preferences for particular forms of regulation be set aside in favour of actions guaranteed to immediately solve the crisis in the industry. In the first six months of 2015, BCLC reported 954 suspicious transactions, including 315 suspicious transactions with individual values of over \$100,000.<sup>570</sup> This amounts to a daily average of more than five total suspicious transactions, including two of \$100,000 or more. The total value of these suspicious transactions was \$107,324,958, meaning that an average of nearly \$600,000 in suspicious funds was accepted each day.<sup>571</sup> Notably, these values are for transactions occurring *before* the July 2015 spike in suspicious transactions that saw more than \$20 million in suspicious cash transactions of \$50,000 or more, including \$14 million in \$20 bills, accepted by casinos in a single month.<sup>572</sup>

These figures, alongside the limited information Mr. de Jong now had about the E-Pirate investigation,<sup>573</sup> illustrate the level of criminality to which the province's gaming industry was subject at that time. While it is not clear that Mr. de Jong was advised of the precise figures outlined above for the first half of 2015, he was made aware of the scale of the suspicious activity identified in July 2015. Aware of the E-Pirate investigation and armed with the information provided to him in the September 2015 briefing, it was incumbent upon Mr. de Jong to immediately take whatever steps were necessary to stop the flow of illicit funds into the province's casinos, regardless of their fit within a particular regulatory model. Despite having ministerial directives put before him that would have accomplished this end, he did not do so. As a result, casinos continued to accept the proceeds of crime, which ultimately formed part of government revenue.

In his evidence, Mr. de Jong indicated that he continued to monitor rates of suspicious transactions in the gaming industry in the years that followed and took the decline in these rates as evidence that the measures imposed by BCLC were having their intended effect.<sup>574</sup> I have already discussed how BCLC's cash conditions program and related measures resulted in a decline in the rate at which the province's casinos were accepting suspicious cash. While I agree with Mr. de Jong that the data from this period demonstrates progress, it is also, in my view, reflective of the inadequacy of these measures. In 2016, Mr. de Jong's final full year as minister responsible for gaming – and the first following the issuance of his directions in October 2015 – BCLC reported 1,649 suspicious transactions, with a value of \$79,458,118.<sup>575</sup> While this value represented a decline of more than \$100 million from 2015 levels,<sup>576</sup> it nevertheless continued to represent an enormous volume of suspicious cash flowing through the

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570 Exhibit 482, Cuglietta #1, exhibit A.

571 Ibid.

572 Evidence of R. Barber, Transcript, November 3, 2020, pp 21–22, 153; Exhibit 144, Ackles #3, paras 23–24 and exhibit D; Exhibit 145, Barber #1, paras 92–93 and exhibit F; Evidence of R. Barber, Transcript, November 2, 2020, pp 41–42.

573 Evidence of M. de Jong, Transcript, April 23, 2021, pp 67–70.

574 Ibid, pp 93–94, 141, 156–57.

575 Exhibit 482, Cuglietta #1, exhibit A; Exhibit 784, Cuglietta #2, exhibit A.

576 Exhibit 784, Cuglietta #2, exhibit A.

industry for which Mr. de Jong was responsible and which ultimately contributed to the provincial government's revenues.

Some insight into the results that could have been achieved from a direction commensurate with the urgency of the circumstances is observed in the impact of Dr. German's recommendation, implemented as modified by BCLC, which, generally speaking, was consistent with the example directives put to Mr. de Jong in September 2015.<sup>577</sup> In 2018, the year in which that recommendation was implemented, BCLC reported only 290 suspicious transactions with a total value of \$5,520,550.<sup>578</sup> A more decisive direction requiring a comparable policy response would have been far more impactful than that issued by Mr. de Jong and would have excluded substantial quantities of illicit funds from the gaming industry that were, in the absence of a more decisive direction, accepted by casinos and ultimately received by government.

It follows from this reasoning that, rather than being content with the pace of progress observed following his direction, Mr. de Jong should have seen, in the time that he remained responsible for the gaming industry following his October 2015 direction, that it had not adequately resolved the issue and that the rate at which suspicious funds were entering the industry remained unacceptably high. Mr. de Jong should have recognized prior to the end of his tenure that further intervention was required and issued additional directions requiring more decisive action. That he did not do so, in my view, exacerbated the inadequacy of his initial direction.

## **Conclusion**

Despite these shortcomings, it is important to recognize the significance of the actions that Mr. de Jong *did* take in response to the information presented to him in September 2015. To some extent, Mr. de Jong appears to have recognized the urgency of the situation facing the gaming industry and taken action to respond. His efforts to create JIGIT were a significant achievement, and his direction to BCLC was a step in the right direction. That it was under Mr. de Jong's watch that the tide of suspicious transactions finally turned and the suspicious cash entering the province's casinos began to decline is a testament to the significance of his efforts.

However, that Mr. de Jong made progress in this regard does not mean that his actions met the challenge with which he was confronted. In my view, they did not. The scale of the crisis gripping the province's casinos at this time required much more decisive action. While positive, the steps taken by Mr. de Jong were simply not commensurate with the urgency of the problem facing the industry at that time. The decline in suspicious activity that occurred under his watch is evidence that Mr. de Jong left the province's gaming industry in better condition than he found it, but the scale of such activity that remained at the time of his departure is proof that the steps he took simply were not enough.

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<sup>577</sup> Exhibit 553, MOF Briefing Document.

<sup>578</sup> Exhibit 482, Cuglietta #1, exhibit A; Exhibit 784, Cuglietta #2, exhibit A.

## Ms. Clark

Christy Clark served as the premier of British Columbia from March 2011 to July 2017.<sup>579</sup> Prior to her tenure as premier, Ms. Clark was an MLA from 1996 until 2005<sup>580</sup> and occupied cabinet positions including deputy premier, minister of education, and minister for children and families while in government from 2001 to 2005.<sup>581</sup> As Ms. Clark's initial tenure in the Legislature pre-dated the rise of money laundering in the province's gaming industry and because she did not hold cabinet positions of clear relevance to this Commission's mandate, the discussion that follows will focus on Ms. Clark's term as premier.

Ms. Clark served as premier through much of the rise and subsequent decline of suspicious cash transactions in the province's gaming industry. Although she was not in government when these transactions began to attract concern from the GPEB investigation division in 2007 and 2008,<sup>582</sup> Ms. Clark became premier as the rate of suspicious cash entering the province's casinos began to rise in earnest. She remained in this role as the acceptance of suspicious cash peaked in 2014 and 2015 and as it declined but remained at significant levels following that peak. While Ms. Clark's tenure did not span the entirety of the timeframe in which I have found that money laundering was occurring in the province's gaming industry, there was not a day that Ms. Clark occupied the premier's office that did not fall within this period of time.

Ms. Clark's role as premier was, of course, distinct from those of the individuals who served as ministers responsible for gaming during her tenure. Ms. Clark did not have – and could not be expected to have had – the same level of direct engagement with the industry as the responsible ministers. Nor did she have any of the statutory powers granted to the responsible minister by the *Gaming Control Act*. As premier, Ms. Clark was charged with providing broad oversight and direction to government as a whole, and I accept that the gaming industry was a small part of a vast area of responsibility.

This does not mean, however, that Ms. Clark exercised no influence over the gaming industry. To the contrary, Ms. Clark selected the responsible ministers,<sup>583</sup> issued directions to those ministers in the form of mandate letters,<sup>584</sup> and was engaged in setting the priorities of government.<sup>585</sup> As such, while Ms. Clark did not have day-to-day, hands-on responsibility for the gaming industry, and while her role was distinct from that of the responsible ministers who served in her cabinet, it is clear that she did bear some level of responsibility for the industry. It is fair to consider whether her actions or omissions contributed to the growth and perpetuation of money laundering

579 Evidence of C. Clark, Transcript, April 20, 2021, p 3.

580 Ibid, p 2.

581 Ibid.

582 Exhibit 181, Vander Graaf #1, para 35–38 and exhibit G; Evidence of J. Schalk, Transcript, January 22, 2021, p 109; Evidence of L. Vander Graaf, Transcript, November 12, 2020, pp 48, 51–52, 165–66; Evidence of L. Vander Graaf, Transcript, November 13, 2020, p 39.

583 Evidence of C. Clark, Transcript, April 20, 2021, pp 3–6, 14.

584 Ibid, pp 13–14.

585 Ibid, pp 8–12, 49–50.

in the province’s casinos. For the reasons outlined below, in my view, they did. As was the case with Mr. Coleman and Mr. de Jong, it is useful to consider Ms. Clark’s tenure as premier in two distinct time periods, the first starting at the beginning of her tenure as premier in 2011 and lasting until the summer of 2015, and the second beginning at the conclusion of this first period and continuing until the end of her premiership in 2017.

### **2011–2015**

Ms. Clark was aware of concerns about money laundering in the gaming industry from the beginning of her tenure as premier.<sup>586</sup> She knew of and was very concerned by media coverage of suspicious cash transactions in the province’s casinos leading up to her taking office and understood that this coverage suggested that these transactions may have been connected to money laundering.<sup>587</sup> Upon taking office, Ms. Clark soon learned of and reviewed Mr. Kroeker’s report.<sup>588</sup> Her initial response to the report was that government needed to implement all of Mr. Kroeker’s recommendations.<sup>589</sup>

In the years that followed, Ms. Clark took limited steps to monitor the progress being made on this issue. She does not seem to have been aware that the rate at which suspicious cash was being accepted in the province’s casinos had accelerated substantially. While Ms. Clark did not seek regular briefings on this subject,<sup>590</sup> she maintained some level of awareness of what was occurring in the industry through letters of expectations issued to BCLC and through BCLC’s service plans and informal reporting to government.<sup>591</sup> Despite these efforts, Ms. Clark did not have a clear understanding of what was occurring in the industry following the delivery of Mr. Kroeker’s report. While Ms. Clark acknowledged that she understood that “more needed to be done,”<sup>592</sup> she testified that she was not aware, prior to 2015, that buy-ins for hundreds of thousands of dollars, predominantly in \$20 bills, had become commonplace at Lower Mainland casinos,<sup>593</sup> or that casino patrons were having hundreds of thousands of dollars, often largely in \$20 bills, delivered to them at casinos, often late at night.<sup>594</sup> She was also not aware that, after 2011, maximum betting limits increased to \$100,000 per hand.<sup>595</sup> Ms. Clark testified that, until 2015, she understood that Mr. Kroeker’s recommendations were having their desired effect,<sup>596</sup> further suggesting that she was unaware of the rapid acceleration in large and suspicious cash transactions following the receipt of Mr. Kroeker’s report.

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586 Ibid, pp 20–21, 25.

587 Ibid, pp 25–26.

588 Ibid, pp 97–98.

589 Ibid, p 98.

590 Ibid, pp 32–33.

591 Ibid, pp 20–21, 27–28, 37–40, 99, 103.

592 Ibid, pp 37–38.

593 Ibid, p 35.

594 Ibid, pp 41–42.

595 Ibid, p 49.

596 Ibid, p 53.

With the benefit of hindsight, it would have been helpful for Ms. Clark to have remained actively engaged with this issue and taken steps to ensure resolution of the issues she acknowledged were of concern to her. I accept, however, that based on the information available to Ms. Clark at the time, her engagement with this matter was reasonable and appropriate. Having learned of a potentially serious issue facing an industry regulated by government and “conducted and managed” by a Crown corporation, Ms. Clark took steps to understand what her government was doing in response. She learned that a previous responsible minister had commissioned an independent report examining this issue, reviewed that report, and indicated her support for the implementation of its recommendations.

Having done so, it was not unreasonable, at that point, for Ms. Clark to redirect her attention elsewhere, trusting that the issue would be brought to her attention again if her further engagement was required. The conclusions set out in Mr. Kroeker’s report were largely positive and would not have indicated to Ms. Clark the extent of the crisis developing in the province’s casinos. Given the succession of experienced, highly capable ministers appointed by Ms. Clark to oversee the gaming industry, it was reasonable for her to rely on her ministers to bring matters requiring her involvement to her attention. There is no evidence that, prior to 2015, Ms. Clark received any such advice.<sup>597</sup>

## **2015–2017**

In 2015, however, Ms. Clark was advised of troubling developments in the gaming industry that, in my view, did require her direct and immediate engagement. It is at this stage that Ms. Clark’s actions fell short of what was required. Ms. Clark testified that she was advised by Mr. de Jong in 2015 that “we have a problem” and that “there had been a spike in reports of suspicious activity” in the province’s casinos.<sup>598</sup> Ms. Clark understood at that time that a significant number of transactions at Lower Mainland casinos were being reported as suspicious.<sup>599</sup> She explained that she recognized this as a “serious problem” and viewed it as cause for “serious concern.”<sup>600</sup> Asked whether this was the first occasion that she was made aware of an increase in suspicious activity since 2011, Ms. Clark confirmed that it was.<sup>601</sup>

Despite Ms. Clark’s concern about this issue, it is clear from her evidence that she took minimal steps to engage with, or even fully understand, the suspicious activity taking place in the province’s casinos at this time. Ms. Clark testified that she did not make inquiries as to whether the vast quantities of cash identified as suspicious were being accepted by casinos, and consequently, contributing to the Province’s revenues.<sup>602</sup> She acknowledged that she never discussed with any of the responsible ministers that

<sup>597</sup> Ibid, pp 53–54.

<sup>598</sup> Ibid, pp 34, 44, 54.

<sup>599</sup> Ibid, pp 34, 44.

<sup>600</sup> Ibid, pp 42, 44.

<sup>601</sup> Ibid, pp 34–35.

<sup>602</sup> Ibid, pp 44–48.

served in her cabinet the options of placing a cap on the quantity of cash that could be used to buy-in in casinos or implementing requirements that cash be sourced prior to its acceptance.<sup>603</sup> Ms. Clark also gave evidence that she never had discussions with any of those ministers regarding the advisability of offering high-limit gaming that allowed bets of up to \$100,000 in an industry that remained dominated by cash.<sup>604</sup>

While Ms. Clark's decision to focus her attention elsewhere prior to learning of the 2015 spike in suspicious transactions was reasonable, upon learning of this development from Mr. de Jong, it should have been abundantly clear to Ms. Clark that the gaming industry was facing a crisis requiring her urgent attention. It was incumbent upon Ms. Clark at this point to ensure that she fully understood the issue and that her government was taking the action necessary to resolve it as quickly as possible. While Ms. Clark's government did take positive steps at this point, including the creation of JIGIT,<sup>605</sup> Ms. Clark did not engage with this issue to the extent required. Ms. Clark failed to discuss with Mr. de Jong obvious steps that could have been taken to immediately cease the acceptance of these suspicious funds and did not even inquire as to whether or not casinos – and, in turn, the government – were, in fact, accepting the enormous volumes of suspicious cash she now knew were present in the province's casinos. While Ms. Clark certainly does not bear sole responsibility for the perpetuation of this problem beyond 2015, Ms. Clark's lack of engagement at this time meant that she was not in a position to ensure that her government took steps sufficient to make certain that casinos did not continue to accept illicit cash and that her government was not funded by the proceeds of crime. Having been made aware of the extraordinary volume of suspicious funds present in the province's casinos, it was incumbent on Ms. Clark, as the leader of the government, to ensure that decisive action was taken to bring this unacceptable state of affairs to an immediate and complete end. While I accept that some meaningful action was taken in the wake of these revelations and that the quantity of suspicious cash accepted by casinos declined in the final years of Ms. Clark's tenure, the volume of suspicious cash in the gaming industry remained at an elevated level until the end of Ms. Clark's term as premier. Given Ms. Clark's lack of engagement with this issue following 2015 and her failure to make inquiries that were, in my view, clearly necessary at that time, some responsibility for the perpetuation of this activity following 2015 must lie with Ms. Clark.

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603 Ibid, pp 48–49.

604 Ibid, pp 34, 47, 54.

605 In her evidence, Ms. Clark suggested that the creation of JIGIT represented the eventual fulfillment of Mr. Kroeker's 2011 recommendation that the Province establish a "cross agency task force to investigate and gather intelligence on suspicious activity and transactions at BC gaming facilities." The creation of JIGIT does appear to have fulfilled the spirit of the recommendation made by Mr. Kroeker. However, the evidence before me does not demonstrate that the creation of this unit in 2016 was in any way motivated by it. The creation of JIGIT was motivated by the recommendations of BCLC and GPEB made immediately prior to the creation of the unit. There is no evidence that government had been actively working on the creation of a cross-agency task force since the time of Mr. Kroeker's recommendation and no evidence that any of those actually involved in bringing JIGIT to life were motivated by Mr. Kroeker's recommendation.

## Conclusion

The problem of illicit cash in casinos grew substantially during Ms. Clark's tenure as premier. While the rate at which suspicious transactions were accepted by this province's casinos began to decline in the latter part of her premiership, this issue was not finally resolved until after her departure. When, in 2015, she was made aware that suspicious cash was being accepted at Lower Mainland casinos at an alarming rate, she did not engage with that issue to a sufficient degree to ensure this practice was immediately and definitively stopped. The premier learned that casinos operated by a Crown corporation and regulated by government were reporting enormous quantities of suspicious cash and, in her words, this was cause for "serious concern." A response that failed to determine whether these funds were contributing to the revenue of the Province and failed to stop this practice for the remainder of her tenure as premier was inadequate.

## Mr. Eby

Following the 2017 provincial election and the resulting change in government, Mr. Eby succeeded Mr. de Jong as minister responsible for gaming.<sup>606</sup> Mr. Eby was first elected to the Legislature in 2013 and served as opposition spokesperson for gaming, among other roles, prior to the 2017 election.<sup>607</sup> Like many of his predecessors, Mr. Eby's responsibility for gaming was a small part of a much larger cabinet portfolio, as he was also appointed attorney general<sup>608</sup> and assigned responsibility for the Insurance Corporation of British Columbia and the Liquor Distribution Branch.<sup>609</sup>

Thanks to the progress made during Mr. de Jong's tenure, the gaming industry for which Mr. Eby assumed responsibility in 2017, while still characterized by significant quantities of suspicious cash, was much improved from what it had been in 2015. In the year in which Mr. Eby became the minister responsible for gaming, BCLC reported 1,045 suspicious transactions<sup>610</sup> with a total value of \$45,300,463.<sup>611</sup> While still troublingly high, these numbers represent a vast reduction from the peak of the crisis only a few years earlier.<sup>612</sup>

Mr. Eby detailed in his evidence how he received briefings from GPEB and BCLC that seemed to present vastly different perspectives on the issue of money laundering in the gaming industry. Whereas GPEB's briefing depicted an industry awash in illicit funds and a lottery corporation resistant to taking any steps in response,<sup>613</sup> BCLC described the

<sup>606</sup> Evidence of D. Eby, Transcript, April 26, 2021, pp 2–3, 23.

<sup>607</sup> Ibid, pp 2, 22.

<sup>608</sup> Ibid, pp 2–3, 23.

<sup>609</sup> Ibid, pp 226–27.

<sup>610</sup> Exhibit 482, Cuglietta #1, exhibit A.

<sup>611</sup> Ibid, exhibit A.

<sup>612</sup> Ibid, exhibit A.

<sup>613</sup> Evidence of D. Eby, Transcript, April 26, 2021, pp 34–43; Exhibit 906, Provincial AML Strategy by John Mazure and Len Meilleur (August 2017); Exhibit 907, Provincial AML Strategy (Part II) by John Mazure and Len Meilleur.

industry’s anti–money laundering regime as “North American-leading” and FINTRAC-approved,<sup>614</sup> leaving Mr. Eby with the impression that BCLC had no concerns about the volume of suspicious cash entering the province’s casinos or the potential that casinos could be used to launder the proceeds of crime.<sup>615</sup>

Mr. Eby responded to this conflicting advice by seeking the external advice of someone he understood to have the requisite expertise<sup>616</sup> to assist him in making sense of the situation and identifying a path forward.<sup>617</sup> This was, in my view, a prudent choice. It is apparent from Mr. Eby’s evidence that he did not consider himself equipped to discern which of the two conflicting briefings was accurate – as discussed in Chapter 12, the answer proved to be neither – or how to move forward.<sup>618</sup> As such it was entirely sensible to seek further guidance and ensure he had an accurate understanding of the problem he was facing before deciding how to respond.

This course of action proved fruitful. Within months of the commencement of Dr. German’s review, he delivered an interim recommendation that patrons be required to declare the source of funds used in transactions of \$10,000 or more in cash or other bearer monetary instruments.<sup>619</sup> Mr. Eby made clear to BCLC his expectation that this recommendation be implemented.<sup>620</sup> Once strengthened by BCLC<sup>621</sup> and implemented, this recommendation dramatically reduced suspicious cash transactions<sup>622</sup> and effectively ended the money laundering crisis that had plagued the gaming industry for a decade.

Given the success of these efforts, Mr. Eby’s actions cannot be said to have contributed to the rise or perpetuation of money laundering in the gaming industry. To the contrary, in my view, Mr. Eby’s efforts, which built upon the progress made during Mr. de Jong’s tenure, contributed significantly toward the final resolution of the problem.

### ***Discouragement of BCLC Proposals to Enhance Anti–Money Laundering Efforts***

In light of this conclusion, I believe that it is necessary to briefly comment on the evidence before the Commission that, as Dr. German’s review was ongoing, Mr. Eby encouraged BCLC to consult with Dr. German prior to taking action to enhance its anti–

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614 Evidence of D. Eby, Transcript, April 26, 2021, p 31; Exhibit 905, BCLC Briefing (July 31, 2017).

615 Evidence of D. Eby, Transcript, April 26, 2021, p 31.

616 Ibid, pp 69–71.

617 Ibid, pp 44–45, 51–53, 58–60, 65–66.

618 Ibid, pp 44–45, 51–53, 58–60, 65–66.

619 Exhibit 832, *Dirty Money 1*, p 247.

620 Exhibit 505, Lightbody #1, paras 258–60; Evidence of D. Eby, Transcript, April 26, 2021, pp 55–56.

621 Exhibit 78, Beeksma #1, para 82; Evidence of J. Lightbody, Transcript, January 28, 2021, pp 75–76; Exhibit 78, Kroeker #1, paras 222–29; Exhibit 505, Lightbody #1, para 261.

622 Exhibit 482, Cuglietta #1, exhibit A.

money laundering efforts.<sup>623</sup> As this encouragement ultimately resulted in some of these measures not being implemented, viewed in isolation, these events could be viewed as Mr. Eby inhibiting anti-money laundering reforms that would have accelerated the reduction in suspicious cash that occurred during this tenure. A proposal put forward by BCLC to impose a cap on the value of cash transactions, in particular, may have resulted in suspicious cash being turned away that was otherwise accepted.

As discussed in Chapter 12, however, in the context of Dr. German's ongoing review, it was entirely sensible for Mr. Eby to encourage BCLC to consult with Dr. German prior to implementing any new anti-money laundering measures. Mr. Eby had retained an expert to evaluate money laundering in the industry and make recommendations to enhance efforts to combat it. In that context, it would not have made sense to make significant changes to the industry's anti-money laundering regime without coordinating or consulting with Dr. German.

Mr. Eby's request that BCLC consult with Dr. German regarding any such measures is akin, in my view, to the decision he made to seek external advice before acting. Mr. Eby could have taken action more quickly had he been concerned only with the appearance of doing so and was not interested in ensuring that he understood the circumstances confronting him and that any actions taken were appropriate. In the same way, BCLC's proposals, while satisfying the objective of taking action quickly, posed a risk of proving misguided or, at least, inconsistent with the direction proposed by Dr. German and as such it was sensible to obtain Dr. German's input before they were implemented. For this reason, I am unable to conclude that Mr. Eby's efforts to encourage BCLC to consult with Dr. German in any way contributed to the perpetuation of money laundering in the gaming industry. In my view, they were prudent and appropriate.

## Conclusion

For the reasons outlined above, in my view, the actions of Mr. Coleman, Mr. de Jong, and Ms. Clark contributed, to some extent, to the growth and/or perpetuation of money laundering in British Columbia's gaming industry. I am unable to reach the same conclusion with respect to Ms. Bond and Mr. Eby.

In drawing these conclusions, I believe it important to emphasize again that identifying the actions of some of these elected officials as having contributed to this problem is in no way equivalent to a conclusion that they did so deliberately. As discussed at the outset of this section, there is no evidence capable of supporting a conclusion that any of these individuals engaged in any form of corruption with respect to matters within the mandate of the Commission. On the contrary, I accept that each was, at all times, motivated by their responsibility to work in the best interests of the province and its citizens. Some fell short in their efforts to do so, but I reject any suggestion that any were deliberately working contrary to the public interest.

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<sup>623</sup> Evidence of D. Eby, Transcript, April 26, 2021, pp 71–74; Exhibit 911, Email chain, re AG File No. 546040 (January 26, 2018); Exhibit 505, Lightbody #1, para 290–312.

I do not wish to be seen as counselling perfection, or otherwise establishing an unrealistically high standard of conduct for those who have taken on the responsibility of governance of the matters falling within the Commission’s mandate, including elected officials, service providers, civil servants, or those in the role of law enforcement. It is necessary to exercise caution in attributing discredit or finding blame for decisions or actions that may have led to unintended consequences.

At the same time, however, it is important to not evade the tasks that I have been assigned in this Inquiry, which include “making findings of fact [about] the acts or omissions of regulatory authorities or individuals with powers, duties, or functions in respect of the sectors referred to in paragraph (a) or any other sector, to determine whether those acts or omissions have contributed to money laundering in British Columbia and whether those acts or omissions have amounted to corruption.”

It is necessary to recognize the importance of making findings of the nature and extent of accountability, where, as here, there is powerful evidence that for a decade or more, criminal actors used a government-run and -regulated industry to their financial advantage. Those are circumstances that are manifestly certain to provoke widespread feelings of mistrust in those responsible for the gaming industry and for its governance.

To the extent that those best positioned to put a halt to the profligate criminal misuse of the gaming industry between 2008 and 2018 failed to take necessary action despite the clear warnings of many knowledgeable and well-intentioned people, this represents a significant failure of will at a time, and in circumstances, when it was most needed.

## Part IV

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# The Real Estate Sector

Real estate presents enormous money laundering vulnerabilities in British Columbia, no less than in other jurisdictions. In Chapter 15, I examine how real estate provides a safe and attractive investment for both legitimate and illicit proceeds, and is vulnerable to multiple money laundering methods. In Chapter 16, I turn to the regulation and anti-money laundering responsibilities of real estate professionals – real estate agents and mortgage brokers. These gatekeepers are in a position to both detect and report suspicious activity if it is recognized as such, but also to knowingly or unwittingly assist money laundering activity.

In Chapter 17, I address a particular area of concern, private lending secured by real estate. In Chapter 18, I examine how the large amount of data collected in the real estate sector provides an opportunity for data analysis that can help to identify money laundering trends and risks and to assist in responding to them proactively.

The remarkable rise in residential real estate values, in particular, has both sharpened public attention on the real estate sector and created further opportunities to clean the proceeds of crime. In Chapter 19, I examine the extent to which it can be concluded that money laundering has contributed to housing unaffordability in the province.

## Chapter 15

# Vulnerabilities to Money Laundering in Real Estate

In the public discourse around money laundering in this province, skepticism has been expressed about the prevalence or even existence of money laundering in real estate. To their credit, none of the participants in the hearings before me took the position that money laundering was not happening in or through real estate.

In order to dispel any lingering doubts about the existence of money laundering in the real estate sector, I have set out in this chapter a review of the intergovernmental, governmental, and academic consensus on the prevalence of money laundering in real estate. This chapter also canvasses the commonly understood typologies involving the use of real estate to launder the proceeds of crime.

One of my purposes in doing so is to illustrate that, in the real estate sector, money laundering transactions are usually one or more steps removed from the physical cash that some members of the public may associate with the words “money laundering.” While money laundering typologies involving real estate do not conjure up dramatic images of hockey bags or suitcases of cash being emptied onto the desks of realtors, that does not mean that money laundering is not happening in this sector. A focus on physical cash when considering the risks of money laundering reflects a misunderstanding of how various money laundering typologies work. In the real estate sector, this sort of focus on cold cash can lead to a failure to appreciate the magnitude of the risk and to recognize indicators of money laundering.

This chapter reviews some of the recognized typologies in brief. Later in this Report, I return to certain typologies to discuss them in context and in detail.

## Why Real Estate Is Attractive to Money Launderers

The literature<sup>1</sup> repeatedly cites a number of practical benefits and attractions of real estate for money launderers, notably:

- enjoyment of the property, both in terms of residing / conducting business on the property, and as a display of one's success;
- the benefit of having a location at which to conduct criminal activity;<sup>2</sup>
- the fact that a large amount of money can be laundered with a single transaction, due to the high value of real estate relative to other goods;<sup>3</sup>
- the relatively low transaction costs, as compared to other methods of money laundering,
- the perception of real estate as a safe investment;<sup>4</sup>
- the potential for income generation via rental income or the appreciation of property;<sup>5</sup>

1 See, for example: Louise Shelley, "Money Laundering into Real Estate," in Michael Miklaucic and Jacqueline Brewer (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization* (Washington, DC: National Defense University Press, 2013), p 134; Joras Ferwerda and Brigitte Unger, "Detecting Money Laundering in the Real Estate Sector," in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Northampton: Edward Elgar, 2013), pp 268–69; Sean Hundtofte and Ville Rantala, "Anonymous Capital Flows and US Housing Markets" (University of Miami Business School Research Paper No. 18-3, 2018), p 10; Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 10, European Parliamentary Research Service, *Understanding Money Laundering Through Real Estate Transactions* (European Union: 2019) [*European Parliament Real Estate Report*], p 2, online: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633154/EPRS\\_BRI\(2019\)633154\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633154/EPRS_BRI(2019)633154_EN.pdf).

2 L. Shelley, "Money Laundering into Real Estate," p 134; AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate* (Australia: 2015), p 9, online: [https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate\\_0.pdf](https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf); J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269.

3 L. Shelley, "Money Laundering into Real Estate"; Brigitte Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector* (Dutch Ministry of Finance, Justice and Interior Affairs, January 2010), p 14, online: <https://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/86218.pdf>; J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269; Transparency International Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)* (Ottawa: 2019), p 20, online: <https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/5dfb8cf8f8effb79c8bdf415/1576766716341/opacity.pdf>; S. Hundtofte and V. Rantala, "Anonymous Capital Flows and US Housing Markets," p 10; Edwin W. Kruisbergen, Edward R. Kleemans, and Ruud F. Kouwenberg, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy" (2015) 21(2) *European Journal on Criminal Policy and Research*, p 243, online: [https://www.researchgate.net/publication/267641936\\_Profitability\\_Power\\_or\\_Proximity\\_Organized\\_Crime\\_Offenders\\_Investing\\_Their\\_Money\\_in\\_Legal\\_Economy](https://www.researchgate.net/publication/267641936_Profitability_Power_or_Proximity_Organized_Crime_Offenders_Investing_Their_Money_in_Legal_Economy).

4 L. Shelley, "Money Laundering into Real Estate," p 136: "... many forms of laundering cost launderers 10 to 20 percent of the sums they seek to clean, this rule does not always apply in the real estate sector"; see also E.W. Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," pp 243, 252; Fabian Maximilian Johannes Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland" (2018) 21(3) *Journal of Money Laundering Control*, p 374.

5 L. Shelley, "Money Laundering into Real Estate," p 136; J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269; Exhibit 601, Appendix 10, *European Parliament Real Estate Report*, p 2; F.M.J. Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland," pp 372–74; see also E.W. Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," pp 243, 252.

- opportunity for further money laundering via real estate, such as by construction on the property;<sup>6</sup>
- the fact that taking out a mortgage to pay for real estate provides an opportunity to use illicit funds to service the debt and legitimize the money that is moving into financial institutions;<sup>7</sup> and
- the ability to develop influence and power at a local level, such as in cases where a large real estate portfolio is owned in a small town or neighbourhood.<sup>8</sup>

In addition to these practical benefits, structural and regulatory factors are cited as incentives for using real estate to launder funds, such as:

- pressure on financial institutions to avoid doing business with potential money launderers, which has led to reforms that have encouraged launderers to seek alternate means of laundering;<sup>9</sup>
- the ability to manipulate price of real estate;<sup>10</sup>
- the ease of maintaining privacy, because of the lack of transparency in public corporate and land registries (see more below);<sup>11</sup>
- conflict for real estate professionals, who are expected to balance expectations of performing due diligence as to the source of funds, but also attract clients;<sup>12</sup>

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- 6 B. Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector*, p 14; Peter B.E. Hill, *The Japanese Mafia: Yakuza, Law, and the State* (Oxford: Oxford University Press, 2003), p 96; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 20; F.M.J. Teichmann, “Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland,” pp 372–73.
- 7 AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate*, p 7.
- 8 Kruisbergen et al, “Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy,” p 248.
- 9 L. Shelley, “Money Laundering into Real Estate,” p 132; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 20.
- 10 TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 20; S. Hundtofte and V. Rantala, “Anonymous Capital Flows and US Housing Markets,” p 10; AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate*, p 8.
- 11 TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, pp 20–21; Transparency International, “Doors Wide Open: Corruption and Real Estate in Four Key Markets” (2017), p 14, online: [https://images.transparencycdn.org/images/2017\\_DoorsWideOpen\\_EN.pdf](https://images.transparencycdn.org/images/2017_DoorsWideOpen_EN.pdf); Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 11, Transparency International Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts* (Ottawa: 2016), pp 14–15, online: <https://static1.squarespace.com/static/5df7c3de2e4d3d3f3fce16c185/t/5dfb8a955179d73d7b758a98/1576766126189/no-reason-to-hide.pdf>; L. Shelley, “Money Laundering into Real Estate,” p 141; S. Hundtofte and V. Rantala, “Anonymous Capital Flows and US Housing Markets,” p 2; E.W. Kruisbergen et al, “Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy,” p 243.
- 12 L. Shelley, “Money Laundering into Real Estate,” p 132; Transparency International, “Doors Wide Open: Corruption and Real Estate in Four Key Markets,” p 19; Ilaria Zavoli and Colin King, “New Development: Estate Agents’ Perspectives of Anti-Money Laundering Compliance – Four Key Issues in the UK Property Market” (2020) 40(5) *Public Money & Management*, p 416, online: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4033773](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4033773).

- minimal reporting of suspicious transactions, whether on the part of the opposite party in the sale, or on the part of real estate professionals;<sup>13</sup> and
- poor enforcement and insufficient sanctions for facilitating money laundering in real estate.<sup>14</sup>

## Canadian Money Laundering Vulnerabilities: FATF 2016 Mutual Evaluation Report

In September 2016, the Financial Action Task Force (FATF) released its fourth mutual evaluation report<sup>15</sup> for Canada.<sup>16</sup> The key findings of the Canada fourth mutual evaluation report with respect to real estate were as follows:

- The real estate sector in Canada is “highly vulnerable” to money laundering, including international money laundering.<sup>17</sup> The sector is exposed to high-risk clients, including politically exposed persons from Asia and foreign investors from locations of concern.<sup>18</sup>
- Certain real estate products, such as mortgage loans, were considered high risk.<sup>19</sup>
- The main typologies identified in reviewing real estate-related suspicious transaction reports submitted to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) ranged from the use of nominees by criminals, and structuring of cash deposits, to sophisticated schemes involving loans, mortgages, and the use of a lawyer’s trust account.<sup>20</sup>
- The existence of a memorandum of understanding between the RCMP and the People’s Republic of China was important, but “no assistance with this country was reported in the province of British Columbia, despite the fact that it appears to be at greater risk of seeing its real estate sector misused to launder [proceeds of crime] generated in China.”<sup>21</sup>

13 Transparency International, “Doors Wide Open: Corruption and Real Estate in Four Key Markets,” pp 24, 29–30; Mohammed Ahmad Naheem, “Money Laundering and Illicit Flows from China – The Real Estate Problem” (2017) 20(1) *Journal of Money Laundering Control*, p 23.

14 L. Shelley, “Money Laundering into Real Estate,” p 132; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 20; Transparency International, “Doors Wide Open: Corruption and Real Estate in Four Key Markets,” pp 31–32; Exhibit 601, Appendix 11, TI Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*.

15 See Chapter 6 for a discussion of the mutual evaluation process. Mutual evaluations are essentially peer reviews in which members of the Financial Action Task Force evaluate other members’ anti-money laundering and counter-terrorist financing measures against the task force’s 40 recommendations.

16 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 5, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016) [FATF Fourth Mutual Evaluation], also online: [www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html).

17 *Ibid*, p 16, para 52.

18 *Ibid*.

19 *Ibid*, pp 78–79, para 206.

20 *Ibid*.

21 *Ibid*, p 112, para 310.

- The supervision of real estate sector is not commensurate with the money laundering risks in that sector; more supervision is necessary.<sup>22</sup>
- Real estate agents are not aware of their anti-money laundering obligations.<sup>23</sup> Real estate agents are not familiar with basic customer due diligence processes and, in particular, are non-compliant with the third-party determination rule, which requires that real estate agents determine whether their customers are acting on behalf of another person or entity.<sup>24</sup>
- Real estate agents “consider that they face a low risk because physical cash is not generally used in real estate transactions ... [and they] are overly confident on the low risk posed by ‘local customer[s],’ as well as non-resident customer[s] originating from countries with high levels of corruption.”<sup>25</sup> Further, “detection of suspicious transactions is mainly left to the ‘feeling’ of the individual agents, rather than the result of a structured process assisted by specific red flags.”<sup>26</sup>
- Suspicious transaction reports have gradually increased, but remain very low in real estate.<sup>27</sup>
- More dialogue is necessary with the real estate industry.<sup>28</sup> FINTRAC “needs to further develop its sector-specific expertise and increase the intensity of supervision of [designated non-financial businesses or professions], particularly in the real estate sector and with respect to [dealers in precious metals and stones], commensurate with the risks identified in the [national risk assessment].”<sup>29</sup> FINTRAC should update money laundering and terrorist financing typologies and red flags to assist in detection of suspicious transactions.<sup>30</sup> FINTRAC does not provide enough sector-specific compliance guidance and typologies especially in the real estate sector.<sup>31</sup>

## Typologies and Academic Literature

### Intergovernmental / Governmental Reports on Typologies

On June 29, 2007, the FATF released its report on money laundering and terrorist financing through the real estate sector.<sup>32</sup> This report addressed the topic generally

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22 Ibid, p 4, para 9.

23 Ibid, p 5, para 19.

24 Ibid, p 82, para 222.

25 Ibid, p 80, para 213.

26 Ibid, p 85, para 234.

27 Ibid, p 7, para 30, Table 2 at p 41.

28 Ibid, p 5, para 18.

29 Ibid, pp 7–8, para 31.

30 Ibid, p 78.

31 Ibid, pp 98–99, para 276

32 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 1, FATF, *Money Laundering & Terrorist Financing Through the Real Estate Sector* (June 29, 2007) [*FATF Real Estate Report*].

and internationally, rather than focusing on any one country. The report aggregated case studies in order to identify the following basic techniques:<sup>33</sup>

- use of complex loans or credit finance;
- use of non-financial professionals;
- use of corporate vehicles;
- manipulation of the appraisal or valuation of a property;
- use of monetary instruments;
- use of mortgage schemes;
- use of investment schemes and financial institutions; and
- use of properties to conceal money generated by illegal activities.

The 2007 FATF report goes on to identify specific typologies as instances of the use of each technique. I will review those briefly here.<sup>34</sup>

### ***Use of Complex Loans and Credit Finance***

**Loan-back schemes:** illicit funds are used to purchase shares in property investment funds, which then provide loans back to the criminal investor for the purpose of buying property, creating the appearance of a legitimate loan from a real business activity.<sup>35</sup>

**Back-to-back loan schemes:** a financial institution lends money on the basis of security (real property) that was acquired with criminal funds.<sup>36</sup>

### ***Use of Non-financial Professionals***

**Obtaining access to financial institutions through gatekeepers:** money launderers seek out the services of accountants, lawyers, tax advisors, notaries, financial advisors, and others in order to create the structures they need to move funds unnoticed. Professionals lend credibility to transactions by, for instance, approaching financial institutions on behalf of their clients to obtain loans for the acquisition of property.<sup>37</sup>

<sup>33</sup> Ibid, p 7.

<sup>34</sup> Exhibit 601, Appendix 10, *European Parliament Real Estate Report*. In February 2019, the European Parliamentary Research Service released *Understanding Money Laundering Through Real Estate Transactions*, a briefing report that sets out typologies and case studies and provides suggestions for combatting money laundering. The report repeats many of the indicators articulated by FATF and set out in the academic literature. As with the FATF reports, the EU report indicates “... real estate plays a role (mainly) in the third and final stage of the money-laundering cycle, after the placement and the layering phases.”

<sup>35</sup> Exhibit 601, Appendix 1, *FATF Real Estate Report*, p 7.

<sup>36</sup> Ibid, p 8.

<sup>37</sup> Ibid, p 9.

**Assistance in the sale or purchase of property:** professionals such as notaries and real estate agents are used to help carry out real estate transactions. FATF noted that “[t]heir professional roles often involve them in a range of tasks that place them in an ideal position to detect signs of money laundering or terrorist financing.”<sup>38</sup>

**Trust accounts:** the FATF identified the use of lawyers' trust accounts (and advice) as a technique used to launder illicit funds through real estate.<sup>39</sup>

**Management or administration of companies:** professionals are engaged to set up, and then manage and administer, corporate entities that engage in financial transactions, including real estate investments, with laundered funds. FATF notes that such professionals’ “access to the companies’ financial data and their direct role in performing financial transactions on behalf of their clients make it almost impossible to accept that they were not aware of their involvement.”<sup>40</sup>

### ***Corporate Vehicles***

**Offshore companies:** the use of legal entities incorporated in another jurisdiction can make determining beneficial ownership and actual control difficult. Offshore companies can also take advantage of enhanced bank secrecy and other protective rules applicable in other jurisdictions.

**Trust arrangements:** trusts, which can be arranged even without the need for a written documents constituting them (unlike corporations), can be used to hide the identity of the beneficial owner of assets or funds.

**Shell companies:** companies with no significant assets or operations may be set up engage in a particular transaction or to hold an asset, while hiding the identity of the beneficial owner(s).

**Property management companies:** real estate purchased with illicit funds may be rented out to provide a legitimate source of income. Further, illicit income can be mingled with legitimate rental income to camouflage it.<sup>41</sup>

### ***Manipulation of the Appraisal or Valuation of a Property***

**Over-valuation or under-valuation:** the purchase of a property from a related or complicit party at an inflated price allows criminals to insert more money into the financial system than they would otherwise be able to. The over-valuation of a property at the appraisal stage may also allow a borrower to obtain a larger mortgage than the fair market value would justify (and, in some cases, to later default on the mortgage and abscond with the proceeds).<sup>42</sup>

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38 Ibid, p 10, para 19.

39 Ibid, pp 10–11, paras 19–22.

40 Ibid, p 11, para 23.

41 Ibid, pp 15–16, para 32.

42 Ibid, p 17, para 36 and p 24, paras 54, 55.

With under-valuation, the seller may agree to sell for a reduced price on paper, but accept the balance of the fair market value in a cash payment directly from the buyer.<sup>43</sup> Under-valuation also has the benefit of creating an apparently larger capital gain on a future sale of the property at market value, thereby creating an explanation for funds that otherwise have no explained source.<sup>44</sup>

**Successive sales and purchases:** related parties sell the same property to each other in successive transactions, providing cover for transactions with no real economic purpose, but which enable the transfer of funds.<sup>45</sup>

### *Monetary Instruments*

**Cash:** although the FATF identifies purchases of real property with physical cash as an indicator of money laundering,<sup>46</sup> I conclude that this methodology is not prevalent in the British Columbia real estate market. However, cash can be injected into real estate by other means, including by adding to property value through renovations paid for in cash. Cash can also be used for smaller-scale real estate transactions, such as rental payments or even mortgage payments to private lenders. This typology is discussed later in this chapter, in the context of a small study completed by Commission counsel on the use of cash in the purchase of building supplies.

**Cheques and wire transfers:** funds are paid into an account by way of multiple wire transfers and cheque deposits, with little or no economic or commercial justification. Funds may then be used to purchase real estate.

### *Mortgage Schemes*

**Illegal funds in mortgage loans and interest payments:** criminals obtain a mortgage and then repay the loan with illicit funds. This typology is discussed further in the section of this Report on mortgage brokers.<sup>47</sup>

**Mortgage fraud:** one method of generating illicit funds is to obtain a mortgage by fraud. The fraud can consist of inflating the value of a property or overstating the qualification of the borrower. A nominee purchaser may also be put forward to obtain the mortgage (hiding the actual owner). An inflated property valuation can lead to a large mortgage loan, which a bad actor may steal and abscond with.<sup>48</sup>

<sup>43</sup> Ibid, p 17, para 37.

<sup>44</sup> Ibid, case study 6.2 at pp 21–22.

<sup>45</sup> Ibid, pp 17–18.

<sup>46</sup> Ibid, p 18.

<sup>47</sup> Ibid, p 21, para 49.

<sup>48</sup> Ibid, p 24, para 55.

## ***Investment Schemes and Financial Institutions***

Like anyone else, criminals may invest their funds directly or indirectly in real estate. This may take the form of buying property directly or through a legal entity, or it may take the form of investing in a partnership or a real estate investment trust (REIT).<sup>49</sup>

## ***Concealing Money Generated by Illegal Activities***

**Investment in hotel complexes, restaurants, and similar developments:** in the final phase of money laundering – integration – illicit funds may be invested in real estate-based businesses, which not only provide stable investments, but may also provide an opportunity to develop a cash-based business that can further assist in the ongoing money laundering process.<sup>50</sup>

The 2007 FATF report includes case studies from a number of countries. One Canadian example involved the conviction of an individual who had provided false information on multiple mortgage applications, and used nominee purchasers (family members) in order to purchase five properties.<sup>51</sup> Both the individual and all nominees paid more toward the properties than could be supported by their income as declared to the Canada Revenue Agency. The individual was later convicted of drug trafficking as well as money laundering.<sup>52</sup>

The report's authors emphasized that real estate agents are well placed to detect suspicious activity or identify red flags, because they generally know their clients better than other parties to the transaction.<sup>53</sup> The report concluded:

Professionals working with the real-estate sector are therefore in a position to be key players in the detection of schemes that use the sector to conceal the true source, ownership, location or control of funds generated illegally, as well as the companies involved in such transactions.<sup>54</sup>

As noted by the Expert Panel on Money Laundering in Real Estate, the transactions above are examples of legitimate and frequent types of transactions that occur in the real estate market. In the absence of a red flag indicating a direct connection to criminal activity, it is difficult to distinguish a transaction with a criminal purpose from a legitimate one.<sup>55</sup> In general terms, they look the same.

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49 Ibid, p 26, para 59.

50 Ibid, p 27, para 64.

51 Ibid, p 25, case study 6.3.

52 Ibid.

53 Ibid, p 29.

54 Ibid, p 10, para 21.

55 Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, "Combatting Money Laundering in BC Real Estate," Expert Panel, March 31, 2019, p 21.

## Academic Reports

There is considerable academic and quasi-academic literature describing the appeal and use of real estate as a money laundering vehicle. The use of real estate by criminals, particularly organized criminals, as a means of offloading and laundering proceeds of crime occurs globally. There are documented occurrences in Europe, Southeast Asia, Japan, South and Latin America, the United Kingdom, the United States, Australia, and Canada.<sup>56</sup> One study of 52 Dutch criminal cases found that, in 30 to 40 percent of money laundering cases, money was invested in real estate.<sup>57</sup>

### Cash and Money Laundering in Real Estate

Elsewhere in this Report, I address the ongoing academic debate over the accuracy and utility of the traditional conception of money laundering as having three phases (placement, layering, and integration). For present purposes, however, I will make use of that conventional framework to discuss how real estate is employed for money laundering. Professor Louise Shelley observed that real estate is used at all three phases of the traditional conception of the money laundering cycle.<sup>58</sup> She describes those phases as follows:

**Placement** involves the introduction of dirty money into the system. **Layering** occurs when the money is already in the system and the audit trail is deliberately obscured. **Integration** occurs when the money is already functioning within the system. [Emphasis added.]<sup>59</sup>

While purchases of real estate with physical cash occur in some developing nations, in countries like Canada there are usually barriers to purchasing real estate with physical cash.<sup>60</sup> In developed nations, purchasing real estate with cash is seen as suspicious, such that financial institutions become the initial entryway (or placement stage) for proceeds of crime entering real estate.<sup>61</sup> However, in the latter two phases of the money laundering cycle, layering and integration, money laundering occurs everywhere. Professor Shelley writes:

Transactions in the layering stage are intended to obscure any financial (traceable) links between the funds and their original criminal sources.

56 L. Shelley, “Money Laundering into Real Estate,” pp 131–33; AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate*, p 5.

57 J. Ferwerda and B. Unger, “Detecting Money Laundering in the Real Estate Sector,” p 269, citing J. Meloen, R. Landman, H. de Miranda, J. van Eekelen, and S. van Soest, *Bui ten Besteding: Een Empirisch Onderzoek Naar de Omvang, de Kenmerken en de Besteding van Misdaadgeld* (Den Haag: Reed Business Information, 2003).

58 L. Shelley, “Money Laundering into Real Estate,” p 132; as per Professor Brigitte Unger: “To sum up, the real estate sector is by its very nature complex and prone to criminal abuse”: B. Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector*, pp 202–3; F.M.J. Teichmann, “Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland,” p 371.

59 L. Shelley, “Money Laundering into Real Estate,” p 140; see also J. Ferwerda and B. Unger, “Detecting Money Laundering in the Real Estate Sector,” p 269.

60 Ibid.

61 Ibid.

In this stage, laundering typically occurs by moving funds in and out of offshore bank accounts. Overseas, the money may be used for real estate investments or may assume the form of a foreign bank loan to buy a house, when the loan is in reality the purchaser's own money parked overseas. Finally, the goal of integration is to create a "history" showing that funds were acquired legally. In the integration phase, the criminal places money in the real estate sector and is not interested in trading in real estate but in investing.<sup>62</sup>

### **Types of Real Estate Susceptible to Laundering**

Experts agree that both commercial and residential real estate are vulnerable to money laundering.<sup>63</sup> Significant examples of laundering in commercial real estate include: the *yakuza* in Japan prior to the long-term recession,<sup>64</sup> laundering using cattle ranches in Colombia,<sup>65</sup> property purchases in the red-light district of Amsterdam,<sup>66</sup> and hotel purchases in tourist areas in Spain and Turkey.<sup>67</sup>

Of course, residential examples abound.<sup>68</sup> While attention has often focused on the use of lavish, high-end real estate by criminal organizations, low-end real estate is also subject to use for money laundering. Examples of the latter include Arizona,<sup>69</sup> rural Ohio, and central Tokyo.<sup>70</sup> In some cases, property is purchased but left vacant, and "[s]uch decay may be allowed so the criminal investors can subsequently buy neighboring properties at depressed costs, thereby increasing their territorial influence."<sup>71</sup> In Austria,

62 Ibid, p 132

63 L. Shelley, "Money Laundering into Real Estate," p 134; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 21.

64 L. Shelley, "Money Laundering into Real Estate," p 135; P.B.E. Hill, *The Japanese Mafia: Yakuza, Law, and the State*, pp 185, 177–247; Shared Hope International, *Demand: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands and the United States* (July 2012), pp 113–14, online: <https://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf>; David Kaplan and Alec Dubro, *Yakuza: Japan's Criminal Underworld, Expanded Edition* (Berkeley and Los Angeles: University of California Press, 2003), pp 196–220.

65 L. Shelley, "Money Laundering into Real Estate," p 136; International Crisis Group, *War and Drugs in Colombia, Latin America Report: Latin America Report No. 11* (January 27, 2005), p 26, online: <https://www.crisisgroup.org/latin-america-caribbean/andes/colombia/war-and-drugs-colombia>.

66 L. Shelley, "Money Laundering into Real Estate," p 138; B. Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector*, pp 6–7;

67 L. Shelley, "Money Laundering into Real Estate," p 136.

68 L. Shelley, "Money Laundering into Real Estate," p 134–40; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, pp 16, 23–24, 28, 29, 30; Exhibit 601, Appendix 11, TI Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*, p 31; United States Senate Permanent Subcommittee on Investigation, *Keeping Foreign Corruption out of the United States: Four Case Histories* (February 4, 2010), online: <https://www.hsgac.senate.gov/imo/media/doc/FOREIGNCORRUPTIONREPORTFINAL710.pdf>; United States Department of Justice, Press Release (July 20, 2016), online: <http://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign>; see also *USA v "The Wolf of Wall Street" Motion Picture*, 2016, 2:16-cv-05362, online: [www.justice.gov/archives/opa/page/file/877166/download](http://www.justice.gov/archives/opa/page/file/877166/download).

69 L. Shelley, "Money Laundering into Real Estate," p 140.

70 Ibid, p 134.

71 Ibid, pp 135–36.

Germany, Liechtenstein, and Switzerland, money launderers were observed to prefer to buy property in large metropolitan areas where they can maintain anonymity.<sup>72</sup>

In a study of money laundering through real estate in the Netherlands, one study found that the type of property used by money launders differed depending on the predicate offence. For those who engaged in criminal activities like drug trafficking, human smuggling, and the illegal arms trade, 45 percent of the property acquired was for residential use while 18 percent was for commercial use (such as hotels and casinos). In comparison, only 24.5 percent of the property acquired by those who engaged in fraud and money laundering was residential, while 69.9 percent was for commercial use.<sup>73</sup>

## Conclusion

My purpose in this chapter has been to highlight the international consensus that (a) real estate is an attractive vehicle for money laundering, and (b) money laundering does, in fact, occur with some frequency in this sector. The remainder of this section will set out evidence of money laundering occurring in the British Columbia real estate sector and will identify particular areas of vulnerability. I begin with a case study on building supply companies and their vulnerability to money laundering.

### Case Study: Building Supply Companies and Money Laundering Vulnerability

Neither builders nor building supply companies are reporting entities under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*). As such, they fall outside the *PCMLTFA* regime, including the requirement to submit reports for suspicious and large cash transactions to FINTRAC.

Reporting entities in the real estate industry are expected to assess all clients for suspicious activity that may indicate money laundering, including a long list of indicators outlined in guidance published by FINTRAC, in accordance with the *PCMLTFA* and its associated regulations.<sup>74</sup> Certain client activity automatically triggers a reporting entity's requirement to file a report with FINTRAC. One such activity is where a reporting entity receives a cash transaction of \$10,000 or more, or multiple cash transactions in a 24-hour period that total \$10,000 or

72 F.M.J. Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland," p 372.

73 Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," pp 243–45.

74 Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184.

more. In such circumstances, the reporting entity must file a large cash transaction report with FINTRAC within 15 calendar days.

As noted, builders and building supply companies are *not* reporting entities under the *PCMLTFA*. They are therefore not obligated to report large cash transactions or conduct know-your-customer due diligence, including inquiring about their customers' sources of funds.

In order to gain a better understanding of the prevalence of large cash transactions in the building supply industry, the Commission issued summonses to eight randomly selected building supply companies in the Lower Mainland. The aim of this undertaking was to gain some insight into the extent of large cash activity at building suppliers, which in turn would help understand the risk arising in this sector.

The summonses asked recipients to produce the following information and records in their possession related to cash transactions:

- records of cash transactions with a value of \$10,000 or greater, related to the purchase of building supplies from the recipient;
- records related to the return and refund of the purchase price of any building supplies purchased in cash (over \$10,000) from the recipient; and
- records related to the policies and practices of the recipient with respect to the acceptance of cash as a means of payment for the purchase of building supplies.

Of the eight companies that received summonses, five provided records to the Commission. While the sample was small, the responses provide some insight into the extent to which cash is used in the building supply industry. The results are summarized below.

The five responding companies were smaller, principally family-owned companies operating in the Lower Mainland outside of Vancouver. They provided records of all cash transactions over \$10,000 from 2015 to 2020. In total, there were 77 cash transactions reported to the Commission from 55 individual buyers. The tables below provide details on the transactions from each responding company:

**Table 15.1: Summary of Cash Transactions over \$10,000, 2015–2020**

<b>Supplier</b>	<b>Number of Cash Transactions over \$10,000</b>	<b>Number of Individual Buyers</b>	<b>Total Value of Transactions</b>
Building Supply Company A	4	4	\$67,200.00
Building Supply Company B	40	26	\$487,927.22
Building Supply Company C	4	3	\$82,837.30
Building Supply Company D	16	15	\$275,832.40
Building Supply Company E	13	7	\$217,753.29
<b>Total</b>	<b>77</b>	<b>55</b>	<b>\$1,131,550.21</b>

Source: Compiled by the Commission.

A detailed breakdown of the records year-to-year is provided below:

**Table 15.2: Details Of Cash Transactions by Building Company, 2015–2020**

<b>Year</b>	<b>Supplier</b>	<b>Number of Cash Transactions over \$10,000</b>	<b>Number of Individual Buyers</b>	<b>Total Value of Transactions</b>
2015	Company A	0	0	\$0.00
	Company B	16	7	\$183,966.85
	Company C	0	0	\$0.00
	Company D	0	0	\$0.00
	Company E	0	0	\$0.00
	<b>2015 Total</b>		<b>16</b>	<b>7</b>

Table 15.2 cont'd.

Year	Supplier	Number of Cash Transactions over \$10,000	Number of Individual Buyers	Total Value of Transactions
2016	Company A	0	0	\$0.00
	Company B	3	1	\$34,500.00
	Company C	0	0	\$0.00
	Company D	5	5	\$86,252.60
	Company E	5	3	\$63,806.01
	<b>2016 Total</b>		<b>13</b>	<b>9</b>
2017	Company A	0	0	\$0.00
	Company B	9	6	\$110,206.08
	Company C	2	1	\$21,381.34
	Company D	4	4	\$70,034.25
	Company E	6	2	\$133,947.28
	<b>2017 Total</b>		<b>21</b>	<b>13</b>
2018	Company A	1	1	\$11,200.00
	Company B	5	5	\$60,202.04
	Company C	0	0	\$0.00
	Company D	1	1	\$55,872.30
	Company E	3	3	\$10,000.00
	<b>2018 Total</b>		<b>10</b>	<b>10</b>
2019	Company A	3	3	\$56,000.00
	Company B	7	7	\$99,052.25
	Company C	2	2	\$61,455.96
	Company D	2	1	\$30,200.00
	Company E	1	1	\$10,000.00
	<b>2019 Total</b>		<b>15</b>	<b>14</b>
2020	Company A	0	0	\$0.00
	Company B	0	0	\$0.00
	Company C	0	0	\$0.00
	Company D	2	2	\$33,473.25
	Company E	0	0	\$0.00
	<b>2020 Total</b>		<b>2</b>	<b>2</b>
<b>Total</b>		<b>77</b>	<b>55</b>	<b>\$1,131,550.21</b>

Source: Compiled by the Commission.

Most cash transactions were conducted by unique buyers, with only one or two repeat customers per company. However, one company did have a single buyer who used cash for 17 different transactions between 2015 and 2018, amounting to \$184,500.

Of all the cash transactions recorded, almost one-third of transactions (24 of 77) were for exactly \$10,000. Only seven of the 77 transactions were for more than \$25,000, and of those, only one transaction was for more than \$50,000. A summary of the transactions is provided in Table 15.3:

**Table 15.3: Number of Cash Transactions over \$10,000**

<b>Transaction Range</b>	<b>Number of Transactions</b>
\$10,000	24
\$10,001–\$15,000	29
\$15,001–\$20,000	15
\$20,001–\$25,000	2
\$25,001–\$30,000	4
\$30,001–\$35,000	1
\$35,001–\$40,000	1
\$40,001–\$45,000	0
\$45,001–\$50,000	0
\$50,001 and above	1

*Source:* Compiled by the Commission.

It is worth noting that of the 77 transactions recorded, 24 were in the exact amount of \$10,000, four were in the exact amount of \$15,000, and six were in the exact amount of \$20,000. No information was provided about the denomination of the cash used by purchasers (i.e., whether it was all \$20 or smaller denomination bills).

From the review of the records provided, many of the cash transactions occurred when contractors would charge orders to their account with the building supply company, and then use cash to pay off some, or all, of their account.

## **Cash Refunds**

No records for cash refunds over \$10,000 were provided. One company informed the Commission that orders in excess of \$1,000 would be deemed “custom ordered” and therefore would generally not be eligible for a refund. A second company was noted to have a policy of not allowing returns of special orders, as cited on the invoices the company provided to the Commission.

## **Cash Policies**

No records responsive to the request for records related to the policies and practices of the recipient (with respect to the acceptance of cash as a means of payment for the purchase of building supplies) were provided. In conversation with building supply companies, Commission counsel were advised that such written policies did not exist.

## **Conclusions**

When it comes to building supply companies, it is worth noting the lack of regulatory coverage and the apparent lack of internal company policies regarding the acceptance of unsourced cash as payment for building supplies. These characteristics may make this sector of the market vulnerable to money laundering. However, the small sample of companies that provided information to the Commission does not indicate a substantial amount of cash transactions at these businesses.

All transactions reported over the \$10,000 threshold were in the low tens of thousands of dollars. The large majority of transactions involving such amounts were for \$20,000 or less. Across the five building supply companies that supplied records to the Commission, a total of \$1,131,550 was paid for in cash between 2015 and 2020.

The Commission did not receive information on source of funds and did not investigate those making the payments. As such, no determination can be made on whether any of these cash payments were used to launder money.

The results of the study suggest that there is little that stands in the way of disposing large amounts of cash through the purchase of building supplies. Making improvements to real property by building or renovating is simply another means of converting cash into equity in real estate. That investment can later be realized on sale of the property, becoming legitimate profit in the hands of the homeowner. In the current real estate market in British Columbia, home improvement is also likely to be a safe investment.

I do not go so far as to recommend that the Province urge the federal government to make building supply companies reporting entities to FINTRAC, with all of the attendant compliance obligations. However, as I outline in considerable detail in Chapter 34, there are significant risks of money laundering arising from businesses that undertake transactions involving over \$10,000 in cash.

As such, as I explain in Chapter 34, I have recommended that the Province enact legislation requiring any business accepting \$10,000 or more in cash as payment for a good or service in a single transaction (or series of related transactions), with identified exceptions, be required to:

- verify a customer's identification and record their name, address, and date of birth;
- inquire into and record the source of funds used to make the purchase;
- determine whether the purchase is being made on behalf of a third party and, if so, inquire into and record the identity of that their party; and
- report the transaction – including the total amount of cash accepted; the item or service purchased; the source of funds reported by the customer; whether the purchase was made on behalf of a third party and, if so, the identity of that third party; and the name, address, and date of birth of the customer – to the Province.

While the evidence from this small-scale inquiry into the building supply industry was extremely modest, it seems to me that it is nonetheless revealing. Five relatively small-scale suppliers generated over a million dollars in large cash sales (over \$10,000) over five years. This suggests that there are real risks, and that money launderers could exploit the lack of oversight and reporting to move significant amounts of illicit money through building suppliers. The recommendation I have made in Chapter 34, repeated above, may well deter many building suppliers from accepting cash over \$10,000, and the scrutiny this recommendation provides will reduce the risk of money laundering in this and other sectors of the British Columbia economy.

## Chapter 16

# Real Estate Professionals and Regulators

My Terms of Reference require that I report on money laundering and the effectiveness of anti-money laundering measures in numerous sectors of the provincial economy. One of the largest sectors – both in terms of value and activity – is, of course, real estate. In this chapter, I describe the professionals involved in real estate transactions and the regulatory regime in which they operate. I pay particular attention to mortgage brokers, because of a noteworthy gap in this area. In addition, I consider how BC's real estate industry interacts with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) within the federal anti-money laundering regime, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*).

I begin with a high-level overview of the history of how real estate has been regulated in British Columbia, and the regulatory framework for those who provide real estate services. This includes people (both licensed and unlicensed) who work as real estate agents, strata and property management agents, and property developers. In the course of that discussion, I address the money laundering vulnerabilities within the existing regulatory framework.

In the second section of this chapter, I examine the relationship between FINTRAC and the BC real estate industry, with a particular focus on how the industry has responded to criticism that it has not met its anti-money laundering obligations.

Finally, in the third section, I focus on mortgage brokers and sub-brokers, with a discussion of the regulatory framework, money laundering vulnerabilities in the industry, and gaps in the regulatory and legislative framework. I include two case studies that provide insight into mortgage brokers.

## Part 1: Overview of the Regulation of Real Estate in BC

### History of Real Estate Regulation in BC

The jurisdiction now known as British Columbia was populated by Indigenous peoples before contact with European peoples. In 1858, the mainland of British Columbia was established as a British colony, with Vancouver Island having already been provided by the Crown to the Hudson's Bay Company in 1849.<sup>1</sup> In 1859, Governor James Douglas passed the *Land Proclamation, 1859*, affirming Crown ownership of all lands in British Columbia.<sup>2</sup> The following decade, the *British North America Act, 1867*, 30 & 31 Vict, c 3 (UK) (now known as the *Constitution Act, 1867*), established that jurisdiction for “property and civil rights” fell to the provinces rather than the federal government.<sup>3</sup> British Columbia joined Confederation in 1871.

Following the *British North America Act, 1867*, British Columbia implemented a modified Torrens land title system. A Torrens system of land title registration is based on the principles of indefeasibility, registration, and abolition of notice and assurance.<sup>4</sup> In British Columbia, a person who has registered title has an indefeasible right to the subject property, meaning the Province ensures the registered owner, and nobody else, is considered the true owner.<sup>5</sup> The land title registry is assured to be conclusive as to ownership of land in British Columbia, backed by the Land Title and Survey Authority Assurance Fund.<sup>6</sup> This almost entirely eliminates the need to make inquiries about the validity of someone's claim of title or interest; a purchaser may rely exclusively on the information registered with the Land Title and Survey Authority. This system also means that any beneficial interests in a property that are *not* registered are not easily traceable.<sup>7</sup> British Columbia is sometimes referred to as a “modified” Torrens system because the indefeasibility of title is subject to certain exceptions set out in the *Land Title Act*, RSBC 1996, c 250.<sup>8</sup>

The land title registry and other official records of the land title office are open to inspection and search by any person.<sup>9</sup> Open access to real estate records is a mainstay of the British Columbian land titles system.<sup>10</sup> In 2005, responsibility for maintaining the land title registry was assumed by the Land Title and Survey Authority.<sup>11</sup>

1 *An Act to Provide for the Government of British Columbia* (UK), 21 & 22 Vict C.99 (August 2, 1858), Preamble.

2 *Proclamation by His Excellency James Douglas, Companion of the Most Honourable Order of the Bath, Governor and Commander-in-Chief of British Columbia*, dated February 14, 1859, available online: <https://open.library.ubc.ca/collections/bchistoricaldocuments/bcdocs/items/1.0370690>.

3 *Constitution Act, 1867*, s 92(13).

4 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, Appendix R, Land Title and Survey Authority of BC, “History of BC's Land Title System.”

5 *Land Title Act*, s 23(2).

6 *Ibid*, Part 19.1; Land Title and Survey Authority of BC, “History of BC's Land Title System,” online: <https://ltsa.ca/property-owners/about-land-records/history-of-bcs-land-title-system/>. It should be noted here that this system did not account for Indigenous title or rights, and so was not truly “conclusive.”

7 *See Land Title Act*, ss 29(2)–(3) for the limited exceptions to this principle.

8 *Ibid*, s 23(2).

9 *Ibid*, s 377.

10 *Ibid*, s 377. See also the predecessor legislation: *Land Title Act*, RSBC 1979, c 219, s 306.

11 Land Title and Survey Authority of BC, “Our Mandate,” online: <https://ltsa.ca/about-ltsa/ltsa-mandate/>.

When transferring land, the transferor has an obligation to provide the transferee with a registrable instrument<sup>12</sup> and/or to provide any further description, plan, other instrument, or conveyance, as required by the registrar.<sup>13</sup> Any person can acquire and dispose of land in British Columbia regardless of citizenship,<sup>14</sup> and the owner must not be disturbed in their possession of land because of their citizenship status.<sup>15</sup>

In 1920, the sale of real estate became a regulated industry, discussed in more detail below.<sup>16</sup> As of August 1, 2021, the body responsible for regulation of those engaged in real estate sales and the management of rental or strata property, is the British Columbia Financial Services Authority (BCFSA).<sup>17</sup> The BCFSA is also responsible for administering the *Mortgage Brokers Act*, RSBC 1996, c 313. At present, BCFSA does not have an anti-money laundering mandate.<sup>18</sup>

## Evolution of the Law Applicable to Real Estate Agents and Property Developers

The real estate profession was first subject to provincial regulation in 1920, with the enactment of the *Real-Estate Agents' Licensing Act*.<sup>19</sup> In 1958, the *Real Estate Act*<sup>20</sup> replaced the *Real-Estate Agents' Licensing Act*. The *Real Estate Act* established the Real Estate Council of British Columbia (RECBC) in 2005, with a majority of industry-elected council members. RECBC was responsible for licensing and educating real estate professionals. The Office of the Superintendent of Real Estate (OSRE) was responsible for enforcing regulatory requirements related to licensing. As of August 1, 2022, both RECBC and OSRE have been incorporated into BCFSA.

The *Real Estate Services Act (RESA)*, the successor to the *Real Estate Act*, requires those providing real estate services to have a licence issued by the regulator, and both prohibit unlicensed activity.<sup>21</sup> The *RESA* governs the use of trust accounts by licensees;<sup>22</sup> requires

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12 *Property Law Act*, RSBC 1996, c 377, s 5.

13 *Ibid*, s 7.

14 I note the recent federal budget announcement that the federal government would be placing a two-year moratorium on the purchase of non-recreational residential real estate by foreign commercial enterprises and individuals who are neither citizens nor permanent residents. See Government of Canada, Budget 2022, *Chapter 1: Making Housing More Affordable*, at “1.4 Curbing Foreign Investment and Speculation,” online: <https://budget.gc.ca/2022/report-rapport/chap1-en.html#2022-4>.

15 *Property Law Act*, s 39. This provision was enacted with the original passing of the Property Law Act in 1979.

16 *Real-Estate Agents' Licensing Act*, RSBC 1948, c 189.

17 BC Financial Services Authority, “BC Financial Services Authority’s Integration with B.C’s Real Estate Regulators Is Now Complete,” August 3, 2021, online: <https://www.bcfsa.ca/about-us/news/news-release/bc-financial-services-authoritys-integration-with-bcs-real-estate-regulators-now-complete>.

18 Evidence of M. Noseworthy, Transcript, February 16, 2021, p 51; Evidence of B. Morrison, Transcript, February 16, 2021, pp 51–52.

19 RSBC 1948, c 189.

20 RSBC 1996, c 397 (now repealed).

21 *RESA*, SBC 2004, c 42, s 3.

22 *Ibid*, ss 26–33.

the carrying of errors and omissions and liability insurance;<sup>23</sup> and makes licensees subject to the jurisdiction of the Superintendent of Real Estate (previously RECBC) to investigate misappropriation of trust funds, breaches of the legislation and regulations, and other misconduct.<sup>24</sup> The *RESA* provides for discipline following a hearing and grants BCFSA powers of compulsion.<sup>25</sup> Penalties available to the regulator include the cancellation of a license, reprimands, suspensions, and mandatory enrollment in training courses.<sup>26</sup> The *RESA* also makes proof of a license a precondition to recovery in court of any compensation for acts performed as an agent.<sup>27</sup>

## Changes to the Regulator

The evolution in the regulation of the real estate industry from 2005 to 2018 was detailed in the *Real Estate Regulatory Structure Review* by Dan Perrin (Perrin Report),<sup>28</sup> one of the reports referred to expressly in the Terms of Reference for this Inquiry. I describe that evolution in a summary way here. RECBC was created by the *Real Estate Act* and was responsible for licensing and education. Over time, it was given increased regulatory authority. In 2005, the *RESA* made RECBC a self-regulated agency independent from government. The newly independent RECBC had rule-making authority and was responsible for licensing, education, and regulatory enforcement.<sup>29</sup> OSRE was responsible for regulating unlicensed activity in the sector and for intervening in licensed activity when it was in the public interest, as well as for approving disclosures under *Real Estate Development and Marketing Act*, SBC 2004, c 41.

As housing prices began to rise sharply, so did media scrutiny of, and public concern about, the conduct of real estate professionals. In spring 2016, RECBC commissioned the Independent Advisory Group on Conduct and Practices in the Real Estate Industry in BC, which released its report in June 2016 (the IAG Report). The IAG Report made 28 recommendations, organized under four key areas of concern: transparency and ethics; compliance and consequences; governance and structure; and licensee and public education.<sup>30</sup> The Independent Advisory Group highlighted the following concerns:

- the lack of a clear and easy-to-interpret code of conduct for licensees, maintained by the regulator;
- RECBC's inconsistent and narrow application of its rules intended to effectively deter misconduct and unethical behaviours, and the failure to take an assertive stand on compliance with regulatory standards such as anti-money laundering requirements;<sup>31</sup>

23 Ibid, ss 99–108.

24 Ibid, s 37.

25 Ibid, ss 37, 40–43.

26 Ibid, s 43(2).

27 Ibid, s 4.

28 Exhibit 607, Dan Perrin, *Real Estate Regulatory Structure Review* (2018) [Perrin Report].

29 Ibid, p 8.

30 Exhibit 618, Report of the Independent Advisory Group: On Conduct and Practices in the Real Estate Industry in British Columbia (June 2016) [IAG Report], pp 35–50.

31 Ibid, p 25.

- the continuing practice of dual agency (acting for both buyer and seller in one transaction);
- a need for more proactive investigation and less reliance on complaints;
- inadequate financial penalties and sanctions for misconduct, in contrast to steadily rising real estate prices and related commissions;
- inadequate public explanation by RECBC for its decisions, consent orders, and penalties;
- a confusing overlapping of roles between the regulator and industry organizations, especially in respect of addressing licensee misconduct;
- the difficulties faced by managing brokers in supervising increasingly independent licensees;
- an inefficient division of regulatory duties between RECBC and OSRE;
- the domination of RECBC by industry participants, creating a perception and a risk that industry views and interests would outweigh those of consumers and the public;
- entry-level education standards that are low compared to other financial professions; and
- a need for revisions to licensing education to include a greater focus on conduct and ethics as foundational elements in both the licensing and the re-licensing process.<sup>32</sup>

On the heels of the IAG Report, the provincial government restructured the regulatory framework, eliminating the self-governance of real estate professionals by making the RECBC board fully government appointed and refashioning OSRE as a stand-alone body with a broadened mandate and greater statutory authority. From late 2016 to August 1, 2021, OSRE continued to be responsible for regulation of unlicensed activity, but was also responsible for rule-making for licensees and for oversight of RECBC, including discipline licensee conduct that was deemed “seriously detrimental to the public interest.”<sup>33</sup>

The Perrin Report, which was commissioned by the Ministry of Finance and released in September 2018, concluded that the regulatory structure described above was a significant factor contributing to dysfunction in the relationship between OSRE and RECBC. Mr. Perrin found that the 2016 changes led to significant tension between OSRE and RECBC. Disputes about jurisdiction arose from the lack of clarity on the overlapping roles of OSRE and RECBC, and the lack of industry expertise among the latter’s new government-appointed board members noticeably slowed the processing of complaints.<sup>34</sup>

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<sup>32</sup> Ibid, pp 22–34.

<sup>33</sup> RESA, s 48.

<sup>34</sup> Exhibit 607, Perrin Report, p 15.

The report recommended that OSRE and RECBC be amalgamated with the Financial Institutions Commission (FICOM, the predecessor to BCFSA) to allow for regulation from a capital market conduct perspective as opposed to just licensee conduct. Put differently, this recommendation aimed to reorient regulation so that, instead of focusing on misconduct issues, it would address broader concerns involving the real estate market. Bringing RECBC and OSRE functions within FICOM, which already had regulatory responsibility for mortgage brokers and financial institutions, would place real estate regulation into a broader context of financial regulation.<sup>35</sup>

The Perrin Report also recommended a fundamental review of real estate regulatory policy. This included the question of whether real estate activity currently exempted from licensing requirements should be regulated, and how real estate conduct that is “disruptive to a fair, efficient and trusted market,” or that is illegitimate, could be deterred.<sup>36</sup>

The Province has acted on some of these recommendations. FICOM’s responsibilities (including administration of the *Mortgage Brokers Act*) were transferred to a new Crown agency, BCFSA, in November 2019.<sup>37</sup> BCFSA is an independent Crown agency that regulates credit unions, insurance and trust companies, pensions, and mortgage brokers. The agency’s mandate is to safeguard confidence and stability in BC’s financial sector by protecting consumers from undue loss and unfair market conduct.<sup>38</sup> BCFSA, like FICOM, supervises and regulates financial institutions and pension plans to determine whether they are in sound financial condition and are complying with their governing laws and supervisory standards.

It was also announced in November 2019 that the Province’s real estate regulators, OSRE and RECBC, would be brought within BCFSA.<sup>39</sup>

## BCFSA as the Single Real Estate Regulator

On March 9, 2021, the BC Legislative Assembly approved legislation integrating OSRE and RECBC with the BCFSA.<sup>40</sup> The integration occurred on August 1, 2021. BCFSA is now the sole regulator of real estate professionals in the province and has assumed the responsibilities of what was formerly RECBC and OSRE.<sup>41</sup>

35 Ibid, pp 2–3.

36 Ibid, p 3.

37 *Financial Services Authority Act*, SBC 2019, c 14; BC Financial Services Authority, “About Us,” online: [https://www.bcfsa.ca/index.aspx?p=about\\_us/index](https://www.bcfsa.ca/index.aspx?p=about_us/index).

38 Ibid; see also BC Financial Services Authority, “Mandate and Values,” online <https://www.bcfsa.ca/about-us/what-we-do/mandate-and-values>.

39 British Columbia, “News Release: Single Real Estate Regulator Protects People, Combats Money Laundering,” BC Gov News (November 12, 2019), online: <https://news.gov.bc.ca/releases/2019FIN0115-002149>.

40 *Finance Statutes Amendment Act*, SBC 2021, c 2; BC Real Estate Association, “Update: Changes to the Real Estate Services Act and Move to Single Regulator” (March 16, 2021), online: <https://www.bcrea.bc.ca/advocacy/update-changes-to-the-real-estate-services-act-and-move-to-single-regulator/>.

41 BC Financial Services Authority, “History of BCFSA,” online: <https://www.bcfsa.ca/about-us/what-we-do/history>.

The functions once performed by RECBC under the *RESA* are now performed by the Superintendent of Real Estate, a statutory role that now exists within BCFSa. The chief executive officer of the BCFSa has served as Superintendent of Real Estate since August 1, 2021, as well as filling other statutory roles such as being the Registrar of Mortgage Brokers and the Superintendent of Financial Institutions.<sup>42</sup> For simplicity, and because I do not believe it makes any substantive difference for my purposes, I will simply refer to the appropriate authority as the BCFSa.

BCFSa licenses individuals and brokerages engaged in various aspects of the real estate industry, including real estate sales and rental and strata property management. It sets entry qualifications, investigates complaints against licensees, and imposes disciplinary sanctions available under the *RESA*.

Most providers of real estate services in British Columbia must be licensed. BCFSa ensures that licensees, among other things, meet educational and professional standards, manage their funds through trust accounts, and carry errors and omissions insurance.

BCFSa is also responsible for the investigation and discipline of unlicensed real estate activity, the development of rules related to the activities of real estate licensees, and the administration of the *Real Estate Development Marketing Act*, SBC 2004, c 41. These functions were previously performed by OSRE.<sup>43</sup>

## Regulated Persons: Real Estate Service Providers

I now turn to the different types of real estate professionals who are regulated in this province, which first requires a look at the provincial *Real Estate Services Act*.

### *Types of RESA Licences*

In British Columbia, professionals who engage in real estate services generally fall into three licensed categories: managing brokers, associate brokers, and representatives. (There is also a fourth category of licence for real estate brokerages.) All four categories are supervised by BCFSa and are governed by the *RESA*.<sup>44</sup> Each category of professional has different licensing requirements and different duties under the *Real Estate Services Rules*.

**Managing brokers** are responsible for exercising the rights and performing the duties of a real estate brokerage. All real estate services must be provided through a brokerage, and every brokerage must have a licensed managing broker.<sup>45</sup> The

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42 BC Financial Services Authority, “Who We Are – Senior Executive Team,” online: <https://www.bcfsa.ca/about-us/who-we-are/senior-executive-team>.

43 BC Financial Services Authority, “History of BCFSa,” online: <https://www.bcfsa.ca/about-us/what-we-do/history>.

44 *RESA*, s 5. See also its subordinate regulation, the *Real Estate Services Regulation*, BC Reg 506/2004 and the *Real Estate Services Rules*, BC Reg 209/2021.

45 *RESA*, s 6.

managing broker acts on behalf of the brokerage for all purposes and is responsible for the brokerage's real estate business, including supervision of the associate brokers and representatives licensed in relation to the brokerage.<sup>46</sup> The *Real Estate Services Rules* set out the responsibilities of managing brokers, including their responsibility to ensure that all business is carried out in accordance with the governing legislation. The rules also require that managing brokers ensure that all related licensees and staff, including associate brokers and representatives, have adequate supervision and are familiar with the rules.<sup>47</sup> A managing broker who has knowledge of improper conduct (or conduct unbecoming a licensee on the part of another licensee or a brokerage employee) is required to take reasonable steps to deal with the matter.<sup>48</sup>

**Associate brokers** are licensees who meet the educational and experience requirements to be a managing broker but are providing real estate services under the supervision of a managing broker.<sup>49</sup>

**Representatives**, commonly referred to as real estate agents or realtors when providing trading services, are licensed to provide real estate services under the supervision of a managing broker.<sup>50</sup> The obligations of both licensed associate brokers and representatives are set out in Rule 29. They are required to keep their managing broker informed of the real estate services that they are providing and must respond promptly to any inquiries from the managing broker. Both categories of licensee are responsible for promptly informing their managing broker if they become aware of misconduct or improper conduct, whether their own or that of another person for whom the managing broker has responsibility.<sup>51</sup>

There are three categories of real estate services governed by the *Real Estate Services Act* and the *Real Estate Services Rules*: rental property management, strata management, and trading services (real estate sales). Individuals must be licensed for each area in which they practice. Separate licensing and training requirements apply to each category of service.<sup>52</sup>

Following the release of the IAG Report in 2016, RECBC implemented more stringent suitability assessment requirements for prospective licensees. This included publishing more suitability hearing decisions, increasing English language proficiency requirements, and streamlining the assessment process in order to flag suitability issues at an earlier time.<sup>53</sup> In November 2020, RECBC updated its suitability guidelines to move

46 Ibid, s 6(2)(c).

47 BC Financial Services Authority, "Real Estate Services Rules" (updated August 1, 2021), online: <https://www.bcfsa.ca/about-us/legislation/real-estate-services-rules>; *Real Estate Services Rules*, s 28(1).

48 Ibid, s 28(2).

49 RESA, ss 5(1)(c), 5(2.1).

50 Ibid, s 5(1)(d).

51 *Real Estate Services Rules*, s 29(5).

52 BC Financial Services Authority, "Education and Licensing – Becoming Licensed," online: <https://www.recbc.ca/professionals/licensing/becoming-licensed>.

53 Evidence of Erin Seeley, Transcript, February 16, 2021, pp 153–54.

toward a “fitness to practice” standard, which also allows the regulator some discretion in assessing criteria for entrance to the profession.<sup>54</sup>

### ***Exceptions to Licensing Requirement***

There are exceptions to the requirement for licensing under the *RESA*, some of which I find problematic.

The first is for employees of developers who engage in sales activities. Those who work for real estate developers are not required to be licensed, even when they are engaging in what would otherwise be trading activities that are restricted to licensed real estate agents. This exemption has attracted much attention, including in the report prepared by Professors Maureen Maloney, Tsur Somerville, and Brigitte Unger<sup>55</sup> (Maloney Report) and the Perrin Report. Both reports recommended that the Ministry of Finance take steps to eliminate the exemption on the basis that doing so would both enhance public protection in the sale of residential developments and provide additional regulatory tools useful for anti-money laundering activities.<sup>56</sup>

This issue was also picked up by the federal-provincial ad hoc working group on real estate (which I describe in more detail in Chapter 18). The group set out “key considerations and challenges,” including that allowing the employees of developers to engage in unregulated sales “decreases oversight and may increase risk of [anti-money laundering] non-compliance, tax evasion, and other misconduct.”<sup>57</sup> Ultimately, the working group declined to make a recommendation, concluding only that further analysis and consultation with industry and regulators is required.<sup>58</sup>

I have less hesitation in urging the Province to end this exemption. The building and sale of new developments is a large and lucrative segment of the BC real estate market. To allow the continuation of a gap in licensing that may, as the working group noted, increase risk of anti-money laundering non-compliance, which is not an option for such a significant segment of the real estate market. Although real estate developers’ employees have *PCMLTFA* obligations in respect of reporting suspicious transactions, they will not have the same education and training requirements as licensees while they remain outside of the licensing scheme. There are other valid reasons to bring these exempted employees into the scheme, such as making them subject to the conduct requirements of licensees and the oversight of BCFSA. I therefore recommend that the Province amend the *Real Estate Services Regulation* to bring the employees of developers within *RESA*’s licensing scheme.

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54 Ibid, p 154.

55 Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, “Combatting Money Laundering in BC Real Estate,” Expert Panel, March 31, 2019 [Maloney Report].

56 Exhibit 607, Perrin Report, pp 30–31; Exhibit 330, Maloney Report, pp 78–79.

57 Exhibit 704, BC Canada Real Estate Working Group, Work Stream 2, “Regulatory Gaps, Compliance, Standards and Education,” (December 15, 2020) [Work Stream 2], pp 7–8.

58 Ibid, p 8.

**Recommendation 8:** I recommend that the Province amend the *Real Estate Services Regulation* to bring the employees of developers within the licensing scheme.

Another gap in the licensing requirements, identified again by the working group and in the evidence of Raheel Humayun, then managing director of investigations for OSRE (and now director of investigations at BCFSA), arises in relation to rental property. The issue arises when the rented property is owned, leased, or rented by a person who is providing what would otherwise be real estate services under the *RESA*.<sup>59</sup> Mr. Humayun provided two examples to illustrate the problem: “for lease by owner” and “for sale by owner.”

In the first scenario, a person rents a property from the owner, but instead of occupying it, sublets it to a third party. In doing so, the person advertises the property for rent, enters into agreements with the sub-lessor for a higher amount than what they are paying to the owner, collects rent, and keeps the difference.<sup>60</sup> The problem, Mr. Humayun said, is that BCFSA has been seeing individuals or corporations entering into multiple residential tenancy agreements and then subletting them to multiple tenants. Such persons are providing rental management services and receiving remuneration for those services, yet they avoid the licensing requirement (and all of the attendant obligations imposed on licensees) because they fall under the exception for owners.<sup>61</sup>

In the second scenario, a person enters into an agreement to purchase a property directly with the owner. Where that purchase agreement allows for assignment, the buyer can then turn around and sell that purchase agreement to a third party. A person could hold multiple purchase agreements and assign them to multiple third parties, effectively acting at business scale (or to use a different phrase, at an industrial level). These activities, if not conducted in respect of their “own” properties, would amount to trading services and be subject to licensing requirements.<sup>62</sup>

In both situations, the regulatory regime does not capture activity that would otherwise be covered. This creates a gap. The working group wrote, in respect of such activity:

RESA was first drafted in 2004 and does not contemplate the sophisticated volume-based business practices that have emerged to subvert the regulatory framework. [For sale by owner and for lease by owner] activity is being abused by unregulated service providers who are conducting large-scale activities and putting the public at risk. Wholesale business models now exist where entities enter into multiple purchase or tenancy agreements and engage to conduct unlicensed RESA services such as purchase contract assignment or subleasing.

<sup>59</sup> Ibid, pp 8–10; Evidence of R. Humayun, Transcript, February 25, 2021, pp 27–32.

<sup>60</sup> Evidence of R. Humayun, Transcript, February 25, 2021, pp 29–30.

<sup>61</sup> Ibid, pp 27–29.

<sup>62</sup> Ibid, pp 30–32.

The broader regulatory and law enforcement framework and the AML [anti–money laundering] compliance regime have little to no insight into the activities of even large-scale unregulated entities acting in this manner, who unlike licensed persons, have no AML responsibilities, conduct expectations or consumer protection accountabilities.<sup>63</sup>

The gap in regulation was found, specifically, to present a money laundering vulnerability:

The work stream further noted that unlicensed entities providing real estate services generally present a greater risk for money laundering and tax evasion than licensees and have no defined regulatory requirement to comply with AML reporting. As all levels of government seek to address AML reporting and misconduct through increased responsibilities and education for regulated real estate professionals, the gap between the regulated and unregulated areas of the market in terms of AML compliance has grown and continues to expand. There is reasonable likelihood that bad actors will favour the unregulated area of the market to escape the lens of law enforcement.<sup>64</sup>

The exemption for this category of operator means there is limited ability for the regulator to respond to activity that can be detrimental to consumers or to the market. Mr. Humayun testified that investigators are limited, even if they have concerns about the conducts of such operators, to making referrals to tax authorities.<sup>65</sup> That leaves consumers vulnerable to such actors.

The exemption also gives rise to a money laundering vulnerability. Real estate brokers and sales representatives are reporting entities to FINTRAC. However, the definition of the term “real estate broker or sales representative” in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* is tied to provincial authorization to act as an agent.<sup>66</sup> As a result, if someone does not fall within the provincial definition, they fall outside the federal FINTRAC reporting regime. There are no anti–money laundering reporting or record-keeping obligations that apply to people who are not licensed real estate service providers. The exemption therefore creates a gap in anti–money laundering oversight. As such, I recommend that the Province bring business scale “for lease by owner” and “for sale by owner” operations into the licensing scheme for real estate service providers. By “business scale” I mean leasing or sales activity operated as a business for its own sake as distinct from an incidental activity of a person who leases one or even two investment properties or chooses to act for themselves in the sale of their principal residence. I leave it to the Province to define with precision the scale of activity requiring licensing.

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63 Exhibit 704, Work Stream 2, p 9.

64 Ibid.

65 Evidence of R. Humayun, Transcript, February 25, 2021, pp 33–34.

66 SOR/2002-184, s 1.

**Recommendation 9:** I recommend that the Province bring business-scale “for lease by owner” and “for sale by owner” operations into the licensing scheme for real estate service providers.

### ***Educational Requirements for Real Estate Licensees***

Prospective licensees must complete one of four courses (one for each type of real estate licence) administered by the University of British Columbia’s Sauder School of Business.<sup>67</sup> Prospective trading services licensees must also complete an Applied Practice Course delivered by the BC Real Estate Association (BCREA).

Each real estate license is granted for a two-year period. A licensee must complete a six-hour relicensing education program in order to be eligible for renewal of their license.<sup>68</sup> Additionally, those licensees who are members of a local real estate board must complete 18 professional development program credits administered by BCREA during their license period.<sup>69</sup>

As noted above, in 2016, the IAG Report concluded that the entry requirements for licensees were low, and that both entry-level education and continuing education should be revised to include a greater focus on conduct and ethics.<sup>70</sup>

Both the regulator and industry have responded. Following the publication of the IAG Report, the required passing level for the pre-licensing examination was increased from 65 to 70 percent; English language proficiency requirements were raised; and BCREA’s trading services practice course was redesigned to focus on concepts of agency, disclosure, and contracts. During each two-year license term, real estate licensees are now required to complete a Legal Update course.<sup>71</sup> In October 2020, RECBC instituted a mandatory course for licensees entitled “Ethics for the Real Estate Professional,” which must be completed by all licensees within each license period. The course is now administered by BCFSA.<sup>72</sup>

There has also been education introduced that is aimed specifically at improving licensees’ understanding of money laundering and compliance with anti-money laundering obligations. In January 2020, RECBC instituted an anti-money laundering course for all licensees to complete during their license term, (mandatory after mid-2020

67 UBC Sauder School of Business, “Real Estate Trading Services Licensing Course: Overview,” online: <https://www.sauder.ubc.ca/programs/real-estate/licensing-registration-courses/bc-licensing-courses/real-estate-trading-services-licensing>.

68 Evidence of Erin Seeley, Transcript, February 16, 2021, p 143.

69 Exhibit 618, IAG Report, p 21.

70 Ibid, p 34.

71 BC Financial Services Authority, “Legal Update Course,” online: <https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/education-and-licensing/continuing-education/legal-update>.

72 BC Financial Services Authority, “Ethics – Building Trust,” online: <https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/education-and-licensing/continuing-education/ethics-course>.

for renewal of a license).<sup>73</sup> BCFSA also offers online resources for anti-money laundering education.<sup>74</sup> On October 5, 2020, BCREA launched its “Mastering Compliance: Anti-Money Laundering Training for Brokers” course for managing brokers.<sup>75</sup>

## Regulated Persons: Property Developers

The *Real Estate Development and Marketing Act* applies to developers who market development property, which is defined as multiple lots or interests in land.<sup>76</sup> The Act is intended to protect the public by ensuring that developers have the necessary approvals and financing.<sup>77</sup> It does not provide for a licensing regime for developers;<sup>78</sup> however, BCFSA is responsible for regulating developers to the extent of ensuring that they provide full information and deposit protection to consumers.<sup>79</sup> The Act regulates those who “market”<sup>80</sup> residential real estate, including requiring developers to ensure title and services will be in place at the time of transfer, and that any deposits be held in trust.

The Act sets out a number of obligations for developers who are marketing a development property, including the provision of disclosure statements to consumers.<sup>81</sup> In 2018, it was amended to introduce requirements for disclosure of any assignment of purchase agreements (a.k.a. presale agreements) to the property tax administrator.<sup>82</sup> This information is maintained in the Condominium and Strata Assignment Integrity Registry.<sup>83</sup> The provisions governing assignments were introduced to create assignment reporting requirements for developers; they are targeted at tax avoidance by those who assign agreements for the purchase of new development units to subsequent purchases at a profit, without reporting the ensuing capital gain. Prior to the amendments to the Act, the rights to a presale development

73 BC Financial Services Authority, “Anti-Money Laundering in Real Estate,” online: <https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/education-and-licensing/continuing-education/anti-money-laundering-real-estate>.

74 BC Financial Services Authority, “Anti-Money Laundering Information,” online: <https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/knowledge-base/information/anti-money-laundering-information>; and “Anti Money Laundering Guidelines,” online: <https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/knowledge-base/guidelines/anti-money-laundering-guidelines>.

75 BC Real Estate Association, “Register Now for Mastering Compliance: Anti-Money Laundering Training for Brokers” (August 26, 2020), online: <https://web.archive.org/web/20210331050019/https://www.bcrea.bc.ca/education/register-now-for-mastering-compliance-anti-money-laundering-training-for-brokers/>.

76 *Real Estate Development Marketing Act*, s 1.

77 Evidence of R. Humayun, Transcript, February 25, 2021, pp 8–9.

78 The Crown corporation BC Housing provides licensing for builders. Some developers are builders, and are licensed by BC Housing, and some are not.

79 BC Financial Services Authority, “Real Estate Developer Resources,” online: <https://www.bcfsa.ca/industry-resources/real-estate-developer-resources/policy-statements>.

80 *Real Estate Development Marketing Act*, s 1, online: <https://web.archive.org/web/20210129220403/https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/real-estate-development-marketing>

81 *Ibid*, s 3(1)(c).

82 *Real Estate Development Marketing Act*, Part 2.1; BC Financial Services Authority, “Condo and Strata Assignment Integrity Registry,” online: <https://www.bcfsa.ca/about-us/news/condo-and-strata-assignment-integrity-register-csair?hits=csair>.

83 *Real Estate Development Marketing Amendment Act*, SBC 2018, c 25.

could be transferred multiple times and the collection of comprehensive information about such transfers was not mandated or routine.<sup>84</sup>

Not all actors involved in property development are captured by the Act. It is targeted at residential developments of more than five units; developments under this size and commercial or industrial developments are not included within its scope. Also falling outside the scope are the capital-raising activities of developers. These are gaps in the oversight regulation of the real estate industry that BCFSa, and the Ministry of Finance, will have to monitor in order to determine whether action is needed to ensure that the regulator has adequate insight into, and control over, actors in the industry.<sup>85</sup> This is an example of an area where the AML Commissioner recommended in Chapter 8 will bring expertise to bear on the money laundering vulnerabilities arising from gaps in the regulatory regime.

## Investigation and Enforcement

I now consider the investigation of real estate licensees, followed by the enforcement and discipline regimes in place.

### Regulator Investigations

BCFSa has now combined the investigative teams of BCFSa, OSRE, and RECBC.<sup>86</sup>

BCFSa supervises licensees in two key ways: performing regular random audits of brokerages and completing investigations of licensees – either in response to a complaint, or proactively on the initiative of the investigative team. In neither case is the regulator looking for money laundering.<sup>87</sup> When asked if auditors or investigators look for money laundering during the course of their work, David Avren, vice-president of legal and compliance at RECBC, testified, “We don’t have an express AML mandate and our resources wouldn’t permit us to undertake that [assisting and collaborating in supporting FINTRAC’s audit work] at present in any event.”<sup>88</sup>

Brokerages are audited by an audit team at least every five to six years. Individuals are also assessed for suitability at the time of their re-licensing, which occurs every two years. Any issues or adverse information that has emerged relating to a licensee during that period may result in conditions on licensing, or transfer to a hearing with a possibility of denial of re-licensing.<sup>89</sup>

84 British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 41st Parl, 3rd Sess, Issue No. 123 (24 April 2018), p 4169 (Hon. C. James).

85 Evidence of M. Noseworthy, Transcript, February 16, 2021, pp 94–95.

86 Exhibit 1051, Affidavit of Blair Morrison, sworn September 13, 2021, para 7.

87 Evidence of E. Seeley and D. Avren, Transcript, February 16, 2021, p 188.

88 Evidence of D. Avren, Transcript, February 17, 2021, p 44.

89 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, pp 46–47.

Auditors and investigators have taken the anti–money laundering course prepared by RECBC, and three of 17 investigators working specifically for RECBC at the time of our hearings had additional anti–money laundering training. Investigations that disclose an element of unusual flows of funds through a trust account, or other indications that a licensee is involved in money laundering, would be directed to the staff members who have that additional anti–money laundering training.<sup>90</sup>

The investigation team responds to complaints received by the regulator. Complaints are received from real estate clients, agents, an anonymous tip line, and occasionally from managing brokers. Investigators may also initiate examinations based on media reports or court decisions, or as a result of audit findings.

Complaints received, as well as open investigations, have been growing steadily. RECBC says this is due to increasing activity in the real estate industry and the organization’s efforts to raise public awareness of its role as a consumer protection regulator.<sup>91</sup> From 2015 to 2020, the number of complaints received annually doubled from 536 to 1,028.<sup>92</sup>

According to RECBC’s 2020/21–2022/23 Service Plan, the average number of days it took to complete a complaint investigation in 2017–18 was 310 days. By 2019–20, RECBC had decreased that to 245 days and was on track to reduce the length of investigations by more than 5 percent in 2020–21.<sup>93</sup>

RECBC reported to the Commission that one significant issue preventing it from pursuing complaints or complex investigative matters promptly was the difficulty in recruiting and retaining qualified investigators, particularly those with experience in financial crimes or real estate. This is in addition to the challenges arising from its increased volume of complaints.<sup>94</sup> In 2018, RECBC had only 10 investigators. By July 3, 2021, BCFSA reported it had 25 staff and was continuing to hire.<sup>95</sup> In 2020–21, RECBC forecast a \$2.2 million increase in staffing costs to support additional full-time employees for compliance, audit, and operations functions (as well as increased employee benefit costs).<sup>96</sup>

RECBC indicated it had been “confronted with a variety of complex and publicly sensitive social issues such as undisclosed conflicts of interest, fraud, fake offers, and allegations of sexual misconduct by licensees.”<sup>97</sup>

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90 Evidence of E. Seeley and D. Avren, Transcript, February 16, 2021, pp 187–89.

91 Exhibit 1050, Affidavit of Michael Scott, sworn September 13, 2021 [Affidavit of M. Scott], para 14.

92 Ibid.

93 Real Estate Council of BC, *2020/21–2022/23 Service Plan* (February 2020) [RECBC Service Plan], p 9, online: <https://www.bcfesa.ca/media/769/download>.

94 Exhibit 1050, Affidavit of M. Scott, para 12.

95 Ibid, para 13.

96 RECBC Service Plan, p 18.

97 Exhibit 1050, Affidavit of M. Scott, para 7.

In the third part of this chapter, in the context of discussing RECBC’s investigation of licensees who were allegedly involved in or connected with the frauds of one-time mortgage broker Jay Chaudhary, I urge the Province to ensure that BCFSAs have adequate investigative resources to ensure that allegations of serious misconduct by licensees are pursued in a thorough and timely manner. This is not limited to the allegations relating to Mr. Chaudhary’s activities, but also includes the serious complaints described by RECBC in its supplementary affidavit.<sup>98</sup>

## Discipline and Enforcement

My discussion of discipline and enforcement considers these topics in relation to both those who are licensed and those who are not licensed under the *RESA*.

### Licensees

The *RESA* provides that the superintendent “must” sanction professional misconduct or conduct unbecoming, by ordering one or more remedies from a list of options set out in the statute.<sup>99</sup>

The available financial penalties have increased over time. Before being repealed by the *RESA* in 2005, the *Real Estate Act* provided a maximum fine of \$10,000 for corporations, or \$5,000 for individuals, for any breach of the Act.<sup>100</sup> The *RESA* originally set maximum fines for professional misconduct or conduct unbecoming,<sup>101</sup> unlicensed activity,<sup>102</sup> or certain acts considered to be seriously detrimental to the public interest,<sup>103</sup> of \$20,000 for brokerages and \$10,000 for others.

In its June 2016 report, the IAG Report concluded that RECBC needed to respond more forcefully to non-compliance:

The willingness and ability of licensees to comply with all regulatory requirements goes to their suitability to hold a licence. Council needs to send a stronger message to licensees regarding compliance with all regulatory requirements and ethical standards. This will, in turn, reassure the public that licensees are held to a high standard of conduct and ethics.<sup>104</sup>

In 2016, the *RESA* fine and disciplinary penalty maximums were increased to \$500,000 for brokerages and \$250,000 for others.<sup>105</sup>

<sup>98</sup> Ibid.

<sup>99</sup> *RESA*, s 43.

<sup>100</sup> *Real Estate Act*, s 40.

<sup>101</sup> *RESA*, s 43.

<sup>102</sup> Ibid, s 49(2).

<sup>103</sup> Ibid, s 50 (now repealed).

<sup>104</sup> Exhibit 618, IAG Report, p 26.

<sup>105</sup> *RESA*, ss 43(2)(i), 49, 50.

The RESA also creates maximum penalties for the commission of an offence, such as breaches of trust account obligations, interference with an investigation, failure to comply with an order of a regulator, contravening the requirement for a license, or making a false or misleading statement in a compelled record.<sup>106</sup> In 2016, those maximums were increased from \$50,000 for a first conviction and \$100,000 for a subsequent conviction to \$1.25 million and \$2.5 million, respectively.<sup>107</sup> Imprisonment for a term of not more than two years is also available.

In February 2021, the regulator expanded the types of contraventions for which administrative penalties are available, creating a scale of penalties according to perceived risk to the public.<sup>108</sup> The change was in response to a perceived gap between letters of advisement, which act as warning letters, and the disciplinary process, which proceeds by way of a resource-heavy and often lengthy hearing process.<sup>109</sup>

Since 2016, the largest discipline penalty issued by RECBC was \$20,000, an amount levied on three occasions.<sup>110</sup> The majority of disciplinary fines issued by RECBC since September 2016 were below \$5,000. It is worth noting that, in addition to disciplinary fines, those sanctioned often face a requirement to repay high investigation and hearing costs, which are often modest but sometimes total over \$50,000.<sup>111</sup>

In evidence before the Commission, Mr. Avren testified that RECBC *does* make orders for disgorgement of benefits received, but that there have not been many of these types of awards. He explained that, because the penalties available since the 2016 amendments are so high, resort to the specific disgorgement section is unnecessary.<sup>112</sup> The regulator should not be shy to use the tools available to it to ensure that regulated professionals do not profit by way of activity that is contrary to the legislation or the rules. I describe below some significant disgorgement orders that were made against unlicensed persons by OSRE. (I recommend elsewhere in this chapter that the Registrar of Mortgage Brokers be empowered to make disgorgement orders.) I consider disgorgement to be a valuable tool in responding to activity that is extremely profitable and yet is contrary to the legislation and rules governing real estate professionals.

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106 Ibid, s 119.

107 Ibid.

108 Real Estate Council of BC, “Administrative Penalty Guidelines,” online: <https://www.recbc.ca/public-protection/decisions/administrative-penalty-guidelines>; and <https://web.archive.org/web/20210516221031/https://www.recbc.ca/public-protection/decisions/administrative-penalty-guidelines>.

109 Evidence of D. Avren, Transcript, February 17, 2021, pp 28–31.

110 BC Financial Services Authority, “Real Estate Decisions – Consent Order” (August 14, 2020), Geoffrey Weston Hays et al. (awarded jointly and severally between two people and a PREC), online: <https://www.bcfsa.ca/system/files/decisions/1134/18-12520hays2020prec20marble20-20consent20order20redacted.pdf>; BC Financial Services Authority, “Real Estate Decisions – Consent Order” (July 2, 2019), Arlene Christina Chiang & Oakwyn Property Management Ltd. (awarded against brokerage and managing broker that had a previous sanction for an unrelated matter), online: <https://www.bcfsa.ca/system/files/decisions/1187/18-421-consent-order-cop-oakwyn-chiang-prec-redacted.pdf>.

111 Section 44(1) of RESA allows the regulator to require the licensee to pay the expenses incurred in relation to the investigation and discipline hearing. See, for example, *Re Behroyan*, 2018 CanLII 50247 (BC REC), where the licensee was ordered to pay enforcement costs of \$58,708.85.

112 Evidence of D. Avren, Transcript, February 17, 2021, pp 32–33.

Awards issued by RECBC may be appealed to the Financial Services Tribunal.<sup>113</sup> Prior to August 1, 2021, section 55(2) of the *RESA* provided that an appealable decision was stayed by the filing of a notice of appeal.<sup>114</sup> This provision was repealed effective August 1, 2021. As noted by Mr. Avren in his evidence, an automatic stay, permitting a professional to continue to practise despite what might be very serious disciplinary findings, would be contrary to public expectation, and I commend this change.<sup>115</sup> An automatic stay is an unusual feature in professional regulation legislation, though is also present in the *Mortgage Brokers Act*. I will return to this when I review the scheme applying to mortgage brokers.

### **Unlicensed Activity**

If, after a hearing, the superintendent determines a person provided real estate services while unlicensed, the superintendent may issue an order requiring the person do a number of things: cease the activity; carry out remedial actions; repay enforcement expenses; pay a penalty (up to \$500,000 for a corporation or partnership, or up to \$250,000 for an individual); or require an additional penalty (of up to the amount of remuneration received by the person in the course of their unlicensed activity). If a decision is made to prosecute an individual for unlicensed activity, section 119 of the *RESA* also allows a fine to be imposed for up to \$1.25 million (\$2.5 for subsequent offence) and/or up to 2 years in jail.

In December 2021, the superintendent issued its largest penalty yet: a \$50,000 penalty coupled with a \$50,000 disgorgement order against an individual and his property management company for providing unlicensed rental property management services.<sup>116</sup>

### **Developers**

BCFSA has enforcement and disciplinary powers under the *Real Estate Development and Marketing Act* to respond to any non-compliance with that Act. It may investigate the developer, and such an investigation can include inspecting records located on the developer's business premises or obtaining a court order authorizing the search and seizure of records located elsewhere. BCFSA may also hold a hearing to determine if the developer has been non-compliant with the Act.<sup>117</sup>

Should BCFSA determine the developer has been non-compliant, it has a number of orders available to it. It may order the developer to stop marketing certain development units, to carry out a specified activity, to comply with the provisions relating to the Condo and Strata Assignment Integrity Registry, or to pay certain fines or sanctions.<sup>118</sup>

<sup>113</sup> *RESA*, s 54.

<sup>114</sup> *Ibid*, s 55(2), repealed by *2021 Finance Statutes Amendment Act*, SBC 2021, c 2, s 79.

<sup>115</sup> Evidence of D. Avren, Transcript February 17, 2021, pp 25–27.

<sup>116</sup> BC Financial Services Authority, “News – BCFSA Issues \$100,000 Penalty for Unlicensed Property Management Activity,” online: <https://www.bcfsa.ca/about-us/news/news-release/bcfsa-issues-100000-penalty-unlicensed-property-management-activity>; *In the Matter of the Real Estate Services Act SBC 2004, c 42 as amended and In the Matter of Yiu Keung (Anthony) Ng and Kitsilano Management Ltd.*, December 3, 2021, online: <https://www.bcfsa.ca/media/2714/download>.

<sup>117</sup> *Real Estate Development and Marketing Act*, ss 25–27.

<sup>118</sup> *Ibid*, s 30.

BCFSA does not have authority to deal with any taxation issues related to the submission of documentation through the Condo and Strata Assignment Integrity Registry – that responsibility lies with the Property Taxation Branch.<sup>119</sup>

In the case of non-compliance with the *Real Estate Development and Marketing Act* by a developer, the maximum administrative penalty available is \$500,000 for a corporation and \$250,000 for an individual.<sup>120</sup> In addition, offences under the Act attract a maximum penalty of \$1.25 million for a first conviction, or \$2.5 million for a subsequent conviction, or not more than two years' imprisonment in either case.<sup>121</sup> BCFSA may also order a developer to pay enforcement expenses.<sup>122</sup>

BCFSA also has the power to apply to the BC Supreme Court for an injunction restraining a person from contravening, or requiring a person to comply with, the Act or an order of the superintendent under the Act.<sup>123</sup>

## Data Gaps

In his evidence, Michael Noseworthy, superintendent of real estate, emphasized that, for the effective regulation of market conduct, it is important to have access to data on a systemic basis.<sup>124</sup> He accepted that BCFSA has inadequate access to data and data analytical capacity to measure and understand trends for regulating market conduct risk.<sup>125</sup> Data he considered would aid his office included the multiple listing service (MLS) maintained by real estate boards. He described a history of mixed success in obtaining MLS data from local real estate boards.<sup>126</sup> The benefits of greater access to data would include giving the office a better sense of what is happening in the sectors it regulates, helping to better serve the public, helping to stay up to date, and being more aware of changes that are happening in the market.<sup>127</sup>

Mr. Humayun also spoke to the information and intelligence needs of BCFSA investigators. He identified the following information sources that would assist the regulator in performing its functions:

- purchase and sale agreements collected by the Property Taxation Branch, which would assist in identifying persons involved in unlicensed trading activity;
- more coordinated access to records of the Residential Tenancy Branch, which would assist in identifying unlicensed property management activity;

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119 Evidence of R. Humayun, Transcript, February 25, 2021, pp 9–10.

120 *Real Estate Development and Marketing Act*, s 30(1)(d).

121 *Ibid*, s 30.

122 *Ibid*, s 31.

123 *Ibid*, s 35.

124 Evidence of M. Noseworthy, Transcript, February 16, 2021, pp 95–96.

125 *Ibid*, p 98; Evidence of R. Humayun, Transcript, February 25, 2021, pp 45–54.

126 Evidence of M. Noseworthy, Transcript, February 16, 2021, pp 100–2.

127 *Ibid*, p 104.

- raw data maintained by the Land Title Survey Authority in order to perform data analysis for the purpose of identifying risks in the market; and
- MLS data maintained by the real estate boards, which are private entities.<sup>128</sup>

MLS data includes details of listings, sales dates, prices, agency relationships, commissions received, and commission splits. At the moment, the regulator can only obtain this information from a brokerage or licensee on demand, and has to trust that the information is received “honestly and properly.” Direct access to MLS data would, according to Mr. Humayun, allow the regulator to conduct “more market conduct-based enforcement versus responding to complaints.”

To be effective, a regulator needs access to data, in a format amenable to analysis. In determining whether access to the kind of information listed by Mr. Humayun would be attainable, I recognize that there are considerations beyond simply what data would give the regulator the best possible insight into market activities and risk trends. However, I believe the regulator requires the ability to access more data to fulfill its duties. I recommend that the Ministry of Finance consult with BCFSa regarding its data needs and put in place measures to accommodate those needs, in a manner that respects the relevant privacy interests arising in this context.

**Recommendation 10:** I recommend that the Ministry of Finance consult with the British Columbia Financial Services Authority regarding its data needs and put in place measures to accommodate those needs, in a manner that respects the relevant privacy interests arising in this context.

I also see considerable merit in ensuring that BCFSa gains access to MLS data. The industry has an obvious stake in the regulator’s access to information that identifies and intervenes in unlicensed activity, and has a reputational stake in the effective regulation of its members and the investigation of allegations of misconduct by members. I strongly encourage the province’s real estate boards and their members to provide BCFSa direct access to MLS data for the purpose of its anti-money laundering work. If such co-operation proves unworkable, I urge the Ministry of Finance to implement regulation that would require the reporting of such information directly to BCFSa for maintenance in its own database.

Having spent time reviewing the overall regulatory structure (primarily governing real estate licensees) and the changes which have been enacted in this area in the recent past, I turn next to the anti-money laundering obligations of real estate licensees and their interactions with FINTRAC.

<sup>128</sup> Evidence of R. Humayun, Transcript, February 25, 2021, pp 45–55; Exhibit 658, Letter to the Commission from Chantelle Rajotte, in response to Commission counsel’s information request, June 9, 2020.

## Part 2: Real Estate Licensees and Anti-Money Laundering Compliance

In this section, I examine the particular vulnerabilities of money laundering in real estate relating to real estate licensees (commonly referred to as “real estate agents”). I also review obligations the *PCMLTFA* places on real estate licensees and anti-money laundering education available to licensees. I then move on to discuss the industry’s compliance with its obligations under the *PCMLTFA* and Regulations and the industry’s relationship with the federal anti-money laundering regulator, FINTRAC.

Real estate licensees have a poor track record of anti-money laundering reporting and compliance. Despite progress at higher levels (industry organizations and regulators), some licensees continue to display inadequate understanding of how money laundering may occur in real estate and hold on to misplaced beliefs that impact their ability and willingness to adequately meet their anti-money laundering obligations.

### Financial Action Task Force Findings about Real Estate Agents in Canada

The Financial Action Task Force (FATF) completed a mutual evaluation report on Canada in 2016 which highlighted the vulnerability of Canada’s real estate industry to money laundering.<sup>129</sup> With respect to real estate agents and FINTRAC, FATF made the following key findings:

- Supervision of real estate sector is not commensurate to the anti-money laundering risks in that sector; more supervision is necessary.<sup>130</sup>
- Real estate agents are not aware of their anti-money laundering obligations. Real estate agents are not familiar with basic customer due diligence processes, and particularly are non-compliant with the third-party determination rule.<sup>131</sup>
- Real estate agents “consider that they face a low risk because physical cash is not generally used in real estate transactions ... [and] are overly confident on the low risk posed by ‘local customer[s],’ as well as non-resident customer[s] originating from countries with high levels of corruption.” Further, “detection of suspicious transactions is mainly left to the ‘feeling’ of the individual agents, rather than the result of a structured process assisted by specific red flags.”<sup>132</sup>

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129 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate & Response from Real Estate Industry [OR: Real Estate & Industry Response], pp 8–9.

130 Exhibit 601, OR: Real Estate & Industry Response, Appendix 5, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), p 4.

131 Ibid, pp 80–82. The third-party determination rule requires, in brief, that reporting entities take reasonable measures to determine whether a third party is involved when carrying out certain transactions or activities: FINTRAC guidance, “Third Party Determination Requirements,” online: <https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/tpdr-eng>.

132 Exhibit 601, OR: Real Estate & Industry Response, Appendix 5, pp 80, 85.

- The number of suspicious transaction reports (STRs) made has gradually increased but remains very low.<sup>133</sup>
- More dialogue is necessary between FINTRAC and the real estate industry. FINTRAC needs to develop its sector-specific expertise and increase the intensity of its scrutiny of designated non-financial businesses and professionals in the real estate sector. FINTRAC should update money laundering / terrorist financing typologies and specific red flags to assist in detection of suspicious transactions. FINTRAC does not provide enough sector-specific compliance guidance and typologies, especially in the real estate sector.<sup>134</sup>

I have concluded that, although there has been progress in the industry with respect to compliance, it is still a pressing concern, and it is the principal anti-money laundering vulnerability that needs to be addressed with respect to persons and businesses providing real estate services in the province.

## **FINTRAC Intelligence on BC Real Estate**

In Chapter 15, I set out the reasons for the real estate sector’s money laundering vulnerabilities and described the common typologies of money laundering in real estate as identified by the FATF. Here, I describe certain FINTRAC intelligence on money laundering vulnerabilities in Canada and British Columbia in particular.

### ***Overview of FINTRAC’s Intelligence Process***

Three representatives of FINTRAC described the centre’s work relating to the real estate sector in Canada.<sup>135</sup>

There are structures and rules in place that restrict and control the flow of information about real estate (and, for that matter, generally). I begin with a summary of how FINTRAC deals with such information.

FINTRAC deals with both strategic and tactical intelligence. Tactical intelligence relates to a specific individual or entity. In contrast, strategic intelligence identifies behaviours and patterns. The distinction is between the specific (tactical: i.e., Company 123 and Transaction 456) and the general (strategic: i.e., there is a trend involving companies which conduct transactions of this variety).

As I describe in Chapter 7, Canada’s FINTRAC regime designates certain persons and organizations as “reporting entities,” which have an obligation to report certain information to FINTRAC. When FINTRAC obtains tactical information, it is not shared

<sup>133</sup> Ibid, pp 7, 41.

<sup>134</sup> Ibid, pp 5, 8, 78, 99.

<sup>135</sup> Annette Ryan, chief financial officer and deputy director of enterprise policy, research, and programs; Donna Achimov, deputy director and chief compliance officer; and Barry MacKillop, deputy director of intelligence.

with reporting entities. Instead, tactical intelligence is provided to law enforcement by way of information disclosures. There is a standard that must be met before FINTRAC can disclose tactical information to law enforcement. FINTRAC must suspect, on reasonable grounds, that the information would be relevant to the investigation or prosecution of a qualifying offence. FINTRAC can disclose information to law enforcement at its own instigation, but most often it does so in response to a Voluntary Information Record filed by law enforcement. A Voluntary Information Record is a record by which law enforcement communicates information to FINTRAC about an ongoing investigation, in order to allow FINTRAC to assess whether it possesses any intelligence that meets the test for disclosure back to law enforcement. The language used here is not intuitive. The term “Voluntary Information Record” suggests that, for instance, a police department has decided to voluntarily share information with FINTRAC, to help FINTRAC in its work. In reality, what is occurring is that the police department is communicating a request to FINTRAC: “we are sending you this Voluntary Information Record so that you can research your data holdings and then send us information relating to a case we are investigating.” In 2019–20 the three predicate offences which figured most prominently in FINTRAC disclosures to law enforcement were fraud (30%), drug-related offences (31%), and tax evasion (14%).<sup>136</sup>

Unlike tactical information, strategic (general) information can be shared with reporting entities. FINTRAC shares strategic information with industries through operational alerts, which describe general trends or typologies in order to assist reporting entities in identifying suspicious indicators.<sup>137</sup>

### **Grant Thornton Report**

In 2014, FINTRAC commissioned Grant Thornton LLP to prepare a report evaluating risks in various reporting sectors. The Grant Thornton Report<sup>138</sup> rated the real estate sector as having a higher risk for money laundering in comparison to other sectors of the economy.<sup>139</sup> The authors attributed this risk to a lack of engagement in anti-money laundering compliance by “significant portions” of the sector, particularly at the smaller end of the market), and an inadequate appreciation by other sectors, such as banking and securities, that real estate transactions carry a higher money laundering risk.<sup>140</sup>

The Grant Thornton Report also addresses anti-money laundering risks associated with real estate licensees and brokerages. The authors concluded that larger brokerages tended to be more risk averse and had stricter anti-money laundering regimes in

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136 Exhibit 733, *FINTRAC Annual Report 2019–20*, pp 2, 10.

137 Evidence of B. MacKillop, Transcript, January 18, 2021, p 183.

138 Exhibit 601, OR: Real Estate & Industry Response, Appendix 9: Grant Thornton LLP, *Reporting Entity Sector Profiles – Money Laundering Terrorist and Financing Vulnerability Assessments* (Toronto: Grant Thornton LLP, 2014) [Grant Thornton Report].

139 As a note of caution, I also observe that Grant Thornton in this 2014 report rated the gambling sector as low risk, as “Canada is not viewed as an attractive market for gambling” and the “Canadian casino sector serves mainly local clients”: *ibid*, Overview, p 10.

140 *Ibid*, p 7.

place, particularly with respect to customer identification, training, and reporting of suspicious transactions.<sup>141</sup> But, on the other hand, “at the smaller end of the market there is often no quality and ethics infrastructure in place.”<sup>142</sup>

The risk of money laundering is intensified because of business pressures:

The competitiveness of the market and sheer number of agents puts pressure on individual agents to secure deals. Agents operating in the sector who are smaller, more independent have less infrastructure to ensure appropriate [know your customer] and support to do any real due diligence. The smaller agent has more incentive to ignore due diligence / [anti-money laundering] requirements, inherent risk.<sup>143</sup>

High-end residential property and low-end commercial property were found to carry a greater money laundering risk.<sup>144</sup> The purchase of Canadian real estate assets with offshore money and/or by offshore persons was noted as a significant risk factor.<sup>145</sup> The report also highlighted purchases by nominees,<sup>146</sup> noting that “[t]he use of nominees, including professional nominees such as lawyers and accountants, or holding companies,” was not uncommon and made it easy to disguise beneficial ownership.<sup>147</sup> Finally, the absence of inquiry by real estate agents into their clients’ source of funds was noted as problematic.<sup>148</sup> I will return to this below.

Grant Thornton concluded that a significant vulnerability of the real estate sector was low anti-money laundering compliance. Failures in this area make an already vulnerable sector more so: “The standards of [anti-money laundering] due diligence and compliance [in real estate] are low and are not an effective barrier, even for notorious criminals.”<sup>149</sup>

### ***Additional FINTRAC Intelligence***

FINTRAC has produced intelligence relating to money laundering risks specific to British Columbia and capital inflows from China.<sup>150</sup> In 2017, following media attention on the issue,<sup>151</sup> FINTRAC’s Strategic Intelligence and Data Exploitation Lab published a financial intelligence report on the extent to which the purchase of BC real estate by

141 Ibid, Real Estate Sector Profile, p 17.

142 Ibid, Overview, p 5.

143 Ibid, Real Estate Sector Profile, p 20.

144 Ibid, Real Estate Sector Profile, pp 20–21.

145 Ibid, Real Estate Sector Profile, p 23.

146 Ibid, Real Estate Sector Profile, p 25.

147 Ibid, Real Estate Sector Profile, p 15.

148 Ibid, Real Estate Sector Profile, p 18.

149 Ibid, Real Estate Sector Profile, p 15.

150 Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia [Redacted] Banking and Private Lenders (December 13, 2018).

151 Ibid, p 61.

foreign buyers might represent money laundering.<sup>152</sup> The version of this report that the Government of Canada produced to the Commission was heavily redacted. One unredacted portion of the report stated: “most of the current media hype surrounding the issue of foreign-owned real estate in the larger metropolitan areas stems from the 20–30% increase in house prices annually.<sup>153</sup> However, fragments of unredacted text suggest that FINTRAC has observed the movement of the proceeds of foreign corruption into Canadian real estate.<sup>154</sup>

The 2017 financial intelligence report concludes that FINTRAC’s operational brief on suspicious indicators for real estate can assist real estate actors in distinguishing between Chinese inflows and real estate-related activity that may be money laundering risks but that “[f]urther guidance is necessary for reporting entities, to assist them in managing their risk related to transactions emanating from China and Hong Kong.”<sup>155</sup>

## **Anti–Money Laundering Responsibilities of Real Estate Licensees**

### ***PCMLTFA Reporting Entities***

The *PCMLTFA* and Regulations provide that the following professionals engaged in real estate transactions in BC are reporting entities: notaries public, real estate agents, real estate developers, and financial institutions.<sup>156</sup> Real estate developers are reporting entities,<sup>157</sup> but their employees, acting as salespeople, are not.<sup>158</sup> Reporting entities are required to designate a compliance officer, conduct a risk assessment of their business and clients, develop a compliance program, and implement the policies and procedures related to that program, including certain baseline requirements such as know-your-client due diligence.<sup>159</sup>

While most responsibilities under the *PCMLTFA* (for example, record-keeping requirements) apply to real estate brokerages as opposed to individual licensees, both brokerages and individual real estate licensees are responsible for submitting suspicious transaction reports to FINTRAC. This responsibility also falls on employees of developers who are involved in sales.<sup>160</sup>

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152 Ibid, p 45.

153 Ibid, p 48.

154 Ibid, p 51; Evidence of B. MacKillop, Transcript, March 12, 2021, p 29.

155 Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia [redacted] Banking and Private Lenders (December 13, 2018), p 56.

156 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*].

157 Ibid, s 59.

158 For an explanation of how obligations under the *PCMLTFA* fall as between real estate brokerages, salespeople, developers, and employees of developers, see FINTRAC, “Real Estate Brokers or Sales Representative, and Real Estate Developers,” online: <https://www.fintrac-canafe.gc.ca/re-ed/real-eng>.

159 *PCMLTFA*, ss 6–9.8.

160 *PCMLTFA*, s 5(m), s 7; FINTRAC, “Real Estate Brokers or Sales Representative, and Real Estate Developers,” online: <https://www.fintrac-canafe.gc.ca/re-ed/real-eng>.

Darlene Hyde, CEO of BCREA, described the nature of real estate agents' connection to the transactions they are involved in, and why they provide valuable insight for anti-money laundering purposes:

[T]hey are charged with understanding the motivations for the client in buying or selling a home, so they are charged with knowing a little bit about the principal character in the whole transaction as to their motivations. They help with the transaction itself, the sale, and they also take a deposit on the property. So, they are a critical part of the transaction.<sup>161</sup>

### ***Obligations of Real Estate Reporting Entities***

Each brokerage must designate a compliance officer responsible for conducting a risk assessment of the brokerage's business. Based on that risk assessment, the compliance officer must establish, and monitor compliance with anti-money laundering policies and procedures. The compliance officer must also develop a training program and, finally, the compliance officer must conduct a review of the program every two years (or hire an independent reviewer to do so).<sup>162</sup>

While certain anti-money laundering obligations fall on individual licensees or salespeople, the lion's share of the responsibility falls on the compliance officer. Often, the person acting as compliance officer is also the managing broker, who in addition to acting as the compliance officer and managing the brokerage is actively engaged in managing his or her own listings.<sup>163</sup> Many brokerages are small, decentralized organizations. The average brokerage in BC comprises four licensees.<sup>164</sup> Given the decentralized nature of many brokerages, the compliance officer often does not have much insight into the day-to-day activities of agents; the documentation the compliance officer sees is often limited to the initial listing agreement and the ultimate contract of purchase and sale once an offer is accepted. The majority of the engagement with the client, which gives a lens into the key information FINTRAC wants, happens outside the view of the compliance officer. The compliance officer usually has little insight into the client's finances, stated property preferences and objectives, behaviour, and lifestyle.

As of June 1, 2021, both real estate licensees and brokerages are required to take measures to establish the source of a person's wealth if that person has been determined to be a politically exposed person, or a family member or close associate of a politically exposed person.<sup>165</sup> They must also take steps to establish the source of funds if they receive \$100,000 or more from a politically exposed person, or a family member or close associate of same.<sup>166</sup> In British Columbia, real estate licensees usually only handle

<sup>161</sup> Evidence of D. Hyde, Transcript, February 17, 2021, p 105.

<sup>162</sup> Exhibit 620, FINTRAC Overview – Slide Presentation to RECBC (May 2019), p 7.

<sup>163</sup> Evidence of E. Seeley and D. Hyde, Transcript, February 17, 2021, pp 49, 120, 148.

<sup>164</sup> Evidence of D. Hyde, Transcript February 17, 2021, p 126.

<sup>165</sup> *PCMLTFA*, s 9.3(1).

<sup>166</sup> *PCMLTF Regulations*, ss 120.1, 122.1.

a small part of the transaction price, the deposit. Also, as of June 1, 2021, real estate professionals are now required to verify the beneficial ownership information of their corporate clients as a part of client identification obligations.<sup>167</sup>

### **Reporting to FINTRAC**

While brokerages are subject to the large cash transaction (\$10,000 or more) reporting obligations, most do not accept cash in sufficient quantities to trigger a large cash transaction report (LCTR). That said, FINTRAC does receive some LCTRs from real estate brokerages each year, which suggests that at least some brokerages are still taking cash. Between the 2011–12 fiscal year and early 2021, 84 LCTRs were made by reporting entities in British Columbia with respect to real estate transactions.<sup>168</sup> Industry representatives gave evidence that it is rare that cash is accepted for a deposit,<sup>169</sup> and it is not clear whether these LCTRs were made by brokerages, real estate licensees, or other reporting entities involved in a real estate transaction.

While LCTRs are not likely to figure prominently in real estate brokerages, suspicious transaction reports (STR) likely should. Licensees are responsible for evaluating whether a transaction meets the threshold of “reasonable grounds for suspicion” in which case an STR is required to be submitted to FINTRAC.<sup>170</sup> The compliance officer or managing broker is often involved in the submission of a report to FINTRAC, although a real estate agent may submit a report without assistance.<sup>171</sup> The compliance officer or managing broker is often involved in the submission of a report to FINTRAC, although a real estate agent may submit a report without assistance.<sup>172</sup>

As discussed further below, real estate licensees often have difficulty identifying the circumstances in which an STR should be filed, and reporting in this area has been low.

## **Industry Compliance with PCMLTFA Obligations**

### **Overview of Compliance in the Real Estate Sector**

FINTRAC records show widespread and repeated historical failures of the real estate industry in BC to meet its *PCMLTFA* obligations. The volume of STRs that are submitted is low relative to the risks of money laundering in real estate. This indicates either a lack of understanding as to when the submission of an STR is appropriate, or a simple cultural reluctance to fully engage with anti-money laundering obligations.

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<sup>167</sup> *PCMLTF Regulations*, s 138: There is a 25 percent ownership or control threshold for the disclosure of beneficial ownership.

<sup>168</sup> Exhibit 742, Dataset – Financial Transaction Report Counts by Postal Code and Activity Sector (March 3, 2021).

<sup>169</sup> Evidence of D. Hyde, Transcript, February 17, 2021, p 91.

<sup>170</sup> Exhibit 626, FINTRAC, AML/TF Real Estate Sector Presentation (September 19, 2018), p 19.

<sup>171</sup> Evidence of S. Ellis, Transcript, February 26, 2021, p 141.

<sup>172</sup> *Ibid.*

FINTRAC monitors reporting entities' compliance with their *PCMLTFA* obligations by conducting on-site examinations and desk examinations (where the reporting entity submits records for review). If FINTRAC observes a high number of quality issues with a specific reporting entity during an examination, it may conduct a database examination, which is a review of that entity's submitted reports to assesses their quality and timing.<sup>173</sup>

The outcomes of an examination may include an enforcement action such as an administrative monetary penalty.<sup>174</sup> Half of the administrative monetary penalties issued since June 2019 were issued to real estate reporting entities.<sup>175</sup>

One problem that FINTRAC identified with the real estate sector is the sheer number of reporting entities. Whereas there are fewer than 15 financial institutions (the source of the vast majority of reports FINTRAC receives) to liaise with in BC, there are 1,300 real estate brokerages and approximately 26,000 licensees in BC.<sup>176</sup>

Each real estate brokerage is unique in the way it operates: some operate under a team structure, some have employees, and at some, all the agents are contractors. Some brokerages require in-office work, but many now have work environments that are mostly, if not entirely, remote. Some have multiple locations. Many serve a particular clientele or tend to work with a particular type of property. These variations make effective supervision by the 15 staff in FINTRAC's Vancouver office (which is tasked with overseeing British Columbia, Alberta, Saskatchewan, and Yukon),<sup>177</sup> only three of whom are dedicated to the real estate sector, challenging. It also makes it difficult to produce guidance that will be useful to every brokerage.

### ***FINTRAC Compliance Reports***

Since at least 2012, real estate has been a priority area for FINTRAC, meaning a large proportion of FINTRAC examinations have been conducted on real estate reporting entities.<sup>178</sup> The sector has been prioritized because of its poor compliance with *PCMLTFA* obligations, low reporting levels, and high vulnerability to money laundering.<sup>179</sup> FINTRAC deputy director and chief compliance officer, Donna Achimov, described a

173 Exhibit 630, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2017) [FINTRAC Compliance Report September 2017], p 9.

174 FINTRAC, "FINTRAC examinations: your responsibilities and what you can expect from FINTRAC," online: <https://www.fintrac-canafe.gc.ca/guidance-directives/exam-examen/05-2005/4-eng>.

175 FINTRAC, "Public Notice of Administrative Monetary Penalties" (Modified May 12, 2022), online: <https://www.fintrac-canafe.gc.ca/pen/4-eng>.

176 Evidence of B. Morrison, Transcript, February 16, 2021, p 13; Evidence of D. Hyde, Transcript, February 17, 2021, p 85.

177 FINTRAC, "Director's Briefing Binder – November 2020," online: <https://www.fintrac-canafe.gc.ca/transp/transition/tb-ct-2020-eng>.

178 Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia [redacted] Banking and Private Lenders; Exhibit 448, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2018), p 9.

179 Exhibit 630, FINTRAC Compliance Report September 2017, p 13; Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2019), p 20.

nationwide challenge with real estate,<sup>180</sup> saying, “[i]n general we know that this sector has been lacking the awareness of how money laundering ... relates to them.”<sup>181</sup>

FINTRAC reports annually to the federal minister of finance annually on each reporting entity sector’s compliance with *PCMLTFA* obligations. These reports have consistently found the real estate sector to be non-compliant on various measures.

For instance, in 2016–17, only 10 percent of the real estate reporting entities who were examined were found to be compliant with the requirement to perform a risk assessment, and less than half were found compliant with verification of client identity requirements. Less than a third of reporting entities were compliant with their obligation to implement policies and procedures, keep records, and conduct a two-year review of their anti-money laundering policies.<sup>182</sup>

In 2018, FINTRAC reported “a misunderstanding across the sector as to how the real estate sector can be used for [money laundering / terrorist financing]” and stressed the need to engage in education to assist the industry to recognize money laundering indicators and to make high-quality and timely STRs.<sup>183</sup> The sector was noted to have “one of the lowest reporting levels.”<sup>184</sup>

In 2019, FINTRAC reported that 64 percent of real estate reporting entities assessed were partially non-compliant with their obligation to risk assess clients, and 31 percent were completely non-compliant.<sup>185</sup> FINTRAC also reported instances of unreported STRs, although it stated such occurrences were not frequent.<sup>186</sup>

Some improvement has been recorded. In 2018–19, compliance with client identification requirements improved, with 74 percent of entities examined found compliant with their obligations (as compared to less than half in 2016–17).<sup>187</sup>

FINTRAC cited challenges in its real estate examinations, stating:

[T]he number of real estate examinations that FINTRAC can feasibly conduct in a given year remains very small, given its examination resources when compared to the thousands of real estate entities that operate across the country.<sup>188</sup>

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180 Evidence of D. Achimov, Transcript, March 12, 2021, p 68.

181 Ibid, p 20.

182 Exhibit 630, FINTRAC Compliance Report September 2017, p 13.

183 Exhibit 448, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2018), pp 9–10.

184 Ibid, p 9.

185 Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (2019), p 20.

186 Ibid, p 21.

187 Ibid, p 20.

188 Ibid, p 21.

The 2020 Compliance Report again noted that priority was given to real estate (37 percent of all exams).<sup>189</sup> Of the entities examined, 40 percent were recommended for follow-up, and 5 percent were recommended for enforcement action. This figure stands in comparison to 3 percent of examinees across all sectors being recommended for enforcement action. The highest level of non-compliance was found in implementation of risk assessments, the use of incomplete or generic policies and procedures, and gaps in client identification and receipt of funds records. The report also recorded concerns about ongoing misunderstanding on the part of some as to how money laundering can occur in a real estate transaction.<sup>190</sup>

There was some agreement in the evidence before me that the risk in real estate was disproportionately located in small brokerages. Ms. Achimov agreed that smaller entities do not have the same infrastructure as large brokerages to allow them to meet their compliance requirements and pointed to FINTRAC's efforts to address the issue by way of guidance on its website and a welcome letter to new real estate agents. According to Ms. Achimov, FINTRAC went to "great lengths" to explain what was required.<sup>191</sup> She was of the view that the situation had improved at the smaller end of the market, and pointed to increases in STRs, and improvements in exam results on deficiencies.<sup>192</sup>

In its 2020 Compliance Report, FINTRAC expressed an intention to continue a focus on large brokerages for examinations, as they represent a greater share of the market.<sup>193</sup> If the highest money laundering risk in real estate sector is at the smaller end of the market, FINTRAC's focus on large brokerages may, in fact, skew toward *overrepresenting* compliance.

### **Summary of Compliance Statistics**

Table 16.1 shows the evolution of the BC real estate sector's compliance with *PCMLTFA* obligations from 2015 through early 2021.<sup>194</sup> It shows the number of entities examined in each fiscal year, and the number of partial ("P") and complete ("C") deficiencies found for each of the *PCMLTFA* obligations. The table supports the conclusion that there are serious failures on the part of real estate brokerages to meet their anti-money laundering obligations. The table also suggests that there has not been significant improvement over time.

<sup>189</sup> Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (2020), p 22.

<sup>190</sup> Ibid, pp 23–33.

<sup>191</sup> Evidence of D. Achimov, Transcript, March 12, 2021, pp 107–8.

<sup>192</sup> Ibid, pp 20–21.

<sup>193</sup> Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (2020), p 24.

<sup>194</sup> The Commission arrived at the "% deficient" figure by adding the partial and complete deficiencies and dividing that sum by the scope of the review.

**Table 16.1: Summary of Compliance Statistics**

	<b>Compliance Officer</b>				<b>Policies And Procedures</b>				<b>Risk Assessment</b>				<b>Ongoing Compliance Training Program</b>				<b>Review Every Two Years</b>			
<b>Deficiencies</b>																				
“P”= Partial deficiency, “C” = Complete deficiency, “%” = Total deficiencies (partial and complete)																				
Fiscal Period	S	P	C	%	S	P	C	%	S	P	C	%	S	P	C	%	S	P	C	%
2015-16	79		2	3%	78	34	15	63%	79	46	27	92%	36	17	4	58%	78	31	40	91%
2016-17	51	2	2	8%	51	25	10	69%	51	31	17	94%	47	10	12	47%	47	10	28	81%
2017-18	48			0%	48	29	6	73%	48	30	13	90%	48	20	9	60%	46	14	27	89%
2018-19	59	4		7%	59	35	6	69%	59	33	20	90%	58	19	11	52%	57	17	31	84%
2019-20	55	3	1	7%	55	37	4	75%	54	29	12	76%	52	14	6	38%	45	19	17	80%
2020-21	5	1		20%	5	3	1	80%	5		4	80%	5	2	1	60%	3		3	100%
<b>Total</b>	297	10	5	5%	296	163	42	69%	296	169	93	89%	246	82	43	51%	276	91	146	86%

Source: Compiled by Cullen Commission

Notes: “S” indicates scope, or the number of entities examined. Missing data compliance report was not made available to the Commission before the completion of this Report.

### **Suspicious Transaction Reporting Rates**

Like compliance, suspicious transaction reporting rates also remain low. FINTRAC has noted that most reporting about the real estate sector comes from larger financial institutions.<sup>195</sup> In February 2015, FINTRAC noted that less than 1 percent of STRs came from the real estate sector.<sup>196</sup> In terms of absolute values, reporting has been trending upward, but some years have seen dips in reporting (see Table 16.2):<sup>197</sup>

<sup>195</sup> Evidence of B. MacKillop, Transcript, March 12, 2021, p 96.

<sup>196</sup> Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia Banking and Private Lenders (December 13, 2018), pp 8, 39.

<sup>197</sup> Exhibit 743, Excel spreadsheet re BCREA Request for Information, STR Reporting Sheet.

**Table 16.2: Suspicious Transaction Reports from Real Estate Sector**

<b>Fiscal Year</b>	<b>STRs in Real Estate – BC</b>	<b>STRs in Real Estate (Nationally)</b>	<b>Total STRs Received by FINTRAC<sup>198</sup></b>	<b>BC Real Estate % of Total</b>
2015–16	7	32	114,422	0.0061
2016–17	18	90	125,948	0.0143
2017–18	21	115	179,172	0.0117
2018–19	13	100	235,661	0.0055
2019–20	37	138	386,102	0.0096
2020–21	15	n/a	n/a	n/a
<b>Total</b>	<b>111</b>			

Source: Compiled by Cullen Commission.

Note: 2020–21 was a partial year – April to November 2020.

For FINTRAC, Mr. MacKillop agreed that there had been some improvement with respect to STRs, but that there was a “constant need for ongoing awareness and education.” Partly due to the sheer number of people working in the real estate sector, understanding of what constitutes a suspicious transaction is not “deep and profound.”<sup>199</sup>

Ms. Achimov acknowledged that even the most recent reporting numbers were very low and said “the bottom line ... [is we] need this particular reporting entity to submit more reporting.”<sup>200</sup> She explained the low reporting, stating:

There was a pervasive view – and I would argue that that’s changing now ... that that was the role of the banks and the entities that actually touch the money, and for the longest time one of the myths was ... if somebody came in with a gym bag of ... old \$20 bills, that’s money laundering. If I didn’t see that, then I didn’t have to do anything else.

...

I think there’s also in some pockets ... some cultural hesitancy in terms of it’s not culturally acceptable to ask where your source of money is and how you come by your money, and so, again, that’s where we work with the real estate associations and industry itself to make sure that we find ways of working around some of those cultural barriers as well.<sup>201</sup>

<sup>198</sup> Ibid.

<sup>199</sup> Evidence of B. MacKillop, Transcript, March 12, 2021, pp 7–8.

<sup>200</sup> Evidence of D. Achimov, Transcript, March 12, 2021, pp 96–97.

<sup>201</sup> Ibid, pp 97–98.

## **Administrative Monetary Penalties Issued to BC Brokerages**

Evidence of serious anti-money laundering compliance failures are also found in FINTRAC administrative monetary penalties. FINTRAC has issued administrative monetary penalties against three BC real estate brokerages in recent years.<sup>202</sup> These penalties were issued in response to violations found during compliance examinations in 2018 and 2019. The first monetary penalty of \$59,235 was issued in January 2021 to a brokerage in Vancouver;<sup>203</sup> the second, of \$33,371.25, was issued in June 2021 to a brokerage in Chilliwack;<sup>204</sup> and the third, of \$255,750, was issued in July 2021 to a brokerage in Vancouver.<sup>205</sup> In all three instances, the brokerages failed to:

- develop and apply written compliance policies and procedures that are kept up to date and, in the case of an entity, are approved by a senior officer;
- assess and document the risk of a money laundering or terrorist financing offence, taking into consideration prescribed factors;
- develop and maintain a written ongoing compliance training program for those employees, agents or mandataries, or persons;
- institute and document the prescribed review; and
- keep prescribed records.

In the third instance, the brokerage also failed to appoint a compliance officer and failed to submit a suspicious transaction report where there were reasonable grounds to suspect that transactions were related to a money laundering offence.<sup>206</sup> These three administrative monetary penalties were of nine issued across all reporting entities in 2021.<sup>207</sup>

## **Reasons for Non-Compliance and Under-Reporting**

In November 2018, BCREA announced it had commissioned Deloitte to study residential and commercial real estate transactions and to identify money laundering

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202 FINTRAC, “Public Notice of Administrative Monetary Penalties” (modified May 12, 2022), online: <https://www.fintrac-canafe.gc.ca/pen/4-eng>.

203 <https://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-03-22-eng>.

204 <https://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-06-11-eng>.

205 <https://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-11-04-eng>.

206 “FINTRAC Imposes an Administrative Penalty on Pacific Place-Arc Realty Ltd.” (November 4, 2021), online: <https://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-11-04-eng>. The brokerage filed a lawsuit on November 15, 2021, claiming that the provisions of the *PCMLTFA* under which the penalty was issued are unconstitutional. See: “Lawsuit of the Week: Vancouver Real Estate Firm Sues FINTRAC and Federal Government,” *Business in Vancouver* (December 10, 2021). See also the BCFSA Notice of Hearing, online: <https://www.bcfsa.ca/media/2825/download>.

207 FINTRAC, “Public Notice of Administrative Monetary Penalties” (modified May 12, 2022), online: <https://www.fintrac-canafe.gc.ca/pen/4-eng>.

vulnerabilities in order to address the apparent difficulties its members were having understanding and meeting their reporting obligations.<sup>208</sup>

In its report, *Assessing Money Laundering Vulnerabilities in the BC Real Estate Sector* (the Deloitte Study), Deloitte made four key findings:

1. there is more information available to real estate agents during transactions than most agents realize;
2. the absence of cash does not eliminate the risk of money laundering;
3. the decentralization of the real estate industry has weakened the understanding and implementation of client identification and risk assessment requirements; and
4. there is resistance to the expectation that real estate agents have unique insights to offer Canada’s anti-money laundering regime and should be expected to take on the burden of complying with it.<sup>209</sup>

It is apparent to me that some in the industry continue to have misunderstandings and misgivings about the role of real estate professionals in identifying and combatting money laundering. This increases the vulnerability of BC’s real estate market to money laundering.

### ***Lack of Evidence of Money Laundering or the Utility of STRs***

A significant consequence of the lack of reporting to FINTRAC by real estate reporting entities is that there is no data flowing to FINTRAC to be analyzed, which could then be turned into operational alerts or briefs to help educate industry about when it is appropriate to file STRs.

The result is that industry remains skeptical that STRs are of any value, or that there is in fact under-reporting of suspicious transactions in the real estate sector. Real Estate Brokers’ Association (REBA) representative Stephen Ellis pointed to a lack of feedback from FINTRAC identifying situations in which a real estate agent did not submit an STR where later there was found to be “absolute evidence of money laundering.”<sup>210</sup> Mr. Ellis stated that he and other managing brokers questioned FINTRAC’s conclusion on under-reporting, because that is not what the community was seeing: “It’s not something that we see as a significant problem within our industry.”<sup>211</sup>

208 Exhibit 601, OR: Real Estate & Industry Response, Appendix 18, BCREA, *Understanding Money Laundering Vulnerabilities* (February 13, 2019); Appendix 15, April van Ert, *BCEA Supports BC Government’s Money Laundering Investigations* (November 27, 2018).

209 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, *Deloitte Presentation to BCREA – Assessing Money Laundering Vulnerabilities in the BC Real Estate Sector* (February 22, 2019) [Deloitte Study], p 8.

210 Evidence of S. Ellis, Transcript, February 26, 2021, p 101.

211 Ibid, p 107.

Mr. Ellis described that a lack of evidence of money laundering occurring in real estate has an impact on industry’s engagement with its anti–money laundering obligations:

[I]t’s very hard to find any factual evidence of money laundering in real estate, where it occurs, how it occurs, in fact if it did occur. There’s lots of suspicion, speculation, assumption, but we don’t have any facts. So, when we ask for a specific instance where a real estate representative has been complicit in a money laundering purchase of real estate, at this particular point in time we’re not aware of any of that evidence being presented to us. We’ve certainly asked for it, you know, give us examples, show us specifically how, why, and where, and that has not been demonstrated to us at all at this point.<sup>212</sup>

I pause here to note one aspect of the above passage: the absence of a specific instance of a real estate representative being complicit in a money laundering transaction. A similar comment was made by the BCREA in its closing submissions. It noted that there was no evidence of widespread money laundering at the real estate licensee level, and that “if there was clear evidence of money laundering–related matters in the real estate industry, it would likely be demonstrated by widespread money laundering convictions, investigations, and reports against real estate licensees.”<sup>213</sup>

This line of thinking suggests a troubling and fundamental misunderstanding about the money laundering risk in real estate *and* the purpose of suspicious transaction reporting. While money laundering typologies involving real estate can involve *complicit* real estate agents, most are not predicated on the knowing involvement of realtors. STRs are not intended as means to report misconduct of licensees with respect to real estate. They are intended as a means of reporting suspicious transactions, whether or not there is complicity or knowing involvement of a licensee. It can, in fact, be anticipated that, in many instances of money laundering through real estate, the licensees will have no knowledge of the nature of the transaction as a money laundering transaction.

Returning to Mr. Ellis’s explanation of how evidence of actual money laundering would assist brokers and licensees in identifying suspicious transactions:

Q: And how would that information assist you in your work as a compliance officer?

A: ... [I]f you take a look at the 27 red flags I would say there’s probably ten of them that don’t apply. There might be a large number of them that do apply, but there’s plausible, reasonable explanation for why did that occurrence is part of a transaction. And so, they’re just indicators. They’re not showing proof. They’re just indicators. So, it’s left up to a judgment call of the individual realtor at that point who’s dealing with the client to interpret those red flag indicators and apply

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212 Ibid, pp 19–20.

213 Closing submissions, BCREA, paras 13–14.

them to see whether or not a Suspicious Transaction Report should be generated and submitted.

So if there was more descriptive information on exactly what it is that we should be looking at and what we should be recording, it would assist certainly in meeting our obligations for STR obligations.<sup>214</sup>

Mr. Ellis described what managing brokers/compliance officers would like to see:

Well, evidence that there has been instances where it was not reported and found that it should have been reported and if we can trace that back and say there was absolute evidence of money laundering and if you had gone back to the Suspicious Transaction Report at the outset and followed that trail, we'd like to be able to see how that works ... [T]he demonstrated evidence of the lack of a submission to where there was evidence of money laundering in real estate, if we could see that and track that, that would be instructive and helpful.<sup>215</sup>

BCREA echoed this complaint in its closing submissions, contending that there is no evidence of money laundering occurring in BC real estate, as there have not been investigations or prosecutions leading to judicial or regulatory findings of that fact.<sup>216</sup>

On one hand, this highlights the problem posed by the low numbers of money laundering prosecutions across Canada: it results in a lack of data about concrete examples of money laundering that can be used to educate the industry. If there needs to be “absolute” evidence of money laundering, and few cases result in conviction, it will be rare to have such evidence. And without evidence that the STRs filed by industry yield productive results, there is a risk that industry will conclude the task is simply an additional layer of unproductive bureaucratic burden and will be discouraged from making best efforts to comply with the anti-money laundering obligations. There needs to be communication between the anti-money laundering regulator and the industry about the use to which STRs are put, and provisions of examples of instances (anonymized as necessary) where real estate sector STRs were of use to an investigation.

On the other hand, the above comments from industry indicate a persistent misunderstanding of how the sector can be used for money laundering. I set out in Chapter 15 the money laundering vulnerabilities of the real estate sector. It is time for the industry to accept that money laundering through real estate is happening, even if individuals on the ground are not recognizing evidence of it. Industry needs to accept that neither FINTRAC nor law enforcement needs to *prove* that money laundering is happening in real estate. It is.

214 Evidence of S. Ellis, Transcript, February 26, 2021, pp 20, 22–23.

215 Ibid, pp 100–101.

216 Closing submissions, BCREA, paras 13–14.

Equally damaging is an expectation that an STR is submitted only where money laundering is certain. A suspicious transaction report does not reflect the reporting entity's certainty that money laundering is occurring – it reflects the fact that the reporting entity has reasonable grounds to suspect that a transaction is related to the commission or attempted commission of a money laundering offence (or a terrorist activity financing offence).<sup>217</sup> STRs are neither complaints to police, nor “tests” of a licensee's ability to identify actual money laundering. They are pieces of intelligence that are provided to FINTRAC in order to assist it in developing both tactical and strategic intelligence about money laundering in the real estate sector. The hesitation of real estate professionals to submit STRs in the absence of proof of their usefulness or of “actual” money laundering impairs the ability of FINTRAC, and by extension law enforcement agencies conducting investigations, to know what is happening in the sector. Given the amounts of money involved and the varied techniques that can be employed in real estate-based money laundering, it is time for a new attitude.

I say the above while acknowledging FINTRAC's comments that there has been improvement in the sectors, particularly as a result of co-operation with industry groups like BCREA. Below, I will also describe efforts by BCREA to educate brokers about their reporting responsibilities. I do not mean to discount these efforts, or the extent which many professionals in the industry take their anti-money laundering responsibilities seriously. But it remains evident to me that there remain pockets of resistance, and these must be overcome.

### ***A Persisting Focus on Cash***

The perception that money laundering in real estate is linked to cash continues to be a barrier to effective anti-money laundering compliance and reporting. The Deloitte Study observed:

There continues to be a perception by realtors that because they generally do not handle cash, they are therefore not exposed to money laundering, however, the realtor's knowledge of the client purchasing or selling real estate is a crucial piece of information to the real estate transactions process, as it is information that is generally not available to other parties to the real estate process.<sup>218</sup>

The Deloitte Study found that real estate agents, when asked what would constitute high money laundering risk, gave extreme and unlikely examples, such as a client arriving with bags of cash.<sup>219</sup>

BCREA expressed to me that it is not a victim of the cash fallacy and insisted “that concept has been totally left in the dust.”<sup>220</sup> I have no doubt that BCREA has internalized

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<sup>217</sup> *PCMLTFA*, ss 7(a), (b).

<sup>218</sup> Exhibit 601, OR: Real Estate & Industry Response, Appendix 19: Deloitte Study, p 30.

<sup>219</sup> *Ibid*, p 18.

<sup>220</sup> Evidence of D. Hyde, Transcript, February 17, 2021, pp 90–91.

this, and that the organization is making its best efforts to educate its members of the same (I discuss their education efforts below). Despite these efforts, the mistaken belief that money laundering in real estate means buying houses with bags of cash is one that persists amongst its membership.

In the Commission’s interviews with local real estate boards, this theme was repeated. Many interviewees expressed the view that without the presence of physical cash, the transaction could not be money laundering. One board expressed a view that most real estate agents believed their *PCMLTFA* obligations were in place because deposits were believed to be a main source of money laundering, and only recently had FINTRAC provided education to dispel this myth and spread information about the role of real estate agents in disrupting the wider web of money laundering. Most boards expressed a desire for better understanding of how money laundering might be conducted through the real estate sector in the absence of cash transactions.<sup>221</sup>

Education can assist in combatting this misunderstanding. Many survey respondents to the UBC Sauder / RECBC (now part of BCFSa) “Anti-Money Laundering in Real Estate” course did express that the course aided them in understanding the use of cash was only one part of money laundering.<sup>222</sup> It is my hope that improved education from both industry and regulators will help to dispel any remaining belief that money laundering in real estate is about cash.

### ***Confusion Over How to Comply with PCMLTFA Obligations***

From the evidence, drawing on the Commission’s interviews with local real estate boards, a review of BCREA materials including the Deloitte Study, and the testimony of BCREA and REBA representatives, it is clear that some in the industry find their anti-money laundering obligations confusing and cumbersome.

Members of local real estate boards expressed the view that the FINTRAC audit process failed to educate brokerages on how to improve their anti-money laundering system or reporting process beyond “bureaucratic trivia,” such as using the right abbreviations and terms. Several real estate boards commented that there was a discrepancy between (a) FINTRAC’s educational guidance and (b) its auditors’ compliance information; they wanted FINTRAC to provide more education as part of the audit.<sup>223</sup>

Several boards emphasized that most real estate agents and brokers have no background in compliance or anti-money laundering matters. There was a concern that real estate agents lack the expertise, resources, and time to digest and apply the FINTRAC guidance in its current state.<sup>224</sup>

<sup>221</sup> Exhibit 601, OR: Real Estate & Industry Response, paras 122–123.

<sup>222</sup> Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), p 26.

<sup>223</sup> Exhibit 601, OR: Real Estate & Industry Response, p 45. Ms. Achimov, for FINTRAC, gave evidence that FINTRAC has now started to provide such education and feedback as part of its audit process: Transcript, March 12, 2021, p 69.

<sup>224</sup> Exhibit 601, OR: Real Estate & Industry Response, p 42.

All boards expressed a desire for clearer, simpler, more user-friendly guidance from FINTRAC. They said the existing FINTRAC guidance was excessively long, complicated, and theoretical, and that its applicability to the on-the-ground experience of real estate agents and brokers was too opaque. All boards noted significant frustration from members who were struggling to understand their obligations and who did not find the FINTRAC guidance helpful. All boards stressed a need for more accessible content.<sup>225</sup>

Many boards expressed a desire for better standardized forms or a more user-friendly system, such as a mobile or desktop application. They were frustrated that the Canadian Real Estate Association's attempt to produce standardized forms did not solve this problem, as FINTRAC had refused to endorse the forms.<sup>226</sup>

### ***Concerns for Client Privacy / Distaste for Intrusive Questions***

There is a perception in the real estate industry that the nature of the real estate agent's role sits uncomfortably with the need to obtain sensitive information about the client, such as financial status or source of funds.

This theme arose frequently in the user feedback survey to the BCFSA anti-money laundering course. One user said they considered the details of financing to be something between the buyer and their lender, and the agent had no way of knowing whether a lender was unregulated. One stated that "I almost feel like it's not really in a realtor's place to ask where client's money is from."<sup>227</sup> Several stated that there were expectations on the real estate agent that he or she should be aware of the client's banking or lending information, and source of funds; this, they said, was unreasonable, and the information not usually known to real estate agents.<sup>228</sup> One licensee stated that "[t]o be asked to investigate such things by the government is unethical."<sup>229</sup>

The Deloitte Study noted that licensees often did not ask questions about the beneficial ownership of property, and would inquire into source of funds only to discover the likelihood the client would close the transaction.<sup>230</sup> Several commented that, as real estate agents, they did not have any role in the financing of a transaction, so no inquiry was necessary.<sup>231</sup>

Deloitte commented that "[a] number of interviewees also indicated that there was a difficulty in asking a number of questions they determined were too personal, such

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225 Ibid, pp 42–43.

226 Ibid, p 43; Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), pp 12, 14, 29.

227 Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), p 23.

228 Ibid, pp 6, 26.

229 Ibid, p 26.

230 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 17.

231 Ibid, p 22.

as source of funds/wealth.”<sup>232</sup> Others cited privacy law as impeding their ability to ask questions about how a client intended to finance a transaction.

BCREA acknowledged the difficulty. Licensees are concerned about the confidentiality they owe their clients and may hold a perception that “they are betraying the trust that their client places in them ... by filing a suspicious transaction report.” Efforts are being made to educate licensees that anti-money laundering reporting is an ethical obligation that cannot be defeated by any obligation of confidentiality to the client.<sup>233</sup>

BCREA is right – a licensee has no professional obligation to keep secret the client’s potential criminal activity. Real estate agents are the point of access for most people to the real estate market. As such, legislatures have imposed legal and professional duties on them to help maintain the integrity of that market, including by making appropriate inquiries and reporting a transaction where they have a reasonable suspicion the transaction is related to the commission or attempted commission of a money laundering offence.

Neither the *PCMLFA* and associated Regulations nor FINTRAC requires that source-of-funds inquiries be made. FINTRAC currently directs that source-of-funds inquiries may form part of enhanced measures that a brokerage can put into place to manage high-risk clients and business areas.<sup>234</sup> As a result, real estate professionals have to use their judgment to assess the money laundering risk of a particular client or transaction and decide whether enhanced inquiries are required. It seems to me to be intuitive that, given the reluctance expressed by realtors to ask these types of questions, they will often err on the side of not pursuing the issue.

It seems to me that the simplest way to overcome these scruples and to gain insight into source of funds is to make such an inquiry mandatory. Optimally, this would be a requirement imposed by FINTRAC.

Source of funds is not an ancillary or unrelated question; it goes to the heart of the task real estate agents have been given. Mandating source-of-funds inquiries would remove confusion and make clear what is expected. Therefore, I recommend that BCFSA make inquiries with FINTRAC as to whether it will institute such a requirement, and, if the answer is no, then BCFSA should require licensees to ask clients about their source of funds at the outset of the client relationship.

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<sup>232</sup> Ibid, p 34.

<sup>233</sup> Evidence of D. Hyde, Transcript, February 17, 2021, pp 46–47.

<sup>234</sup> FINTRAC, “Compliance Program Requirements” (June 1, 2021), online: <https://www.fntrac-canafe.gc.ca/guidance-directives/compliance-conformite/Guide4/4-eng#s4>.

**Recommendation 11:** I recommend that the British Columbia Financial Services Authority (BCFSA) make inquiries with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to determine whether it plans to institute a source-of-funds inquiry requirement for licensees. If FINTRAC does not plan to do so, I recommend that the BCFSA require real estate licensees to ask clients about their source of funds at the outset of the client relationship, and record the information provided.

A mandatory requirement will eliminate uncertainty. It also allows real estate professionals to point to the requirement as the reason they are obligated to ask the question. A lack of discretion on the part of the realtor takes some of the discomfort out of asking the question and informs the buyer that they will not receive more favourable treatment at the hands of another professional. Where the client's answer is vague, unusual, or seems unrealistic, given what is known of the client, it may be an indication that an STR is appropriate.

Such a requirement has been implemented in the United Kingdom, where a client will be asked about their source of funds by their estate agent, mortgage broker, and financial institution.<sup>235</sup>

### ***Perception that the Burden on Real Estate Agents Is Unduly Onerous***

Real estate agents interviewed for the Deloitte Study expressed frustration and a sense of unfairness at being asked to assess money laundering risk when they had a direct sightline into only 5 to 10 percent of the transaction funds.<sup>236</sup>

Industry members have pointed to other actors they say are better equipped to take on anti-money laundering reporting obligations. The Deloitte Study, interviews with local real estate boards, and feedback from the joint UBC Sauder / RECBC (now part of BCFSA) “Anti-Money Laundering in Real Estate” course reveal a general sentiment that the onus for anti-money laundering should be on banks and lawyers rather than on real estate agents.<sup>237</sup> Some licensees expressed the view that lawyers ought to be responsible for reporting because of the greater role they play in overseeing funds, compared to real estate agents. I address the role of lawyers, who are subject to significant anti-money laundering oversight by the Law Society, in Part VII of this Report.

The Deloitte Study noted discontent at being asked “to do the government’s job,” particularly when no additional compensation was provided for performing anti-

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235 Home Owners Alliance, “Do Estate Agents Need Proof of Funds?” online: <https://hoa.org.uk/advice/guides-for-homeowners/i-am-buying/do-estate-agents-need-proof-of-funds/>.

236 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 21.

237 Ibid, p 23; Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), pp 15, 17, 18, 19, 22, 23, 24, 26, 29.

money laundering related duties.<sup>238</sup> Deloitte noted that many real estate agents expected financial institutions to vet source of funds.<sup>239</sup>

These objections ignore the insight into a transaction and a client’s motivations that are available to real estate licensees, and in some cases uniquely to them. While financial institutions do have responsibilities under the *PCMLTFA*, their lens into a transaction is limited. Financial institutions do not have the same amount of face-to-face interaction with clients that real estate licensees do. They are usually not privy to the stated buying preferences of clients, their expressed financial status, or the presence of third parties in a transaction.

### ***Lack of Clarity on Suspicious Transaction Reporting***

The real estate board representatives the Commission interviewed expressed much confusion over what would constitute a “suspicious” transaction. BCREA acknowledged this continuing confusion in its closing submissions to the Commission.<sup>240</sup>

Despite FINTRAC’s provision of suspicious indicators to assist licensees to identify suspicious transactions, those operating in in the Lower Mainland commented that despite being listed as an indicator of suspicion by FINTRAC, the example of a student purchasing a million-dollar property was not unusual.<sup>241</sup>

Feedback received about the BCFSA anti–money laundering course evidenced continued confusion about the indicators of and threshold for suspicion. One respondent queried whether evasion of capital controls was “always wrong and suspicious”; others requested more emphasis on how to identify suspicious activity, and one contesting whether the indicators listed were actually suspicious.<sup>242</sup> Others, however, stated the course had cleared up much of their confusion.<sup>243</sup>

The Deloitte Study found that some real estate agents appear to be over-reliant on Canadian Real Estate Association forms, employing a “check-the-box” approach without truly understanding the purpose of the documents.<sup>244</sup> The Deloitte Study and FINTRAC’s 2019 Compliance Report noted that brokerages failed to tailor the forms to their business, such that brokerages were not adequately reviewing for and identifying high-risk activity.<sup>245</sup> At the same time, local real estate boards and others expressed

238 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 18, 33; Exhibit 660, UBC / RECBC AML in Real Estate Course Evaluation Report (November 17, 2020), pp 7, 10, 15, 22, 26.

239 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 21.

240 Closing submissions, BCREA, para 12.

241 Exhibit 601, OR: Real Estate & Industry Response, para 128.

242 Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), pp 6, 16–17, 23.

243 Ibid, pp 7, 16.

244 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 27.

245 Ibid, p 27; Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2019), pp 20–21.

frustration at being told, during FINTRAC assessments, that reliance on Canadian Real Estate Association forms was insufficient.<sup>246</sup> These concerns emphasize the need for caution when producing templates or checklists for use by industry. Although templates and other guides designed to assist real estate professionals meet their obligations may be helpful. Caution should be exercised to avoid producing generic forms that are relied upon to the exclusion of the exercise of judgment. Although no doubt greatly appreciated by industry, forms that help a business meet its anti-money laundering obligations cannot stand in the place of quality education and training.

Ms. Hyde pointed to the threshold for filing STRs as an area that could use improvement:

The reasonable grounds to suspect is something – again it’s an abstract concept and I think giving more flesh to that, reasonable grounds to suspect is good thinking in terms of helping the realtor identify those specific red flags that are going to trigger a suspicious transaction report.<sup>247</sup>

Ms. Hyde expressed a wish for FINTRAC’s suspicious indicator guidance to be more geographically targeted.<sup>248</sup> She also suggested that “an app with some drop down menus” would be preferable to the current eight-page document used to make suspicious transaction reports.<sup>249</sup> She highlighted the difficulty of reaching the small business sector, and noted the average brokerage has four real estate agents; to this challenge, she emphasized the need for “very concrete, real language as opposed to bureaucratic language.”<sup>250</sup> There are no magic bullets for the issues raised above. To a large degree, what is required is continuing education and training to change the mindsets of real estate licensees, and to change the culture to one that recognizes anti-money laundering responsibilities as foundational professional obligations. Both industry and regulators are alive to this and have responded.

## **Anti-Money Laundering Education Available to Real Estate Agents**

Both regulators and industry have responded with education and training aimed at improving anti-money laundering compliance. FINTRAC has published indicators of suspicious transactions in real estate, as well as a risk-based approach workbook for reporting entities in the real estate sector to assist in developing a compliance program.<sup>251</sup>

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246 Exhibit 601, OR: Real Estate & Industry Response, pp 42–45.

247 Evidence of D. Hyde, Transcript, February 17, 2021, p 143.

248 Ibid, p 121.

249 Ibid, p 125.

250 Ibid, p 126.

251 Exhibit 601, OR: Real Estate & Industry Response, Appendix 6, FINTRAC, *Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate* (Ottawa: 2016); Appendix 8: FINTRAC, “Money Laundering and Terrorist Financing Indicators – Real Estate”; Appendix 7: FINTRAC, “Risk-Based Approach Workbook: Real Estate Sector.”

RECBC (now part of BCFSA) implemented an anti-money laundering course for real estate licensees in 2020, which is mandatory for all licensees.<sup>252</sup> BCREA also launched an optional anti-money laundering course targeted at managing brokers and compliance officers in 2020.<sup>253</sup>

### **FINTRAC Education**

To assist reporting entities in knowing when to submit an STR, FINTRAC issues operational alerts, which are intended to update recipients on indicators of suspicious financial transactions and high-risk factors related to new, re-emerging or particularly topical methods of money laundering.<sup>254</sup>

FINTRAC also issues operational briefs that are intended to provide clarification and guidance on issues that impact the ability of reporting entities to maintain a strong compliance regime.

Both operational alerts and operational briefs are published on FINTRAC's website. I understand that a number of industry representatives have complained that these reports were not easily accessible, and that accessing such information required "digging" through the FINTRAC website.<sup>255</sup>

In November 2016 FINTRAC published *Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate*, designed to assist reporting entities to identify and report suspicious transactions.<sup>256</sup> This brief presents 32 indicators and 12 themes that real estate reporting entities should consider in deciding whether to report a suspicious transaction.<sup>257</sup> The brief was updated in 2019 and then again in 2021.<sup>258</sup>

FINTRAC hosts and participates in conferences with industry and provincial regulators. Ms. Hyde described this participation as a good first step but expressed the view that more direct education was needed, and particularly more active collaboration between the industry, the provincial regulator, and FINTRAC.<sup>259</sup>

252 Exhibit 617, BCFSA, "Anti-Money Laundering in Real Estate" online course materials.

253 Exhibits 623A–623F, Mastering Compliance AML Training for Brokers.

254 FINTRAC, "Operational Alert: Professional Money Laundering Through Trade and Money Services Businesses" (July 18, 2018), online: <https://www.fintrac-canafe.gc.ca/intel/operation/oai-ml-eng>; FINTRAC, "Operational Alert: Laundering the Proceeds of Crime Through a Casino-Related Underground Banking Scheme" (December 2019), online: <https://www.fintrac-canafe.gc.ca/intel/operation/casino-eng>; FINTRAC, "Operational Alert: Laundering of the Proceeds of Fentanyl Trafficking" (January 31, 2018), online: <https://www.fintrac-canafe.gc.ca/intel/operation/oai-fentanyl-eng>.

255 Evidence of S. Ellis, Transcript, February 26, 2021, p 100.

256 Exhibit 601, OR: Real Estate & Industry Response, Appendix 6: FINTRAC, *Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate*.

257 Ibid, pp 4–6.

258 Exhibit 601, OR: Real Estate & Industry Response, Appendix 8, FINTRAC, "Money Laundering and Terrorist Financing Indicators – Real Estate."

259 Evidence of D. Hyde, Transcript, February 17, 2021, pp 116–17.

These efforts appear to be paying off. Real estate boards interviewed by the Commission commented that they had noticed an improvement in FINTRAC’s availability, guidance, and presence at conferences in 2019. Some boards mentioned specific presentations they found very useful. The boards that had attended these events stated that, after the event, members expressed a much better understanding of the purpose behind the FINTRAC reporting and real estate agents’ role in monitoring transactions.<sup>260</sup>

### **BCREA Education**

In September 2018, BCREA announced that it had launched an action plan to help licensees and managing brokers better understand and meet their FINTRAC reporting duties.<sup>261</sup> BCREA followed this announcement with several publications intended to assist real estate agents with their anti-money laundering obligations.<sup>262</sup>

In October 2020, BCREA launched a nine-week training program, “Mastering Compliance,” designed to assist managing brokers and compliance officers to improve their compliance programs and meet their anti-money laundering requirements.<sup>263</sup> Specifically, the program aims to educate participants on *PCMLTFA* requirements and on how to assess inherent risks, consider risk tolerance, and understand how to mitigate risks.<sup>264</sup>

Ms. Hyde stated that, as of February 2021, approximately 160 of 1,300 managing brokers in British Columbia had taken the BCREA course.<sup>265</sup>

### **BCFSA Anti-Money Laundering Course**

As of April 1, 2020, all licensees in the province are required to complete BCFSA’s “Anti-Money Laundering in Real Estate” course in order to renew their licence.<sup>266</sup> Since licences are issued for two-year terms, all licensees ought to have taken the course by April 2022.

The course is a response to the Maloney Report and Dr. Peter German’s reports, as well as information received from FINTRAC about the real estate industry’s compliance

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260 Exhibit 601, OR: Real Estate & Industry Response, pp 42–43.

261 Exhibit 601, OR: Real Estate & Industry Response, Appendix 13, April van Ert, *BCREA Launches FINTRAC Action Plan* (September 1, 2018).

262 Exhibit 601, OR: Real Estate & Industry Response, Appendix 14, Matt Mayers, *Real Estate Transparency to Build Public Confidence* (November 1, 2018); Appendix 15, April van Ert, *BCREA Supports BC Government’s Money Laundering Investigations* (November 27, 2018); Appendix 16, BCREA, *The Role of REALTORS® in Helping the Government Stop Money Laundering* (December 2018); Appendix 17, Marianne Brimmell, *Getting to the Bottom of FINTRAC Compliance* (January 16, 2019); Appendix 28, April van Ert, *Signs You Should File a Suspicious Transaction Report* (September 3, 2020).

263 Exhibit 601, OR: Real Estate & Industry Response, Appendix 26, Marianne Brimmell, *Get Ready for Mastering Compliance: Anti-Money Laundering Training for Brokers* (August 13, 2020); see also Appendix 27, BCREA, *Mastering Compliance: Anti-Money Laundering Training for Brokers Program*.

264 Evidence of D. Hyde, Transcript, February 17, 2021, pp 87–88.

265 Ibid, p 84.

266 Exhibit 601, OR: Real Estate & Industry Response, Appendix 12, Real Estate Council of BC, *Anti-Money Laundering in Real Estate* (April 1, 2020).

problems. Erin Seeley, past chief executive officer of RECBC and now senior vice-president of policy and stakeholder engagement of BCFSa, testified that the Real Estate Council intended, by “putting resources at the earlier stage of education and professional guidance” to “broaden [the] culture of compliance and understanding and address some of those deficiencies.”<sup>267</sup>

The six-module course reviews money laundering typologies and the international anti-money laundering regime. It explains the role of real estate in money laundering in BC, how real estate licensees may unwittingly participate in transactions with a risk for money laundering, and how they can assist in deterring and detecting money laundering. It provides concrete examples of transactions that carry a high risk or may be suspicious.<sup>268</sup> The course also covers obligations of real estate agents under the *PCMLTFA* in a detailed but simple way and explains why these obligations fall upon real estate agents. An entire module is devoted to suspicious transaction reporting and debunks the “bags of cash” myth.<sup>269</sup>

Ms. Seeley noted that much of the previously existing training targeted managing brokers, and this course was intended, at least in part, to fill a gap by providing licensees with practical tools to identify red flags.

Unfortunately, licensees who have taken the course reported persisting concerns with the reporting regime, including:

- a fear of retaliation from the purchaser/seller for reporting a transaction to FINTRAC;
- lacking the kind of information about a client’s source of funds or wealth that would allow an agent to identify who and what are suspicious;
- general confusion over what money laundering is and what it looks like;
- disagreement or confusion over what counts as suspicious;
- what to do when red flags arise and when to report;
- frustration with asking realtors to take on more responsibility to combat money laundering – several suggested this responsibility be shifted to lawyers;
- the view that the content was irrelevant to them; and
- a desire for tools such as template reporting forms, compliance programs, and suspicious indicators.<sup>270</sup>

<sup>267</sup> Evidence of E. Seeley, Transcript, February 16, 2021, p 145.

<sup>268</sup> Exhibit 617, RECBC, “Anti-Money Laundering in Real Estate” online course materials, Module 3, slides 45–72.

<sup>269</sup> Exhibit 617, RECBC, “Anti-Money Laundering in Real Estate” online course materials, Module 5, slides 118–64.

<sup>270</sup> Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020).

I am encouraged by the high quality of BCFSAs course. Similarly, the BCREA course for managing brokers and compliance officers is a positive step toward educating the industry.<sup>271</sup> It is my hope that, as real estate agents become familiar with these resources, compliance with *PCMLTFA* requirements will improve and reporting will increase. It will be critical for BCFSAs – which can compel licensees to take its courses – to continue to provide quality, up-to-date anti-money laundering education and guidance to industry. The AML Commissioner may prove a useful resource to consult with, given that office's expertise.

## **Improving Anti-Money Laundering Compliance and Suspicious Indicator Reporting**

Real estate licensees need more assistance in understanding when to file STRs. Without clear and direct instruction, real estate licensees on the ground will continue to under-report. Real estate licensees have a front-line view into the initial stages of a real estate transaction, including the decision-making and personal attributes of the client, the client's expressed priorities and intentions for the property, and in some cases, the client's real estate purchasing behaviour over time. Licensees must be empowered to play a more engaged role in BC's anti-money laundering framework in order to fill the information gap left by their historic under-reporting.

### ***Use of Technology to Assist Licensees and Brokerages***

Real estate licensees work in a very different environment than employees of banks. They are largely independent contractors, working outside the traditional office environment, often without direct managerial and administrative supports. This is particularly so at the smaller end of the market. To succeed in meeting their anti-money laundering obligations, real estate licensees need to be supported in the environment in which they work.

Although I have concluded that the primary cure for the industry's difficulties with respect to compliance is education, assistance could be provided by developing aids that recognize the environment in which realtors operate.

Industry, ideally with assistance from FINTRAC, or even led by FINTRAC, would do well to focus on developing technological aids for realtors, such as a mobile application for meeting anti-money laundering obligations and particularly the submission of STRs. Such an application could remind realtors of what the suspicious indicators in a transaction are, walk them through identifying any indicators in the particular transaction before them, and then assist the user in determining whether a report should be filed. The information submitted by the licensee can be made available to the compliance officer, allowing another level of oversight and an opportunity to identify transactions that should be the subject of an STR.

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<sup>271</sup> Exhibits 623A-F: Mastering Compliance AML Training for Brokers.

Such an application could also help realtors overcome confusion about the required threshold for making a report. As noted above, some licensees have expressed reluctance to file STRs in the absence of concrete and obvious evidence of money laundering. That, of course, is not the threshold. The threshold is “reasonable suspicion.”<sup>272</sup>

While artificial intelligence cannot (and should not) replace the expertise and judgment of licensees who understand their market and client base, it is clear that for many, more direct guidance is needed.

FATF recently highlighted the success of electronic tools developed for the real estate sector in Belgium and Slovakia. In Belgium, a collaboration between a private technology developer, the financial intelligence unit, and the regulator of real estate agents resulted in an “AML tool” designed to guide and advise real estate agents in fulfilling their anti-money laundering obligations digitally. FATF observed that the tool has been efficient in assessing and mitigating money laundering risks. Critically for the success of the AML tool, it is approved by the regulator, and if the agent or real estate office uses it as intended, the user is determined to be compliant with their anti-money laundering obligations. A “workflow” tool in Slovakia simplifies and digitalizes the workstream of real estate agents, and allows for electronic identification of clients, risk assessment and automatic identification of the level of risk, and an automated indication of next steps, for example, whether additional information about source of funds is required.<sup>273</sup>

In Chapter 18, I recommend that the Ministry of Finance conduct a “red flag” analysis of suspicious indicators in British Columbia real estate, with one purpose being to determine what suspicious indicators are reliably indicative of money laundering or other criminal activity. The results of such research could be useful both in educating industry and in informing the design of a mobile application that appropriately flags suspicious transactions.

In practice, the responsibility for ensuring compliance with the *PCMLTFA*, including with the obligation to file STRs, generally falls to the compliance officer. The Maloney Report included a recommendation that the onus for compliance with the Act should be placed directly on individual real estate licensees.<sup>274</sup> As I review below, the burden on compliance officers is significant, and I note the logic of the recommendation. It is my hope that making it easier for licensees to fulfill their suspicious transaction reporting obligations with tools like a well-designed mobile application will help to shift anti-money laundering responsibilities back to individual licensees.

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272 Exhibit 626, FINTRAC’S AML/TF Real Estate Sector Presentation (September 19, 2018), p 19.

273 Financial Action Task Force, “Public Consultation on the FATF Risk-Based Guidance to the Real Estate Sector” (March 2022) pp 20–21, online: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-guidance-real-estate.html>.

274 Exhibit 330, Maloney Report, p 78.

## The Burden on Compliance Officers

The managing broker role is one created by the *Real Estate Services Act*, separate from the anti-money laundering regime.<sup>275</sup> The compliance officer role is one mandated by the *PCMLTFA* and associated Regulations.<sup>276</sup> In practical terms, however, because the managing broker carries out the regulatory requirements of oversight and supervision of the brokerages' day-to-day operations, the managing broker also regularly also takes on the compliance officer role.<sup>277</sup>

Managing brokers are responsible for managing regulatory responsibilities of agents, sometimes upwards of 50 agents, for both federal and provincial regulators, involving multiple pieces of legislation and their regulations, and the regulator's bylaws.<sup>278</sup>

Compliance officer obligations can be a significant part of the managing broker's responsibilities. These responsibilities include establishing and updating anti-money laundering policies and procedures, developing a brokerage risk assessment, training licensees on their reporting requirements, reviewing the compliance program periodically, and supervising licensees for compliance.<sup>279</sup> Managing brokers and compliance officers, on top of their supervisory and compliance responsibilities, may also be active as licensees engaged in selling real estate.<sup>280</sup>

Some managing brokers manage very large offices – there is no limit on the number of licensees that can be under their supervision.<sup>281</sup> Brokerage sizes in BC vary wildly: the median size is just four licensees, but there are brokerages with hundreds of licensees.<sup>282</sup> It has been the experience of the regulator that larger brokerages generally have more sophisticated systems that provide for oversight and that supervision, and anti-money laundering compliance issues occur more frequently with smaller brokerages, where there is less support through technology and supervision.<sup>283</sup>

The task that falls to managing brokers (and hence compliance officers) has also been rendered more complex by the evolution of the industry. Individual salespeople are far more likely to be independent contractors than employees in the brokerage office.

There may also be an economic disincentive to rigorous supervision and investigation by managing brokers.<sup>284</sup> Licensees (and their brokerages) get paid when sales are made.<sup>285</sup> When sales are slowed or stopped, conversely, remuneration

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275 *RESA*, s 6.

276 *PCMLTF Regulations*, s 156(1).

277 Evidence of E. Seeley, Transcript, February 16, 2021, pp 156–58; Evidence of S. Ellis, Transcript February 26, p 16.

278 Evidence of S. Ellis, February 26, 2021, pp 15–17.

279 *Ibid*, pp 16–17, 71–74.

280 *Ibid*, p 25.

281 Evidence of E Seeley, Transcript, February 16, 2021, p 158.

282 *Ibid*, p 162.

283 *Ibid*, pp 160–61; Evidence of D. Avren, Transcript, February 16, 2021, p 163.

284 Evidence of D. Avren, Transcript, February 16, 2021, pp 169–72.

285 Evidence of E. Seeley, Transcript, February 16, 2021, pp 176–78.

is negatively affected. Supervisory activity that impedes sales, and the earning of commissions, is contrary to the business (if not the regulatory) model of brokerages. That a licensee earning commission can potentially make much more than a managing broker who is compensated by way of salary (which is derived from commission splits or fees that the licensees pay to the brokerage) also complicates the supervisory dynamic.<sup>286</sup> Deloitte, in the report commissioned by BCREA, recommended that, where possible, the roles of managing broker and FINTRAC compliance officer should be clearly defined and separated.<sup>287</sup> BCREA argued that this recommendation is “impractical” as it would add cost and complexity for brokerages.<sup>288</sup> REBA agreed that, in a province where the average brokerage size is only four licensees, hiring a separate compliance officer is neither practical nor feasible for most brokerages.<sup>289</sup> I tend to agree that, especially for small brokerages, this may be an impractical solution.

The role of managing brokers was the subject of a review by the Office of the Superintendent of Real Estate of the role of managing brokers, published in December 2020.<sup>290</sup> That review produced five recommendations for strengthening the role of the managing broker, including these relevant to the present discussion:

- enhancing education and qualification requirements for managing brokers, including increasing the minimum experience requirement from two years to three;<sup>291</sup>
- developing enhanced resources for managing brokers to promote compliance, including providing better regulatory guidance aimed at managing brokers and supplying templates or frameworks for brokerage policy manuals;<sup>292</sup> and
- more rigorous brokerage licensing and ownership requirements, including by implementing a compliance plan requirement.<sup>293</sup>

I agree with these recommendations and discuss them further below.

### ***Enhance Qualifications for Managing Brokers***

The managing broker has a great deal of responsibility for anti-money laundering compliance (and other regulatory oversight responsibilities) and should have experience in the industry. Two years, in my view, is insufficient to qualify a licensee to become a broker. I encourage the Province, in consultation with the industry,

<sup>286</sup> Ibid, pp 183–85; Evidence of S. Ellis, Transcript, February 26, 2021, p 32.

<sup>287</sup> Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 40.

<sup>288</sup> Ibid, Appendix 20, Darlene Hyde, Letter to Expert Panel on Money Laundering, re British Columbia Real Estate Association Submission to Expert Panel,” BCREA (March 4, 2019).

<sup>289</sup> Evidence of S. Ellis, Transcript, February 26, 2021, p 116.

<sup>290</sup> OSRE, “Review of the Role of Managing Brokers in BC’s Real Estate Framework” (December 2020), online: <https://www.bcfsa.ca/media/1817/download>.

<sup>291</sup> Ibid, p 9.

<sup>292</sup> Ibid, p 10.

<sup>293</sup> Ibid, p 11.

to consider greater prerequisite qualifications for managing brokers, including education and experiential requirements.

### ***Greater Support Needed for Compliance Officers***

In this environment, compliance officers require resources for both the risk assessment and the policies and procedures requirements that are straightforward and unambiguous, and can be integrated into the brokerage's systems without undue complexity. One user, in the feedback survey to the RECBC (now BCFSA) Anti-Money Laundering in Real Estate course, asked “[W]here can we get an example of a small / tiny brokerage Compliance Program template, to customize and implement?”<sup>294</sup>

An electronic anti-money laundering tool of the type described above, and used successfully in Belgium and Slovakia, would go a long way to streamlining and simplifying the anti-money laundering obligations of managing brokers.

Absent such a tool – or while one is under development – the creation of templates to assist managing brokers conduct risk assessments and anti-money laundering policies and procedures would be helpful.

Templates that are suited to the BC real estate environment and that are specific to the market in which the brokerage operates, both in terms of geographic location (whether a large urban centre, a vacation hotspot, or a rural area) and market segment (e.g., commercial real estate, expensive residential single family homes, rental / investment property) will go a long way toward this goal. I encourage industry and regulators to work together to create such templates.

The usefulness of any template or technological tool will have maximum impact, and uptake, if FINTRAC is involved and approves of the final product, providing some assurance to the industry that use of such tools is not inconsistent with their compliance obligations.

Of course, the use of templates must not replace the use of independent judgment and professional experience. If templates or technology tools are introduced, they must be presented with commentary that clearly communicates that templates and technology should not be relied on to the exclusion of a managing broker's own judgment and knowledge of their particular market and the anti-money laundering risks it may present.

### ***Make the Existence of a PCMLTFA Compliance Program a Prerequisite to Licensing a Brokerage***

A brokerage license is issued by the Superintendent of Real Estate (in effect, BCFSA).<sup>295</sup> Brokerages should not be allowed to begin conducting business without demonstrating to the regulator that they have an anti-money laundering compliance plan in place.

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<sup>294</sup> Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), p 21.

<sup>295</sup> RESA, ss 3(1), 5(1)(a), 9(1).

While BCFSFA cannot be responsible for ensuring that a given anti-money laundering compliance plan is acceptable to FINTRAC, it can ensure, as a condition of licensing, that a brokerage has a compliance plan in place. Such a plan should contain, at a minimum, the following: anti-money laundering policies and procedures; a risk assessment of the brokerage's intended business and client / market segment; client verification and identification forms; and a plan for both anti-money laundering training and a two-year review of the brokerage's anti-money laundering policies.

**Recommendation 12:** I recommend that the British Columbia Financial Services Authority use its rule-making authority to mandate that brokerages demonstrate the existence of an anti-money laundering compliance plan as a condition of licensing.

## Indicators of Suspicion

In Appendix 16A, located at the end of this chapter, I outline indicators of suspicion that real estate agents and professionals may wish to consider when assessing money laundering risks at different stages of a real estate transaction.

## Part 3: Mortgage Brokers

### History

I earlier addressed the prevalence of money laundering in real estate and commented on particular vulnerabilities arising with mortgage lending typologies. I now focus on this risk area because I view it as seriously in need of reform. In the remainder of this chapter, I outline the regulatory regime for mortgage brokers and set out specific reforms that will go a long way to addressing gaps that currently exist. In doing so, I offer two case studies based on evidence before me, which offer important insights about money laundering involving mortgage brokers.

Mortgage lending and origination became a regulated industry in BC in 1972, with the passage of the provincial *Mortgage Brokers Act*, RSBC 1996, c 313 (*MBA*). The original focus of the Act was consumer protection, in particular protection against unconscionable interest rates and fees.

In 2019, the Expert Panel on Money Laundering in BC Real Estate (Professors Maloney, Somerville, and Unger) described the *MBA* as antiquated. The panel identified areas where the Act had not kept pace with national and international consumer protection standards, changes in the financial services market, and issues such as money laundering in the real estate market.<sup>296</sup> The Expert Panel recommended that

<sup>296</sup> Exhibit 330, Maloney Report, pp 79–80; Ministry of Finance, Mortgage Brokers Act Review: Public Consultation Paper (January 2020) [MBA Review Consultation], p 1, online: <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/mortgage-brokers-act-consultation-paper.pdf>.

the *MBA* be replaced with new legislation. In response to this recommendation, in January 2020, the provincial Ministry of Finance began a public consultation process to elicit feedback on the modernization of the *MBA*.<sup>297</sup> While this chapter goes on to describe the current obligations established by the legislation and the structure and function of the regulator, I pause to say that the entire regime is presently in the midst of review. Representatives of BCFSA, in particular, readily acknowledged that the Act as it currently stands is woefully out of date. Because the Act is currently under review, it is an opportune time for reforms. Below I will suggest changes that I consider critical to advancing anti-money laundering objectives.

## Registrar of Mortgage Brokers

The Registrar of Mortgage Brokers administers the *Mortgage Brokers Act*. The Registrar is located within BCFSA. The Registrar's office regulates over 5,000 mortgage brokers and brokerages in British Columbia.<sup>298</sup> The Registrar has a number of functions, including registration, oversight of registrants (compliance and examination), and enforcement. The Registrar is responsible for keeping a register of every mortgage and submortgage broker registered under the *MBA*.<sup>299</sup>

The Registrar is appointed by the board of directors of BCFSA.<sup>300</sup> The duties of the Registrar are mainly carried out by the Deputy Registrar of Mortgage Brokers. The day-to-day functions of the Registrar are carried out by the Director of Mortgage Brokers. The Registrar employs 14 staff members.<sup>301</sup> This includes a team responsible for the registration of mortgage and submortgage brokers, as well as a five-person investigative team and a four-person compliance team responsible for examinations.<sup>302</sup>

## Registration Requirements

The *MBA* defines a mortgage broker as a person who does any of the following:

- a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;
- b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;
- c) carries on a business of buying and selling mortgages or agreements for sale;

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297 *MBA Review Consultation*, p 1.

298 Exhibit 603, *Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia*, p 39.

299 *MBA*, s 3(1); see also Evidence of C. Carter, Transcript, February 16, 2021, pp 30–31.

300 *MBA*, s 1.1.

301 Exhibit 606, *BCFSA Organizational Chart* (updated November 30, 2019), p 11; Evidence of C. Carter, Transcript, February 16, 2021, pp 31–32.

302 Exhibit 606, *BCFSA Organizational Chart*, p 11.

- d) in any one year, receives an amount of \$1,000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;
- e) during any one year, lends money on the security of 10 or more mortgages;
- f) carries on a business of collecting money secured by mortgages[.]<sup>303</sup>

Surprisingly, the *MBA* does *not* require anyone engaging in these activities to register as a mortgage broker. As a result, if a person fits into one of the six descriptions above, they are not *always* required to register as mortgage broker. What the Act prohibits – unless the person is registered under the Act – is for a person to “carry on business as a mortgage broker or submortgage broker.”<sup>304</sup> As such, there is some misalignment. The activities defined as mortgage brokering in section 1 of the *MBA* do not match up exactly with the activities that are prohibited without registration. A person is allowed to engage in the activities listed in section 1, unregistered, up to the point that it constitutes “carrying on business.”<sup>305</sup>

Furthermore, the definition of “mortgage broker” is *not* restricted to those who connect borrowers with lenders (known as “origination”). It also includes lenders who secure their loans by way of mortgages.

Despite the broad range of activity encompassed by the definition of “mortgage broker” in the *MBA*, only two categories of registration exist: one for *individuals* (referred to by the Act as **submortgage brokers**) and one for *brokerages* (referred to in the Act as **mortgage brokers**). There are no separate registration categories for lenders and originators, nor are there separate conduct requirements or qualification criteria.<sup>306</sup>

The registration process involves setting qualification criteria, against which staff conduct a suitability review for each applicant. For example, brokers must meet certain education requirements to be eligible for registration.<sup>307</sup> A certified criminal record check is required as part of this suitability review.<sup>308</sup> The office takes a closer look at lender applicants than originator applicants, including the owners and directors of corporate entities.<sup>309</sup>

303 *MBA*, s 1.

304 *MBA*, s 21(1)(a).

305 *Ibid*; see discussion at paras 68–85 of *AZTA Management Corporation v Croft Agencies Ltd*, 2014 BCSC 1462.

306 Evidence of C. Carter, Transcript, February 16, 2021, pp 33, 35–36.

307 BC Financial Services Authority, “Registrations – Mortgage Brokers Education Requirements” (accessed January 20, 2021), online: [https://www.bcfsa.ca/pdf/mortgagebrokers\\_Registered/Edu.pdf](https://www.bcfsa.ca/pdf/mortgagebrokers_Registered/Edu.pdf).

308 BC Financial Institutions Commission, Information Bulletin MB 11-002, “Individual Registration Applications Suitability Reviews and Criminal Record Checks” (May 2011), online: <https://www.bcfsa.ca/media/1535/download>.

309 Evidence of C. Carter, Transcript, February 16, 2021, pp 37–38.

The Registrar conducts a suitability review of each applicant for registration by verifying the applicant’s credentials, reviewing open-source material, and assessing the individual’s past criminal and regulatory history with other regulators. A number of “red flags” may arise on a suitability review, which will lead to a more in-depth review of an applicant.<sup>310</sup>

## Obligations of Mortgage Brokers

The *MBA* sets out a number of obligations for mortgage brokers and submortgage brokers, including:

- prohibiting a person from withholding, destroying, concealing, or refusing any information or records required by the Registrar for inquiry;<sup>311</sup>
- prohibiting a mortgage broker or submortgage broker from making any false, misleading, or deceptive statements;<sup>312</sup>
- requiring the mortgage broker to disclose any conflicts of interest the mortgage broker or any of their associates or related parties may have to investors and lenders,<sup>313</sup> and to borrowers;<sup>314</sup>
- not being party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable;<sup>315</sup> and
- not to engage in conduct “prejudicial to the public interest.”<sup>316</sup>

Financial professionals who give advice or sell financial products, as a general matter, have a number of obligations. Some are commonplace, such as the duty of loyalty to the client or the obligation to conduct “know your client” due diligence. But the *MBA* does not impose such obligations on mortgage brokers.<sup>317</sup> Not does it require mortgage brokers to inquire into the source of funds being used.

## Designated Individuals

Each mortgage broker (i.e., a brokerage) that is a corporation, partnership, or sole proprietorship must have a registered submortgage broker who acts as its “designated individual.” The designated individual role involves oversight over those engaged

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310 Ibid.

311 *MBA*, s 6(7.5).

312 Ibid, s 14(1).

313 Ibid, s 17.4.

314 Ibid, s 17.3.

315 Ibid, s 8(1)(g).

316 Ibid, s 8(1)(i).

317 Evidence of C. Carter, Transcript February 16, 2021 pp 43, 76.

in mortgage lending at that firm or office. The designated individual must ensure that employees who are involved in arranging mortgages are properly registered, aware of regulatory obligations, and appropriately supervised. They must ensure that the brokerage's financial records are accurate and up to date, and that year-end financial filings are provided on time and in the form required. They must make sure that registration information is accurate and timely and that applications submitted through the mortgage broker e-filing system are complete and accurate.<sup>318</sup>

To qualify as a designated individual, a submortgage broker must have been registered for a minimum of two years and have no prior record of regulatory misconduct under the *MBA* or otherwise.<sup>319</sup>

A designated individual – which is analogous to a managing broker in the real estate licensee context – is not a legislated role. It does not involve a separate registration. The obligations of a designated individual arise only from policy as developed by BCFSA.

## Enforcement and Penalties

The office of the Registrar of Mortgage Brokers includes a team responsible for handling complaints, examinations, and investigations. As of August 1, 2021, RECBC and OSRE have been incorporated within BCFSA. I was informed by Blair Morrison, chief executive officer of BCFSA, that the investigative capacities of each organization – BCFSA, RECBC, and OSRE – are being consolidated with the intention of “prioritizing the development of a common market conduct framework to enable a proactive response to key regulatory risks.”<sup>320</sup>

The Registrar of Mortgage Brokers investigates contraventions of the *MBA* and its regulations (including BCFSA policies), for both registered mortgage brokers and unregistered mortgage brokering activity. The Registrar receives complaints from the public and from other industry professionals. When a complaint arrives, it triggers a review process, which includes assessment of the role of individuals involved, including any designated individual responsible for overseeing those named in the complaint.<sup>321</sup>

The Registrar has the power to investigate mortgage and submortgage brokers who may be in violation of their obligations under the Act or against whom a sworn complaint has been made.<sup>322</sup>

There are two branches of disciplinary proceedings that the Registrar can pursue when a mortgage or submortgage broker is suspected to have violated their obligations under the *MBA*. The first is to apply administrative penalties against the broker. The

<sup>318</sup> BC Financial Services Authority, “Mortgage Broker Resources - Registrations” (accessed 20 January 2021), p 2, online: [https://www.bcfesa.ca/pdf/mortgagebrokers\\_Registered/Registrations.pdf](https://www.bcfesa.ca/pdf/mortgagebrokers_Registered/Registrations.pdf).

<sup>319</sup> Ibid.

<sup>320</sup> Exhibit 1051, Affidavit of Blair Morrison, sworn September 13, 2021 [Affidavit of B. Morrison], paras 7–8.

<sup>321</sup> Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, p 41.

<sup>322</sup> *MBA*, s 5.

second is to pursue a provincial offence. This “provincial offence” option requires a referral to the BC Prosecution Service. The issuance of administrative penalties is much more common than a referral for a provincial offence.<sup>323</sup>

After giving the registered party an opportunity to be heard, if the Registrar is of the opinion that the mortgage or submortgage broker has violated their obligations under the Act, he or she may (a) suspend the person’s registration, (b) cancel the person’s registration, (c) order the person to cease a specified activity, or (d) order the person to carry out specified actions that the Registrar considers necessary to remedy the situation.<sup>324</sup>

If a mortgage broker contravenes any of the obligations listed in the *MBA*, they have committed an offence under the Act. They are subject to prosecution and, upon conviction, penalties. Depending on which section of the Act the mortgage broker has contravened, the penalties for an offence include fines that range from \$2,000<sup>325</sup> to \$200,000, and/or imprisonment for not more than two years, depending on the severity of the offence.<sup>326</sup> The more serious offences, including carrying on business while unlicensed, carry a maximum fine of \$100,000 for a first offence, plus the possibility of jail time.<sup>327</sup> Less serious offences are punishable with a fine, but no possibility of jail time.<sup>328</sup>

It is also an offence under the *MBA* for a person who is not registered as a mortgage or submortgage broker to carry on a business as a mortgage broker.<sup>329</sup> The Registrar has the power to investigate such persons. If, in his or her opinion, that person has been carrying on such business without being registered under the Act, the Registrar has the power to order the person to (a) cease a specified activity, (b) carry out specified actions that the Registrar considers necessary to remedy the situation, or (c) pay an administrative penalty of not more than \$50,000. If convicted of an offence for the same misconduct, a fine not exceeding \$100,000 (for a first offence) and a term of imprisonment of up to two years is available.<sup>330</sup>

In addition to assessments initiated by complaints, the compliance team also conducts proactive examinations. As of February 2020, approximately 50 percent of mortgage broker case files were proactive examinations.

Where appropriate, examinations and complaints may lead to an investigation. In the 2018–19 fiscal year, the Registrar opened 181 complaints, conducted 83 suitability reviews and 37 examinations, and concluded 61 investigations.<sup>331</sup>

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323 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, pp 42–43.

324 *MBA*, s 8(1).

325 *Ibid*, s 22(3)(b).

326 *Ibid*, s 22(2)(b)(ii).

327 *Ibid*, s 22(2)(b).

328 *Ibid*, s 22(3).

329 *Ibid*, s 21(1)(a).

330 *Ibid*, s 8(1.4).

331 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, p 42.

The largest administrative monetary penalty available to the Registrar is \$50,000, an amount that has been issued on four occasions: once in 2004,<sup>332</sup> twice in 2018,<sup>333</sup> and once in 2021.<sup>334</sup>

As of the fall of 2020, two investigations into misconduct by the Registrar had resulted in charges of a provincial offence. Those investigations occurred in 2004 and 2010 and involved allegations of repeated unlicensed activity.<sup>335</sup>

## Mortgage Brokers and FINTRAC

Mortgage brokers are not designated as reporting entities under the *PCMLTF Regulations*. Mortgage brokers are therefore not required to submit suspicious transaction reports (or any other reports) to FINTRAC.

### Case Study: Jay Chaudhary

Jay Chaudhary is a former registered mortgage broker who was suspended by the Registrar of Mortgage Brokers in 2008 for conducting business in a manner prejudicial to the public interest. Specifically, Mr. Chaudhary was alleged to have knowingly submitted false information to lenders on behalf of his clients in order to secure financing for them.<sup>336</sup> In 2019, he was the subject of a cease-and-desist order from the Registrar, in which it was alleged that he carried on these activities after 2008 as an unregistered mortgage broker. Mr. Chaudhary gave evidence before the Commission. He was remarkably forthright. Most of what is set out below was relayed by Mr. Chaudhary himself.

After his 2008 suspension, Mr. Chaudhary did not seek to have his registration reinstated but instead continued with his mortgage brokering activities unregistered. From 2009 through mid-2018, when his activities were disrupted by an investigation, and later a cease-and-desist order by the Registrar, he is alleged to have arranged almost half a billion dollars in residential mortgages and earned approximately \$6 million in fees and

332 *In the Matter of the Danh Van Nguyen and Express Mortgages Ltd.*, October 15, 2004, online: <https://www.bcfsa.ca/media/204/download>.

333 *In the Matter of Dennis Percival Rego, Shank Capital Systems Inc. and Arvind Shankar*, January 15, 2018, online: <https://www.bcfsa.ca/media/252/download>: \$50,000 penalties ordered separately as against two individuals.

334 *In the Matter of Dean Frank James Walford and In the Matter of Loan Depot Canada, Decision on Penalty and Costs*, 2021 BCRMB 1, December 22, 2021, online: <https://www.bcfsa.ca/media/2788/download>.

335 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, p 43.

336 Exhibit 653, *In the Matter of the Mortgage Brokers Act and Jay Kanth Chaudhary, Suspension Order*, October 16, 2008, pp 2–9.

commissions.<sup>337</sup> That is a startling amount, both the volume of financing but also the remarkable profits made from this unregistered activity.

While there was no evidence before the Commission that Mr. Chaudhary conducted his activities in furtherance of a money laundering scheme, his story illustrates a very serious money laundering vulnerability in the real estate sector.

When he was a registered mortgage broker, Mr. Chaudhary would alter and submit applications for residential mortgages for his clients. The alterations he made were designed to make the applications acceptable to lenders. Mr. Chaudhary said he did not charge a fee to his clients for making such alterations (at that time); instead, he simply took his share of the commission payable by the lender. The fraudulent alterations would mostly be made to documents demonstrating income and assets, such as job letters, bank statements, and notices of assessment.<sup>338</sup> He used widely available computer software tools to help him make the dishonest changes.<sup>339</sup> These manual falsifications could remain undetected because lenders who receive the applications have no direct access to the Canada Revenue Agency (CRA) for confirmation: they depend on the honesty of mortgage brokers and borrowers. There is no obvious way to detect documents that have been tampered with.<sup>340</sup>

While Mr. Chaudhary said he was not concerned that any of his clients were involved in illegal activities, there was some evidence that applicants who sought Mr. Chaudhary's services were involved in mortgage fraud schemes that had attracted the attention of law enforcement.<sup>341</sup>

In 2008, a complaint from a bank employee spurred an investigation by the Registrar. As a result, Mr. Chaudhary was suspended in October 2008. Mr. Chaudhary agreed in his evidence before the Commission that he falsified applications to lenders.<sup>342</sup>

When his suspension ended, Mr. Chaudhary did not apply to reinstate his registration. Instead, at some point in 2009, he started processing mortgage loan applications again, this time with the necessary assistance

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337 Exhibit 655, *In the Matter of the Mortgage Brokers Act and Jay Kanth Chaudhary, Cease and Desist Order*, May 23, 2019 [Cease and Desist Order], para 67.

338 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 29–30.

339 *Ibid*, pp 30–31.

340 Evidence of M. McTavish, Transcript, February 22, 2021, p 105.

341 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 43–44; Exhibit 654, Investigation Report on Client Files of Jay Chaudhary, pp 10–11.

342 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 17–18.

of registered mortgage brokers.<sup>343</sup> He used the same methods to alter applications according to the client's needs.<sup>344</sup>

The changes that he made were sometimes significant. In respect of one mortgage application reviewed, Mr. Chaudhary agreed it was likely that he falsified the applicant's tax documents to show an income of \$279,726 instead of the \$34,428 reported to CRA, and falsified bank statements to show \$810,000 in savings in the same applicant's account, rather than the \$250,000 actually available.<sup>345</sup> He agreed he had made changes to other documents that were just as significant.<sup>346</sup>

Compensation to Mr. Chaudhary was provided by a split of the registered mortgage broker's fees paid by the lenders, as well as, by this point, by fees paid by clients directly to Mr. Chaudhary. He charged 1 percent of the mortgage amount directly to the client.<sup>347</sup> The mortgage broker who processed the application for Mr. Chaudhary would receive their commission from the lender and then, typically, pay Mr. Chaudhary his 25–30 percent of that commission, often in cash.<sup>348</sup> Ultimately, Mr. Chaudhary used the services of a number of mortgage brokers to process his falsified applications.

Mr. Chaudhary said that, by 2018, he was using the services of four registered mortgage brokers to process transactions. When asked if the mortgage brokers were aware that he was falsifying supporting documents for loan applications, Mr. Chaudhary responded, "90 percent, yes."<sup>349</sup> Some of the brokers, he said, would have seen the changes he made to supporting documentation.<sup>350</sup> To Mr. Chaudhary's recollection, none of these brokers ever expressed concern to Mr. Chaudhary about what he was doing. None, to his knowledge, reported him to the Registrar.<sup>351</sup> When asked why he thought that was the case, he responded:

[T]hey were making commissions. And, you know, with hardly ever doing anything because most of the work was done by me[;] they would just be inputting information and getting

343 Ibid, pp 51–52 and 61–62; Evidence of M. McTavish, Transcript, February 22, 2021, pp 118–19.

344 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 64–65.

345 Ibid, pp 88, 91–92.

346 Ibid, p 89.

347 Ibid, p 59.

348 Ibid, p 62.

349 Ibid, pp 64–65.

350 Ibid, pp 65–66.

351 Ibid, p 67.

approvals. So, the ease of transaction and the amount of money they're making was good.<sup>352</sup>

Other professionals besides mortgage brokers were necessary to this scheme, including a referral network of licensed real estate professionals. Real estate licensees referred their own clients to Mr. Chaudhary, who paid them fees in return.<sup>353</sup> Mr. Chaudhary believes that these licensees knew what he was doing, and at least two were aware of his suspension, because he had informed them of it himself.<sup>354</sup> At the time he gave evidence before the Commission, Mr. Chaudhary believed that one of the two realtors who had been made expressly aware of his status was still licensed in British Columbia. The other is deceased.<sup>355</sup>

Several realtors, according to Mr. Chaudhary, personally used his services to obtain financing for properties they otherwise could not afford.<sup>356</sup> The use of Mr. Chaudhary's unregistered mortgage broker services by real estate licensees was confirmed by representatives of RECBC.<sup>357</sup> The network of professionals referring work to Mr. Chaudhary grew from four or five realtors<sup>358</sup> to 15 or 20.<sup>359</sup> Mr. Chaudhary thought that, of those 15 to 20 realtors who referred him business, about 80 percent were still licensed at the time he gave evidence before the Commission.<sup>360</sup>

Real estate licensees, like registered mortgage brokers, had a significant financial incentive to use Mr. Chaudhary's services: they earned commissions when their client successfully purchased property. Whether they referred clients to Mr. Chaudhary knowing of his practice of falsifying documents, or simply turned a blind eye to what Mr. Chaudhary was doing, this network of financially incentivized professionals gave Mr. Chaudhary access to a client base that kept him in business, very profitably, for over a decade. A cease-and-desist order issued by the Registrar on May 23, 2019, summarizes the staggering number of mortgages he is alleged to have facilitated over this period:

[F]rom 2009 to mid 2018, Mr. Chaudhary worked on 875 files, generated \$5,283,347 in client fees and \$642,344 [in] referral fees

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352 Ibid.

353 Ibid, pp 26, 59.

354 Ibid, p 52–54.

355 Ibid, p 56.

356 Ibid, pp 64-65.

357 Evidence of M. Scott, Transcript, February 25, 2021, pp 95–97.

358 Evidence of J. Chaudhary, Transcript, February 24, 2021, p 24.

359 Ibid, p 58.

360 Ibid, p 59.

paid by the registered submortgage brokers who submitted the applications to lenders on his behalf, and arranged \$511,558,206 in mortgage loans.<sup>361</sup>

To Mr. Chaudhary's knowledge, none of the real estate licensees in his network reported his activities to their own regulator or to the Registrar.<sup>362</sup> This was so even though he recalled some real estate licensees asking him directly if he was a registered mortgage broker – to which he would respond in the negative. Such disclosures never cost him referrals.<sup>363</sup> As was the case before he was suspended, Mr. Chaudhary's clients included licensees who, he believed, were aware of the fraudulent alterations he was making to loan applications.<sup>364</sup>

I pause to point out that discovering whether a mortgage broker is appropriately licensed is not at all difficult: the Registrar maintains a list of registrants on its public-facing website. A simple query on that website would have allowed anyone working with Mr. Chaudhary (whether under his own name or one of the pseudonyms he testified that he used) to easily determine that he was *not* registered.

Mr. Chaudhary's explanation for why he used pseudonyms helps to explain the apparent complicity of real estate licensees. He said a pseudonym was necessary to protect him from real estate licensees who would consider him "competition":

[T]he realtors that I work with probably [have] an upper hand ... because the clients would probably end up going to them because they know the realtors have this individual who can get them the mortgage... whereas the realtors that do not have the services of individuals like us will – might have difficulty getting their clients approved.<sup>365</sup>

Mr. Chaudhary's dishonesty gave his clients and associates an unfair competitive advantage. One of the consequences of Mr. Chaudhary's fraudulent services was keeping honest purchasers out of the market. Such conduct creates an uneven playing field and distorts the market, in the sense that buyers who would *not* qualify for lending, did. In addition, this resulted in a deception and an appreciable risk for lenders, who were misled as to the truth of the financial wherewithal of the buyer.

361 Exhibit 655, Cease and Desist Order, p 12 and para 67.

362 Evidence of J. Chaudhary, Transcript, February 24, 2021, p 24.

363 Ibid, pp 74–75.

364 Ibid, pp 94–95.

365 Ibid, p 91.

The type of unregistered – and fraudulent – mortgage brokering activity admitted to by Mr. Chaudhary is evidently not uncommon. In evidence before me were a number of cease-and-desist orders of the Registrar of Mortgage Brokers, setting out allegations of such activity against various individuals, as well as notices of hearing directed at the registered mortgage brokers who allegedly assisted them.<sup>366</sup> A former investigator for the Registrar stated that unregistered mortgage brokering activity, often coupled with falsified documentation, was a top area of investigation for the Registrar in his time there.<sup>367</sup> Mr. Chaudhary gave evidence that he was aware, through his own clients, of a number of unregistered persons offering mortgage brokering services in the Lower Mainland.<sup>368</sup>

### ***Factors that Allowed Mr. Chaudhary to Operate***

Mr. Chaudhary provided his views on why he was able to operate undetected for so long.

While he was a registered mortgage broker, Mr. Chaudhary claimed that the brokerage he worked through failed to apply supervision or oversight to his brokering activities. The review of the application packages he submitted to lenders did not go beyond checking that all required documents were present.<sup>369</sup> It would have been apparent, on a review of the documents themselves, that there were suspicious inconsistencies in the applications. For instance, notices of assessment submitted by Mr. Chaudhary were purported to have been issued by the “Canada Customs and Revenue Agency,” not the “Canada Revenue Agency,” as it was then known.<sup>370</sup> As far as Mr. Chaudhary was aware, no one at the brokerages he worked through ever reached out independently to a borrower in order to confirm the accuracy of their information as it appeared on documents. Such inquiries could, he said, have caught some of the falsified applications.<sup>371</sup>

As Mr. Chaudhary recognized, the success of his scheme depended on the fact that all the professionals involved profited:

[T]he clients were happy, the banks [had] no default, they were making their interest ... I don't think any one of my clients

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366 Exhibit 604, Registrar of Mortgage Brokers Discipline Orders Overview Report [OR: Mortgage Brokers Discipline Orders].

367 Evidence of M. McTavish, Transcript, February 22, 2021, pp 102–4.

368 Evidence of J. Chaudhary, Transcript, February 24, 2021, p 93.

369 Ibid, pp 33–34.

370 Ibid, pp 34–35.

371 Ibid, pp 35–36.

defaulted. I don't remember. I didn't hear [of] any. So, realtors make their commission. Mortgage brokerages make their commission. I make my commission. All the parties involved, the notaries, whole industry.

Q: So nobody's motivated to stop it?

A: That's right.<sup>372</sup>

So long as registered mortgage brokers are willing to work with unregistered persons, Mr. Chaudhary is of the view that it will be very difficult to detect and stop the kind of activity he was involved in. The only strategy that he contemplated could be successful would be collaboration between CRA and lenders.<sup>373</sup> As noted, lenders do not currently have direct access to CRA information or to confirmation from CRA as to the contents of loan applications. Mr. Chaudhary recommended stronger oversight of submortgage brokers by brokerages, especially of new brokers, and strict consequences – perhaps even loss of license – for real estate licensees who do not report unregistered brokers.<sup>374</sup>

### ***Consequences to Mr. Chaudhary***

Mr. Chaudhary was the subject of a cease-and-desist order in May 2019, as described above. In the course of the hearing, his counsel indicated that he was the subject of scrutiny by the CRA,<sup>375</sup> presumably as a result of his unregistered mortgage brokering activities. He does not appear to have faced any other legal consequence for his actions.

Mr. McTavish for BCFSa gave evidence that he brought the Chaudhary file to the leadership of the RCMP's "E" Division, but that the RCMP ultimately declined to take on the matter. To his recollection, the reason given was that the matter did not fall within their mandate.<sup>376</sup>

<sup>372</sup> Ibid, pp 103–4.

<sup>373</sup> Ibid, p 106.

<sup>374</sup> Ibid, pp 107–8.

<sup>375</sup> Ibid, p 54.

<sup>376</sup> Evidence of M. McTavish, Transcript, February 22, 2021, pp 148–49; Exhibit 651, Case Note: Meeting with RCMP, Re J. Chaudhary (April 3, 2019).

### ***The Money Laundering Vulnerability***

Despite Mr. Chaudhary's evidence that he falsified approximately 70 percent of the loan applications he processed between 2009 and 2018, he also stated that he was unaware of any of the borrowers having defaulted on their loans.<sup>377</sup> While this may be happy circumstance for the lenders who unknowingly advanced loans to unqualified borrowers and faced the risk of default, it raises the question of how these unqualified borrowers were able to service the loans.

While there was no direct evidence that Mr. Chaudhary's clients were servicing their loans with the proceeds of crime, mortgage fraud such as that carried out by Mr. Chaudhary allows individuals with illicit incomes to obtain mortgages.<sup>378</sup> It allows a criminal (say a profitable drug dealer) to qualify as if he had a \$500,000 annual income, even though his tax return would only show an income of \$30,000. In turn, this allows the borrower to translate illicit funds into equity in real property by making payments on the loan with dirty money.

Mr. Chaudhary understood that a borrower defaulting on a loan arranged through falsified documents could lead to uncomfortable scrutiny of the borrower's application and by extension of the mortgage broker involved. He therefore took care to ensure, by other means, that a borrower was able to service the loan.<sup>379</sup> Sometimes this meant taking into account the assistance of the borrower's family members, and often it meant taking into account income that the client had earned but not declared to tax authorities.<sup>380</sup> Sometimes, he said, he simply took into account what the borrower was currently paying in rent – if it was more than the service payments on the loan, he was confident they wouldn't default.<sup>381</sup> Mr. Chaudhary claimed that he never considered that a borrower's funds came from illegal activity.<sup>382</sup>

### ***The Realtors and Mortgage Brokers Who Assisted Mr. Chaudhary***

Mr. Chaudhary could not have carried on his unlicensed activity without the active assistance of a network of professionals, both real estate licensees and mortgage brokers.

The complaints about Mr. Chaudhary's unregistered activity were made, according to the cease-and-desist order made against him, between July 2017 and March 2018. An investigation followed, culminating in a search of premises controlled by Mr. Chaudhary in February 2019. The cease-and-desist order was issued on May 23, 2019.<sup>383</sup>

Mr. Chaudhary stated in his evidence that each of the mortgage brokers who assisted him had been suspended. Notices of hearing and, in one case, a consent order issued

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377 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 68–69.

378 Ibid, pp 72–74.

379 Ibid, pp 69–72.

380 Ibid, pp 72–74.

381 Ibid, pp 71–72.

382 Ibid, p 74.

383 Exhibit 655, Cease and Desist Order.

against registered mortgage brokers are in evidence before me. These mortgage brokers are alleged to have engaged, or in some cases have admitted to engaging, in conduct prejudicial to the public interest by “fronting” for Mr. Chaudhary. One broker had her licence revoked and has agreed to never seek reinstatement in British Columbia.<sup>384</sup> None are currently registered as mortgage brokers in British Columbia.

But the case is different with respect to the real estate licensees in Mr. Chaudhary’s network. I heard evidence from representatives of RECBC who confirmed they had received referrals from the predecessor to BCFSA, FICOM, with respect to 26 licensees who were connected with Mr. Chaudhary, starting in June 2019.<sup>385</sup> According to a senior investigator for RECBC, 12 licensees were alleged to have arranged their own personal mortgages through Mr. Chaudhary, which raises the question of whether these licensees used Mr. Chaudhary’s services knowing that he would falsify their financial information. Seven of those 12 real estate licensees are also alleged to have referred Mr. Chaudhary’s services to their own clients.<sup>386</sup>

Based on the review of the evidence conducted by RECBC, it appeared that real estate licensees who referred clients to Mr. Chaudhary had received referral fees from him.<sup>387</sup>

Of the 26 real estate licensees identified by FICOM, at the time evidence was heard in February 2021, 11 were under investigation, five were awaiting referral for investigation, and 10 were “flagged in the system.” But no investigations were completed, and no disciplinary proceedings had been commenced.<sup>388</sup> This is despite the fact that, on review of the referral, RECBC determined that the allegations were credible and that it takes the view that knowingly referring clients to an unregistered mortgage broker would be contrary to the rules of conduct governing real estate licensees and a serious matter for discipline.<sup>389</sup> In a subsequently tendered affidavit, a representative of BCFSA (into which RECBC was incorporated on August 1, 2021) advised that it had retained an outside investigator to assist in the investigation of the Chaudhary matters.<sup>390</sup> To date, no disciplinary action has been taken. In fact, no notices of hearing have been issued against any of the individuals referred for alleged

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384 Exhibit 604, OR: Mortgage Brokers Discipline Orders, Appendix A, BCFSA, *In the Matter of the Mortgage Brokers Act and in the Matter of Mana Erfani, Consent Order* (August 2020); Appendix G, British Columbia, *In the Matter of the Mortgage Brokers Act and Shane Christopher Ballard, Notice of Hearing* (October 2019); BCFSA, *Notice of Hearing in the Matter of Kasra Erfani Mohseni*, February 1, 2021, online: <https://www.bcfesa.ca/media/291/download>; BCFSA, *Notice of Hearing In the Matter of Ksenia Ivanova*, January 27, 2021, online: <https://www.bcfesa.ca/media/288/download>.

385 Evidence of D. Avren, Transcript, February 17, 2021, p 9; Evidence of M. Scott, Transcript, February 25, 2021, pp 93–94; Exhibit 661, Letter from FICOM to RECBC, re Real Estate Licensees working with Jay Kanth Chaudhary (June 7, 2019): The referral was in respect of 28 individuals, but according to RECBC, it was determined that two were not licensed.

386 Evidence of M. Scott, Transcript, February 25, 2021, pp 95–97.

387 *Ibid.*, p 100.

388 Evidence of D. Avren, Transcript, February 17, 2021, pp 9–10.

389 Evidence of M. Scott, Transcript, February 25, 2021, pp 100–4.

390 Exhibit 1050, Affidavit of Michael Scott, sworn September 13, 2021 [Affidavit of M. Scott], para 26.

involvement in Mr. Chaudhary’s scheme.<sup>391</sup> With the exception of two individuals who voluntarily withdrew from the industry by not seeking renewal, the real estate licensees referred by FICOM to RECBC (24 real estate licensees) in connection with the Chaudhary matter remain in the industry.<sup>392</sup>

RECBC witnesses explained that referrals were prioritized for investigation based on the alleged conduct of the real estate licensees, in particular, whether the behaviour related to their own personal mortgage activities.<sup>393</sup> Mr. Chaudhary’s evidence was that he made alterations to mortgage applications for real estate licensees, some of whom he stated were aware of what he was doing, because he told them so.<sup>394</sup> In my view, it seems more likely that a real estate licensee who personally obtained a mortgage through Mr. Chaudhary would be better positioned to (a) know Mr. Chaudhary was unregistered, (b) understand that they were financially unqualified to obtain the amount of financing they needed, and (c) know that Mr. Chaudhary had altered their financial documents. This raises serious questions about the ethics and integrity of the real estate licensees involved and their fitness to retain their licences as realtors. It also raises questions about the speed with which these allegations are being addressed.

Following the testimony given by RECBC representatives in February 2021, BCFSA provided, in writing, further context for RECBC’s complaints handling process and investigations.<sup>395</sup> This evidence was provided by BCFSA because, by that time, RECBC had been incorporated into that agency. The responsibility for both real estate licensees and mortgage brokers now rests with BCFSA.

At the time the Chaudhary matters were referred to RECBC, the regulator already had an inventory of 150 matters that it had triaged “as serious and worthy of investigation.”<sup>396</sup> Some of these involved allegations of a very serious nature, including fraud and dishonesty.<sup>397</sup> RECBC was confronted, Mr. Scott attested, with a “variety of complex and publicly sensitive social issues such as undisclosed conflicts of interest, fraud, fake offers, and allegations of sexual misconduct by real estate licensees.”<sup>398</sup>

RECBC also found itself facing a continually increasing number of complaints, caused in part by increased activity in the real estate sector and in part by RECBC’s own efforts to educate the public about its function and to create means, such an anonymous tip line, to make the process of reporting questionable conduct easier.<sup>399</sup> At the same time, RECBC says it had limited resources to manage complaint volumes. Attracting

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391 Evidence of D. Avren, Transcript, February 17, 2021, pp 9–10; Evidence of M. Scott, Transcript, February 25, 2021, pp 116–17.

392 Evidence of M. Scott, Transcript, February 25, 2021, pp 116–17.

393 Ibid, pp 95–97.

394 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 94–95.

395 Exhibit 1050, Affidavit of M. Scott; Exhibit 1051, Affidavit of B. Morrison.

396 Exhibit 1050, Affidavit of M. Scott, para 24.

397 Ibid, para 8.

398 Ibid, para 7.

399 Ibid, para 14.

and retaining investigators with experience in financial crimes or real estate is difficult, although from 2018 to July 31, 2021, RECBC was able to increase its staff responsible for investigations from 10 to 25.<sup>400</sup>

In March 2021, RECBC asked OSRE to conduct a review of the complaints handling processes of comparative administrative bodies.<sup>401</sup> That report highlighted the importance of retaining skilled and knowledgeable intake and investigative staff. Doing so is critical to the success of handling complaints. I commend the initiative to undertake comparative research and, more importantly, to implement that research to improve the means by which complaints are handled and resolved.

RECBC urges me to conclude that it managed the complaints it received and allocated scarce resources appropriately, applying its expertise as a regulator of real estate professionals. It states that it was dealing with complaints that it considered to be more serious in nature than those concerning the Chaudhary-affiliated realtors.<sup>402</sup>

It is difficult, on the limited evidence available to me, to second-guess how RECBC prioritized the complaints it received. I remain concerned, however, by the fact that so many of the professionals who assisted Mr. Chaudhary, at least some of whom must have known what he was doing, even today remain licensed to provide real estate services in British Columbia. The conduct at issue is sufficiently serious that allowing it to go uninvestigated for such a lengthy period of time is unacceptable. If it is the case that RECBC was appropriately prioritizing the complaints it received based on the resources it had available to investigate complaints, then it is clear that the resources allocated were insufficient. The current unified real estate regulator, BCFSa, must be able to move with dispatch when real estate professionals are identified as being involved in fundamentally dishonest activities that create money laundering risks. Accordingly, I recommend that the Province allocate sufficient resources to BCFSa to ensure that it has the capacity to address allegations of serious misconduct in a timely way.

**Recommendation 13:** I recommend that the Province allocate sufficient resources to the British Columbia Financial Services Authority to ensure that it has the capacity to address allegations of serious misconduct in a timely way.

RECBC did not have an express anti-money laundering mandate, although it is apparent from its evidence that it was aware of the issue of money laundering through real estate and had provided education and professional development assistance to its members in this regard. The creation of an anti-money laundering mandate for BCFSa would allow for the prioritization of investigations with a fraud and possible money laundering component. The existence of a clear mandate in this regard would also, I

<sup>400</sup> Ibid, para 13.

<sup>401</sup> Ibid, para 21 and exhibit B, OSRE, *Complaints Handling Processes in Professional Regulation* (March 2021).

<sup>402</sup> Closing submissions, Real Estate Council of British Columbia, para 14.

expect, allow BCFSa to more readily and rapidly identify matters that justify the use of extraordinary resources – as I understand RECBC had done by assigning the Chaudhary matters to an outside investigator in the summer of 2021.<sup>403</sup> For these and other reasons, I recommend in Chapter 20 that BCFSa be given a clear and enduring anti-money laundering mandate.

As noted, the investigations of the real estate professionals who were alleged to have aided Mr. Chaudhary in his frauds – and to have taken advantage of those frauds financially themselves – did not demonstrate speed or effectiveness. It appears these investigations were impeded by the disjointed regulatory structure in place when the matter arose. The originating complaint about Mr. Chaudhary was made to the Registrar of Mortgage Brokers in the summer of 2017. That investigation culminated in a search of Mr. Chaudhary’s premises in February 2019, followed by a cease-and-desist order against him in May 2019. Notices of hearing against implicated registered mortgage brokers followed in relatively rapid succession. By contrast, a referral of the allegedly implicated realtors to RECBC did not occur until June 2019. Had the regulators of both professions (real estate licensees and mortgage brokers) been operating under one roof, as they are now, it is possible that the investigations could have played out in parallel, at speed. Because the functions of the Registrar, OSRE, and RECBC are now all executed by BCFSa, it is unnecessary for me to offer a recommendation to remedy the historic lack of coordination that arose from the disjointed regulatory landscape. BCFSa has given evidence that it is prioritizing the development of a common market conduct framework to respond to regulatory risks,<sup>404</sup> and the Chaudhary matter is an illustration of why such a coordinated response is a welcome and necessary improvement.

Mr. Chaudhary’s case illustrates the money laundering risk that can arise when an unscrupulous actor engages in mortgage brokering (registered or unregistered). Another instance about which I heard evidence makes a much more direct link between mortgage brokering activity and the laundering of the proceeds of crime.

### **Case Study: Suspicious Mortgages**

The Commission heard evidence from witnesses who had a role in investigating certain transactions involving a registered mortgage broker. I should note that this individual was given notice of the evidence that would be led, and he did not take any position or participate in these proceedings. Out of fairness to him, I will also note at the outset that the investigations and findings described below resulted in neither criminal charges nor professional disciplinary action against him.

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403 Exhibit 1050, Affidavit of M. Scott, para 26.

404 Exhibit 1051, Affidavit of B. Morrison, paras 8–10.

This matter came to the attention of the Registrar of Mortgage Brokers in 2012, following a police search of premises in which an acquaintance of Grant Curtis, a registered mortgage broker, resided. The search was in relation to an investigation unrelated to mortgage brokering. At the residence, police found a number of documents about arranging mortgages. Mr. Curtis's name appeared on these documents. The documents were referred to the Registrar (which at the time sat within FICOM) and the matter was assigned to Michael McTavish, then an investigator with the Registrar.<sup>405</sup>

On review of transactions processed by Mr. Curtis, Mr. McTavish noted recurring and unusual circumstances. For instance, several of the borrowers had connections with criminal activity. The mortgage broker himself was new to the business but was doing a high volume of mortgage transactions. This by itself was not suspicious, but in connection with the apparent criminal associations of many of the borrowers, and other unusual features of the transactions, it raised concerns. Indeed, the concerns were serious enough that the file was referred to the RCMP on the hypothesis that some of the mortgage transactions may have been used to facilitate organized criminal activities.<sup>406</sup>

The unusual features noted by Mr. McTavish in his review included:

- several borrowers with apparent criminal associations;
- tenancy agreements completed prior to purchase and with unconventional commencing / ending dates or rental periods (e.g., for a year and a day rather than a year);
- tenants with no evident connection to the property (e.g., an ICBC search did not connect the tenant to the property purportedly being rented);
- the property was later sold within a short period of time, with little or no capital gain on the sale;
- self-employed borrowers with vague descriptions of business activities and little to no corroborating presence on the internet or in corporate registries;
- inconsistencies on tax documents provided to support borrowers' incomes, such as different font sizes and styles;
- very short closing dates;

405 Evidence of M. McTavish, Transcript, February 22, 2021, pp 126–28.

406 Ibid, pp 128–32.

- reported assets at odds with the ages and reported incomes of the borrowers;
- significant amounts of cash reported to be sitting in savings or chequing accounts;
- borrowers with multiple properties and high property turnover rates;
- the presence of an intermediary referral source on many of the transactions; and
- gifted down payments from sources with no clear relationship to the borrower.<sup>407</sup>

The review conducted by Mr. McTavish led him to conclude that it would be difficult to make out misconduct on the part of the mortgage broker within the scope of the regulator's authority, and that, even if misconduct were made out, it would not be sufficient to revoke the broker's registration.<sup>408</sup> In Mr. McTavish's view, there was insufficient adducible evidence on the connections between the broker and the borrowers, and the borrowers' criminal connections, for the Registrar to take regulatory action.<sup>409</sup> Based on the issues he noted in his review, Mr. McTavish determined that what he was seeing was likely a criminal rather than a regulatory matter. He referred it to the RCMP.<sup>410</sup>

The Commission heard from Corporal Karen Best of the RCMP, who was assigned to the investigation of Mr. Curtis and those associated with him in August 2013. At the time, Corporal Best was in the RCMP's Federal Serious and Organized Crime (FSOC) unit. In September 2014, her unit was merged with two other units and its focus shifted from financial investigations to drug investigations.<sup>411</sup> After the structural change, she was directed to focus on drug-related investigations, but she carried on to summarize her findings of the Curtis matter as and when she could.<sup>412</sup> Corporal Best completed what she characterized as a summation of her findings in the spring of 2016.<sup>413</sup>

Corporal Best was able to add to the information available to FICOM with police sources, including background information on connections

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40/ Ibid, pp 132–35, 137–41; Exhibit 650, FICOM Investigative Services, Review of Sample of Mortgage Transactions Case file INV11.343.48836\_Redacted, pp 6–7.

408 Evidence of M. McTavish, Transcript, February 22, 2021, pp 142–44; Exhibit 650, FICOM Investigative Services Grant Brian Curtis: Review of Sample of Mortgage Transactions, p 2.

409 Evidence of M. McTavish, Transcript, February 22, 2021, p 144.

410 Ibid, pp 129, 143.

411 Evidence of K. Best, Transcript, February 23, 2021, pp 8–10, 18–19.

412 Ibid, pp 23–24.

413 Ibid, p 25.

that Mr. Curtis and his referral source had with a self-professed money launderer, Sulaiman Safi.<sup>414</sup> From the RCMP Integrated Market Enforcement Team, she was able to learn that “a significant number” of the properties brokered by Mr. Curtis were suspected or documented marijuana grow operations.<sup>415</sup> Mr. Curtis’s referral source was also discovered to be the subject of a number of criminal fraud investigations.<sup>416</sup>

The intelligence supported the theory that what was being observed was mortgage fraud in furtherance of a money laundering scheme.<sup>417</sup> Two common purposes of mortgage fraud can be identified: that of the fraudster, who simply wants to abscond with the funds once the loan is advanced, and that of the money launderer, whose objective is to make payments on the mortgage and thereby integrate funds that are the proceeds of crime into the legitimate economy.<sup>418</sup> Corporal Best concluded that, while the transactions reviewed displayed indicators of money laundering, it would be difficult to establish the source of funds in order to prove an offence.<sup>419</sup> The report concluded:

The probe conducted by FSOC indicates that organized crime groups in the Lower Mainland may have been using secondary mortgage financing in order to launder funds and that this practice may still be occurring.<sup>420</sup>

The report prepared by Corporal Best was forwarded to her direct supervisor in March 2016, and it was sent on to the head of FSOC’s Financial Integrity Unit some six months later. Shortly thereafter, she was informed that the report was being forwarded to an analyst for intelligence purposes, but that the file was closed. No further investigation of the matter was undertaken.<sup>421</sup>

The subject mortgage broker, it appears from other evidence before me, carried on his activities as a registered mortgage broker until at least May 2019, when he was the subject of a notice of hearing by the Registrar. That notice of hearing, which to my knowledge has not been resolved, alleges that Mr. Curtis engaged in “fronting” for another individual.<sup>422</sup>

414 Ibid, pp 32–33, 55–60; *R v Crawford*, 2013 BCSC 932.

415 Evidence of K. Best, Transcript, February 23, 2021, pp 32–33.

416 Exhibit 652, Affidavit #1 of Karen Best Sworn Feb. 12, 2021 [Affidavit #1 of K. Best], exhibit B, pp 27–35.

417 Evidence of K. Best, Transcript, February 23, 2021, pp 64–65; Exhibit 652, Affidavit #1 of K. Best, exhibit B, p 114.

418 Evidence of K. Best, Transcript, February 23, 2021, pp 34–37.

419 Ibid, pp 68–69; Exhibit 652, Affidavit #1 of K. Best, exhibit B, p 116.

420 Exhibit 652, Affidavit #1 of K. Best, exhibit B, p 116.

421 Evidence of K. Best, Transcript, February 23, 2021, pp 72–80.

422 Exhibit 604, OR: Mortgage Brokers Discipline Orders, Appendix K, British Columbia, *In the Matter of the Mortgage Brokers Act and in the Matter of Grant Brian Curtis* (April 2019).

## Regulatory Issues and Legislative Gaps

The two case studies above illustrate regulatory and operational issues with real estate professionals, as well as vulnerabilities to fraud and money laundering within that industry. I also heard from witnesses on both the regulatory side and the industry side of mortgage brokering as to their perceptions of the weaknesses in the current regime. They agreed that the current legislation, which is under review, is outdated and fails to address the realities of the industry today.<sup>423</sup> They also identified significant regulatory and legislative gaps preventing effective oversight of the profession. These gaps contribute to the vulnerability of the sector to money laundering. In this section, I consider specific gaps and vulnerabilities in the regulation of mortgage brokering and make recommendations to address these vulnerabilities.

The context for the discussion below is that the regulation of the industry is in a state of transition in British Columbia. The *Mortgage Brokers Act*, enacted in 1972, is under review. The Ministry of Finance has undertaken a public consultation in that regard.<sup>424</sup> BCFSAs has recently undergone structural changes such that it now has oversight of a broader spectrum of actors in the real estate industry. Not only mortgage brokers, but now also real estate licensees and developers, will be regulated by BCFSAs. As Mr. Morrison, chief executive officer of BCFSAs testified, this integration will allow the regulator to look at the real estate sector at large as a “holistic integrated regulator.”<sup>425</sup> My observations below should be understood in the context of this ongoing change.

### Confusion About Activity Requiring Registration

As I noted above, the very definition of “mortgage brokering” in the *MBA* is confusing. It is not aligned with the activities that give rise to the obligation to be registered. This could lead to unregistered persons unknowingly engaging in activities that are supposed to be performed only by registered persons. Furthermore, the situation leaves open a gap for unregistered persons to engage in activities that ought to be restricted to registered persons.<sup>426</sup> Mr. Carter, Deputy Registrar of Mortgage Brokers, explained:

[T]he Act defines mortgage brokers in a number of different ways, and the definitions can be challenging to administer. I’ll give you just one example of that and it relates to private lending. So there is one section that says essentially you qualify for registration if you are carrying on the business of lending money secured by mortgages. There’s then another section in the same section of the legislation that talks about being required to be registered if you, in any given year, lend on the security of more than ten mortgages. What that creates is a bit of an interpretation challenge, and what I mean by that is it’s conceivable that you’re in the business of lending money on the secured on less than ten mortgages. Carrying on a

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423 See, for example, Evidence of C. Carter, Transcript, February 16, 2021, p 33.

424 Ibid, pp 41–42.

425 Evidence of B. Morrison, Transcript, February 16, 2021, pp 12–14.

426 Evidence of C. Carter, Transcript, February 16, 2021, pp 42–43.

business depends on a whole range of different legal indicia, and the two requirements, the two triggers, the two aspects of the definition are not helpful when it comes to administering the legislation.<sup>427</sup>

I agree. I have concluded that mortgage brokering activities are vulnerable to money laundering. To manage this risk, it is critical for the regulator to (a) know who is engaging in mortgage brokering in the province, and (b) ensure that those people are adequately screened, qualified, and overseen by the regulator. I recommend that the Province amend the *Mortgage Brokers Act* definition of “mortgage broker” to harmonize it with the requirement for registration.<sup>428</sup> At a minimum, the act of loan origination, and the ability to earn fees from such activity, should be activities that are restricted to registered mortgage brokers.

**Recommendation 14:** I recommend that the Province amend the *Mortgage Brokers Act* definition of “mortgage broker” to harmonize it with the requirement for registration.

### ***Information Available to the Registrar on Applications for Registration***

The investigative summary prepared by Corporal Best is an exhibit before the Commission.<sup>429</sup> The summary includes information that Corporal Best obtained from police sources that were not available to the Registrar when it considered Mr. Curtis’s application for registration. For example, the summary relays details of Mr. Curtis’s association with three police investigations, including a suspected stock market fraud, an extortion matter, and cannabis cultivation.<sup>430</sup> The RCMP also had access to a report from FINTRAC detailing certain suspicious transactions Mr. Curtis had been involved with, which led a FINTRAC analyst to conclude that some transactions engaged in by Mr. Curtis (unrelated to his mortgage brokering) were “consistent with money laundering.”<sup>431</sup> Some of these matters pre-dated Mr. Curtis’s registration in 2008. Mr. Curtis was not charged in relation to any of these matters.

It seems likely to me that some of the information available to the RCMP, but not available to the Registrar, would have been highly relevant to the Registrar’s consideration of Mr. Curtis’s licensing application. The Registrar requires a prospective registrant to provide a certified criminal record check, which will disclose convictions and outstanding criminal charges. At the very least, the Registrar would benefit from an extended criminal background check that flags connections to organized crime and

<sup>427</sup> Ibid, pp 40–41.

<sup>428</sup> Evidence of S. Gale, Transcript, February 22, 2021, pp 39–40.

<sup>429</sup> Exhibit 652, Affidavit #1 of K. Best, exhibit B.

<sup>430</sup> Evidence of K. Best, Transcript, February 23, 2021, p 49; Exhibit 652, Affidavit #1 of K. Best, exhibit B, pp 18–19.

<sup>431</sup> Evidence of K. Best, Transcript, February 23, 2021, pp 50–51; Exhibit 652, Affidavit #1 of K. Best, exhibit B, pp 24–25.

charges relating to financial crimes or fraud in making a determination of a person's suitability for registration. Given what I have concluded is the vulnerability of mortgage brokering to fraud, which in turn may enable money laundering, it is important for the Registrar to have access to this type of information. The Registrar already requires that applicants for registration disclose such charges, but the criminal record check that is required discloses only convictions and outstanding charges.<sup>432</sup> I recommend that the Registrar make it a requirement that applicants for registration provide an extended criminal and police background check, showing not only convictions and outstanding charges but also past charges relating to financial misconduct, as well as police database information about the person. To the extent that any changes are required to the *Criminal Records Review Act*, RSBC 1996 c 86, to effect this change, I recommend that the Province undertake those amendments.

**Recommendation 15:** I recommend that the Registrar of Mortgage Brokers make it a requirement that applicants for registration provide an extended criminal and police background check, showing not only convictions and outstanding charges but also past charges relating to financial misconduct, as well as police database information about the person.

### ***Information Available in Respect of a Submortgage Broker's Activities***

Mr. McTavish testified that he obtained the files respecting loans originated by Mr. Curtis from one of the lenders under provincial jurisdiction (itself registered under the Act). From Mr. McTavish's written report, it is apparent that this was done in order to avoid alerting those involved about the investigation.<sup>433</sup> It is understandable that, at times, the Registrar will be concerned about alerting a brokerage or a submortgage broker about an ongoing investigation by demanding documents directly from the brokerage. This could tip someone off and result in the loss of evidence.

The Registrar's access to information about the activities of mortgage brokers and the transactions they have been involved in is limited. I heard, for instance, that the *MBA* does not allow the Registrar to summon documents directly from a federally regulated bank.<sup>434</sup> The *MBA* currently authorizes the Registrar to summon and enforce the attendance of witnesses and compel them to give evidence on oath, and to produce records or property, similar to the power of a court in the trial of a civil action. Failure to attend or refusal to produce make a person liable for contempt. However, the *MBA* goes on to exempt "a bank or an officer or employee of a bank" from the operation of

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432 Financial Institutions Commission, Information Bulletin MB 11-002, "Individual Registration Applications Suitability Reviews and Criminal Record Checks" (May 2011), online: <https://www.bcfsa.ca/media/1535/download>.

433 Exhibit 650, FICOM Investigative Services: Grant Brian Curtis, Review of Sample of Mortgage Transactions, p 2.

434 Evidence of C. Carter, February 16, 2021 p 89.

these provisions.<sup>435</sup> It is difficult to reconcile this exemption with the effective regulation of mortgage brokers who conduct business extensively with banks. This carve-out may reflect a cautious approach to jurisdiction, but, if so, it seems to me to be excessively cautious. I urge the provincial government to revisit the carve-out of banks and their employees from the Registrar’s powers of compulsion while the provincial Ministry of Finance conducts its review and modernization of the *MBA*.

A lack of information was identified by both the regulator and Samantha Gale, chief executive officer of the Canadian Mortgage Brokers Association – British Columbia (CMBA-BC), as a gap in the ability to understand and therefore adequately oversee what is happening in the industry.<sup>436</sup> In Ontario, Ms. Gale said in her testimony, brokerages submit an annual report to the regulator. That annual report gives the total number and dollar value of mortgages brokered in the prior year.<sup>437</sup> This is sometimes described as an “annual information return.” The Financial Services Regulatory Authority of Ontario (FSRA) uses such information “to assist FSRA in its risk assessment and oversight of mortgage brokerages and administrators.”<sup>438</sup> No similar requirement exists in British Columbia. Mr. Carter said that such information would provide the regulator with a window into the systemic risks within the system and in the sector.<sup>439</sup> Lack of insight into industry trends can hamper the regulator’s ability to understand where risks arise, and then to target resources appropriately. The Province’s *Mortgage Brokers Act* Review Public Consultation Paper proposes and supports the modernization to be gained with an annual information return.<sup>440</sup> I agree. I recommend that, in its revision of the *MBA*, the Province include a requirement that brokerages submit annual information returns to give the Registrar better insight into industry trends and risks.

**Recommendation 16:** I recommend that, in its revision of the *Mortgage Brokers Act*, the Province include a requirement that brokerages submit annual information returns to give the Registrar of Mortgage Brokers better insight into industry trends and risks.

Another example of an information gap is a lack of a quick and direct means for the Registrar to see all of the transactions that a mortgage broker has facilitated. There is no registry of mortgage brokerage transactions, nor are mortgage brokers noted on mortgage documents filed with the Land Title and Survey Authority. In order to review a sub-broker’s transactions, the Registrar must obtain the transaction information from either the brokerage itself – which might alert the sub-broker of the Registrar’s interest

435 *MBA*, ss 6(3), (4), (5).

436 Evidence of S. Gale, Transcript, February 22, 2021, pp 35–36.

437 *Ibid.*

438 Financial Services Regulatory Authority of Ontario, “Annual Information Returns,” online: <https://www.fsrao.ca/industry/mortgage-brokering/annual-information-returns>.

439 Evidence of C. Carter, Transcript, February 16, 2021, pp 44, 76, 87–88.

440 *MBA* Review Consultation, p 17.

– or from lenders who fall within the Registrar’s jurisdiction. Discovering the extent of a broker’s origination activity is difficult. This is problematic, because some of the red flags of fraud and money laundering involving mortgage brokers only become apparent or rise to a level of significance when viewed in the context of a number of transactions.

As earlier noted, there is no authority on the part of BCFSA to seek records from banks. Mr. McTavish, speaking from his experience with investigations at the Registrar, identified that type of information as being useful in identifying fronting activities.<sup>441</sup>

In Chapter 18, I recommend the inclusion of information about the identity of mortgage brokers and other real estate professionals involved in a real estate transaction in Land Title and Survey Authority filings. This information, if organized in data fields and searchable, would provide the Registrar with easily accessible, complete information about a broker’s transactions.

### ***Rule-Making Capacity***

Mr. Morrison pointed to a number of changes in the powers and structure of BCFSA that give it an advantage over its predecessor, FICOM. One of those changes is the ability to make rules.<sup>442</sup> That power, however, does not yet extend to mortgage brokers. Such a power in respect of mortgage brokers would allow the Registrar to respond more nimbly to issues and market conditions as they arise.<sup>443</sup> I recommend that the Province give BCFSA rule-making authority in respect of mortgage brokers.

**Recommendation 17:** I recommend that the Province give the British Columbia Financial Services Authority rule-making authority in respect of mortgage brokers.

### ***No Managing Broker Role***

One feature of modern mortgage broker legislation that is missing from the current British Columbia legislation is the role of a managing broker, described by Mr. Carter as “a locus of accountability for oversight and regulatory compliance within a brokerage.”<sup>444</sup> Ms. Gale, for CMBA-BC, identified this as the most significant gap in the legislation.<sup>445</sup> At the moment, this role is assumed by a “designated individual,” a policy creation of the Registrar.<sup>446</sup> However, there is no separate licensing category in the legislation for such a person, and there is no enhanced educational or training requirement (as contrasted

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441 Evidence of M. McTavish, Transcript, February 22, 2021, pp 120–21.

442 Evidence of B. Morrison, Transcript, February 16, 2021, pp 22–23.

443 Ibid, pp 28–29.

444 Evidence of C. Carter, Transcript, February 16, 2021, p 34.

445 Evidence of S. Gale, Transcript, February 22, 2021, p 37.

446 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, pp 40–41.

with the managing broker of a real estate brokerage).<sup>447</sup> Given this observation made by Ms. Gale (which I accept) that effective supervision and oversight of sub-brokers is critical to detecting and preventing mortgage fraud, I conclude that it is important that the managing broker's responsibilities and training requirements be clearly defined. I recommend that the Province amend the *MBA* to create a managing broker role with clearly defined responsibilities.

**Recommendation 18:** I recommend that the Province amend the *Mortgage Brokers Act* to create a managing broker role with clearly defined responsibilities.

It is apparent from the case studies above that submortgage brokers are well positioned to observe fraudulent activity and should receive clear guidance from the Registrar about what fraud looks like, as well as when and where to report it. Mortgage brokers should also receive guidance through education from the regulator and industry about when to report suspicious activity to their managing brokers. And managing brokers should receive guidance as to when to report suspicions to an appropriate authority. They should report to BCFSA who can provide access to the AML Commissioner upon request or, in appropriate circumstances, refer the matter to the dedicated provincial money laundering intelligence and investigations unit.<sup>448</sup>

I support the Registrar providing guidance by articulating a threshold of suspicion at which a mortgage broker ought to be withdrawing from a proposed transaction. I recommend that the Registrar require education for both managing brokers and sub-brokers, focusing on the detection and reporting of fraud and money laundering in the industry.<sup>449</sup>

**Recommendation 19:** I recommend that the Registrar of Mortgage Brokers require education for both managing brokers and sub-brokers, focusing on the detection and reporting of fraud and money laundering in the industry.

### ***Enforcement and Inadequacy of Penalties***

The evidence with respect to Mr. Chaudhary indicated very clearly that unregistered brokers cannot successfully operate without the complicity of other professionals, whether those professionals are the registered brokers “fronting” for the unregistered

<sup>447</sup> Evidence of S. Gale, Transcript, February 22, 2021, p 37.

<sup>448</sup> I recommend the creation of the AML Commissioner in Chapter 8 of this Report, and in Chapter 41, I recommend that the Province create a new provincial money laundering intelligence and investigation unit.

<sup>449</sup> I understand that CMBA-BC and BCFSA are currently coordinating to create an anti-money laundering course to educate submortgage brokers, which I support. It is likely that such a course can provide a foundation for education to managing brokers: see Evidence of S. Gale, Transcript, February 22, 2021, p 68; Exhibit 647, CMBA-BC Anti-Money Laundering Course Module.

broker or real estate licensees referring clients. Mr. Chaudhary's evidence also made it clear why these networks are difficult to disrupt: they are very profitable for everyone involved. The risk / reward calculus for professionals who knowingly engage in such schemes must change.

The financial penalties available to the Registrar are a starting point. At present, the maximum penalty available in administrative proceedings against a mortgage broker is \$50,000. This is an inadequate deterrent. It fails to match the potential profitability of unregistered or fraudulent activity.<sup>450</sup> This is stark in the case of Mr. Chaudhary, who, according to the cease-and-desist order made against him, amassed nearly \$6 million in fees over the course of nearly a decade of unregistered brokering activities.<sup>451</sup> The availability of enhanced financial penalties, and an order of disgorgement of profits, together with the tools to enforce it, would provide a more meaningful consequence and a deterrent to unregistered brokering. Both Ms. Gale and Mr. McTavish expressed the view that the current regulatory scheme provides the Registrar inadequate tools to deal with unregistered brokers. Making available more significant penalties and the disgorgement of illicit profits would start to address that gap.<sup>452</sup> I recommend that the Province amend the *MBA* to allow for larger financial penalties, up to \$250,000, to align with penalties available under the *Real Estate Services Act*, SBC 2004, c 42 (*RESA*).

**Recommendation 20:** I recommend that the Province amend the *Mortgage Brokers Act* to allow for larger financial penalties, up to \$250,000, to align with penalties available under the *Real Estate Services Act*.

In addition to providing for larger deterrent penalties, I endorse the use of orders for the disgorgement of profits outlined above. I recommend that the Province amend the *MBA* to give the Registrar the power to make an order of disgorgement of profits for registered mortgage brokers found to have engaged in misconduct and for unregistered persons engaged in mortgage brokering activities.

**Recommendation 21:** I recommend that the Province amend the *Mortgage Brokers Act* to give the Registrar of Mortgage Brokers the power to make an order of disgorgement of profits for registered mortgage brokers found to have engaged in misconduct and for unregistered persons engaged in mortgage brokering activities.

Witnesses spoke of the need for a cultural shift to a mindset of compliance in the industry. I agree. Part of that shift may be achieved by education and training requirements. However, professionals in the real estate industry should have a positive

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450 Evidence of C. Carter, Transcript, February 16, 2021, p 44.

451 Evidence of M. McTavish, Transcript, February 22, 2021, p 122.

452 Evidence of S. Gale, Transcript, February 22, 2021, pp 63–64; Evidence of M. McTavish, Transcript, February 22, 2021, pp 97–99.

obligation, set out in the legislation, to report unregistered mortgage brokering, falsification of documents, and other indicia of suspicious activity to the regulator.<sup>453</sup> The regulator can impress on the profession the seriousness of failing to report by imposing appropriately serious consequences, including suspension and loss of licence or registration. In an industry where the financial incentives are oriented toward obtaining financing and closing a deal, the risk / reward calculation of participating in or turning a blind eye to abuses must be adjusted by the deterrents available and by diligence on the part of the regulator to use them. My comments in this regard apply equally to registered mortgage brokers and real estate licensees. I recommend that BCFSa impose a positive obligation on real estate licensees to report suspected unregistered mortgage brokering to it.

**Recommendation 22:** I recommend that the British Columbia Financial Services Authority impose a positive obligation on real estate licensees to report suspected unregistered mortgage brokering to it.

There are other legislative measures that might, incidentally, address some of the fraud and money laundering risks identified in this Report by imposing express conduct requirements on brokers. Those include the imposition of a legislated duty to act in the best interests of a client or investor; to act fairly, honestly and in good faith; and to fulfill “know your client” or client identification obligations.<sup>454</sup> Such measures would be useful both for setting clear expectations of conduct and for detecting suspicious indicators associated with some forms of money laundering. For instance, the use of a nominee may become apparent when a broker fulfills their client identification obligations. I understand that some of these amendments to the legislation are being considered already<sup>455</sup> and I urge their adoption.<sup>456</sup>

I noted earlier in this chapter the recent amendments to *RESA* that eliminated an automatic stay of a disciplinary order where a licensee files an appeal of an order of the Registrar to the Financial Services Tribunal. I mentioned there that such a stay provision remains in force in the *MBA*.<sup>457</sup> In my view, there was good reason to eliminate this provision from *RESA*, and there is good reason to eliminate it in the *MBA* and to ensure that it is not recreated in any new legislation replacing the *MBA*.

453 Evidence of M. McTavish, Transcript, February 22, 2021, p 158. An issue identified with respect to real estate licensees and the obligation to report was that the reporting requirement was limited to advising the managing broker, with no further requirement on that individual to report on to the regulator: see Evidence of E. Seeley, Transcript February 17, 2021, p 3.

454 Evidence of C. Carter, Transcript, February 16, 2021, pp 43–44.

455 *MBA Review Consultation*, pp 9–10, 11, 15; Exhibit 605, Overview Report: Mortgage Brokers Act Consultation.

456 The review referenced in the footnote above acknowledges that a conflict may arise between the duty of loyalty to a lender and to a borrower. The Ministry of Finance is best positioned to navigate this potential conflict as it proceeds with its review of the *MBA* and its eventual replacement.

457 *MBA*, s 9(2).

**Recommendation 23:** I recommend that the Province amend the *Mortgage Brokers Act* to eliminate the automatic stay pending appeal found in section 9(2) of the Act.

There is an overarching need for professionalization of the mortgage brokers industry. I am hopeful that the reforms I have supported will go a good distance toward accomplishing this.

### ***Engagement of Law Enforcement***

The Curtis and Chaudhary matters both highlight a problem of successfully attracting the attention of law enforcement to financial crimes arising in a regulatory setting. As demonstrated in each of these cases, there is a limit to the authority of the Registrar, as well as its capacity and ability, to investigate and address conduct that appeared, on its face, to be criminal in nature. It is acknowledged in the literature, and supported by the evidence before me, that the laundering of proceeds of crime into and through real estate is a prevalent and desired method of money laundering.

Money laundering in real estate cannot be achieved without the assistance – sometimes knowing – of regulated professionals. Regulators in the real estate sector must be armed with the ability to detect money laundering and fraud. Just as important, they must have a law enforcement agency to which they can effectively direct information when they perceive that a matter may involve criminality. A provincial law enforcement agency with a clear anti-money laundering mandate could take up such investigations at the point where regulatory jurisdiction, mandate, and/or capacity ends.

In Chapter 41, I recommend the creation of a provincial law enforcement intelligence and investigation unit with a focus on proceeds of crime and money laundering. The effectiveness of such a body will depend, in part, on strong relationships with provincial regulators in the financial sector, including real estate. The effective sharing of information and insights will permit the identification of money laundering vulnerabilities within each regulator's area of responsibility. As such, I recommend that BCFSAs work with the new dedicated provincial money laundering intelligence and investigation unit to develop an information-sharing partnership.

**Recommendation 24:** I recommend that the British Columbia Financial Services Authority work with the new dedicated provincial money laundering intelligence and investigation unit to develop an information-sharing partnership.

### ***Incorporating Mortgage Brokers as Reporting Entities in the PCMLTFA***

Finally, the Maloney Report and the German report (*Dirty Money 2*) both recommended that mortgage brokers be made reporting entities pursuant to the

*PCMLTFA*.<sup>458</sup> The evidence I have heard regarding the role of mortgage brokers in real estate transactions, their direct knowledge of a client's financial circumstances, and their ability to observe suspicious behaviours first-hand, compel me to support this recommendation and to repeat it here. Mortgage brokers would be useful reporting entities under the *PCMLTFA*, both in terms of information that mortgage brokers can provide about suspicious transactions, and with respect to the training, record-keeping, and education that FINTRAC oversight would entail. I recommend that the provincial Minister of Finance urge her federal counterpart to make mortgage brokers reporting entities under the *PCMLTFA*.

**Recommendation 25:** I recommend that the provincial Minister of Finance urge her federal counterpart to make mortgage brokers reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

## Mortgage Brokers and Indicators of Suspicion for Fraud and Money Laundering

As set out, I heard evidence about actual or suspected fraudulent transactions involving mortgage brokers. I find that transactions of this nature carry with them at least a risk of money laundering. As such, I flag the following indicators of suspicion. I expect this list of indicators may assist relevant industry actors – such as lenders, real estate licensees, and mortgage brokers – in identifying transactions that carry such a risk. This will further their understanding as to when a report ought to be made to the regulator, or when a mortgage broker ought to withdraw from a transaction entirely.

- **Altered documents:** alterations are generally made for the purpose of inflating declared income and assets. Indicators of alteration include inconsistent font types and sizes; typos; the use of incorrect or outdated names for government agencies (e.g., “Canada Customs and Revenue Agency” instead of Canada Revenue Agency”); and mathematical inconsistencies in tax documents.
- **Declared assets and income that are inconsistent with the age and occupation of the borrower:** whereas there may be legitimate instances where a younger borrower has significant assets, this may be an indicator that declared assets have been inflated.
- **Unusual assets for the borrower profile:** there may be legitimate reasons for a younger or lower income borrower to have a luxury asset such as a boat, but this is one factor that may contribute to an overall assessment of suspicion.
- **Assets that are sitting in unproductive accounts:** bank statements showing large amounts of liquid assets sitting in low-interest chequing or savings accounts. This

<sup>458</sup> Exhibit 330, Maloney Report; Exhibit 833, Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*].

may indicate either a falsified bank balance, or a recent transfer of funds that requires inquiry as to origin.

- **Gifts from unconnected sources:** the gifting of funds from family members may not be unusual to assist borrowers make a down payment, particularly on the purchase of a first home. However, gifts from unrelated persons or business associates are more unusual.
- **Unusual tenancy agreements:** the existence of a tenancy agreement for the subject property between the borrower and a tenant, before closing or before funding has been secured, may indicate a false tenancy agreement drafted in order to show a source of income. Other odd features of the agreement, such as unusual length of term (a year plus a day instead of a year), or renters whose existence cannot be confirmed by internet searches, may give rise to suspicion. After the fact, the inability to connect a supposed tenant with the property at issue (by internet search, ICBC records, etc.) may be an indicator that the tenancy agreement was a sham.
- **Borrower gives vague description of self-employment, or is evasive as to the nature of their business.**
- **Borrower reports being self-employed but the business has little or no footprint:** the business from which the borrower claims to derive income has little or no internet footprint, gives only a PO box as an address, or cannot be located on the BC or Canada companies' registry.
- **Borrower has known or reported criminal affiliations:** a person with a criminal past may legitimately purchase property and seek financing for such a purchase. However, the existence of criminal affiliations, along with other indicators, may create suspicion.
- **Borrower owns multiple properties with a high turnover rate.**
- **Short closing dates.**
- **Improbable success:** the mortgage broker gives assurances that they can successfully secure financing for the borrower where others have failed.
- **Requesting referral or other fees for assisting a borrower in acquiring financing:** mortgage brokers are typically compensated by lenders when a transaction is successful. Observing compensation made by the borrower may signal something is amiss.

It was apparent from the evidence before me that certain patterns indicative of suspicion may only become apparent on review of a particular broker's practice, or of a number of transactions in which a particular mortgage broker was involved. Such patterns include:

- Sudden or unexplained jumps in income by a submortgage broker, which may be an indication that a broker is "fronting" for an unregistered person.
- Several borrowers have criminal histories or reported criminal affiliations.
- Multiple properties were resold quickly.
- Properties that are the subject of a submortgage broker's transactions are often later found to be grow-ops or otherwise associated with criminal activity.
- Inability to confirm income or asset information by one or more borrowers who obtained a mortgage through the submortgage broker.
- Repetition of one or more of the suspicious indicators listed above in the submortgage broker's portfolio. Indicators that seem normal or explicable in individual instances may become improbable or suspicious when repeated.
- Unusual referral sources, such as repeated referrals from persons outside the real estate industry or from persons with criminal histories and affiliations.

## Appendix 16A: Suspicious Indicators for Real Estate, by Transaction Phase

Below, I have rearranged the indicators in FINTRAC's 2016 operational brief and 2019 update so that the indicators are organized according to transaction phase. I hope this reorganization is of some practical assistance to real estate licensees in identifying suspicious transactions as they move through the client relationship.

### For Property / Strata Managers:

1. Client is known to have paid large remodelling or home improvement invoices with cash, on a property for which property management services are provided.

### Initial Contact / Listing Contract

#### *Individuals:*

1. When you ask for identification information (e.g. name, address, email, phone number, or birthday), the client:
  - a. refuses or tries to avoid providing it;
  - b. provides info that is misleading, vague, or incorrect;
  - c. provides different information for different transactions;
  - d. balks, and alters the transaction;
  - e. appears to be collaborating with others to avoid providing ID info; or
  - f. provides only a PO box or gatekeeper's address, or disguises a post office box as a civic address.
2. You receive identification documents from the client, but:
  - a. the documents seem incorrect, counterfeited or false; or
  - b. you have difficulty authenticating the client's identity documents.
3. Client appears to be collaborating with others to avoid providing identification.
4. You do not meet the client; your contact is a "gatekeeper" or agent for the client such as a lawyer, notary, accountant, or other.
5. You notice that multiple clients / parties to past transactions use the same mail or email addresses, phone numbers, or other identifiers, even though these parties do not appear to be related.
6. On a Google search, you notice that your client's name was identified by the media, law enforcement, and/or intelligence agencies as being linked to criminal activities.

7. Client is a citizen of (not just appears ethnically connected to) or currently residing in a country listed on a watchlist (e.g., countries under financial prohibition provisions, including Belarus, Eritrea, Iran, Libya, Nicaragua, North Korea, People's Republic of China, Russia, South Sudan, Syria, Ukraine (linked to Russia's ongoing violations of Ukraine's sovereignty and territorial integrity), Venezuela, Yemen, and Zimbabwe).<sup>459</sup>

*Companies or entities:*

1. Company seems to have no business operations (is a shell company).
2. Company has a very complex ownership structure.
3. Company seeks to purchase property unrelated to its business (e.g., a graphic designer company seeking to purchase a warehouse).
4. Company is resident in or operating out of a country on a watchlist (see above).

Reviewing Properties Together

*General Information*

1. Client seems nervous.
2. Client makes statements about involvement in criminal activities.
3. The client has provided you untrue information on at least one occasion.
4. The client refuses or is reluctant to provide information, gets defensive, or asks questions about avoiding FINTRAC reporting.
5. Transaction is carried out on behalf of persons who don't seem to have the necessary financial resources, including minors or incapacitated persons.

*Property Details*

1. Client presents confusing details about the transaction or doesn't seem to know why the property is being purchased/sold.
2. Client doesn't seem to care about price, just wants a property in a particular location or wants to complete the transaction in a big rush.

*Client's Financial Means*

1. When you ask how the client will be financing the property, the client:
  - a. refuses to identify a source of funds;
  - b. provides info that is false, misleading, or substantially incorrect;

<sup>459</sup> Government of Canada, "Types of Sanctions," online: [https://www.international.gc.ca/world-monde/in-international\\_relations-relations\\_internationales/sanctions/types.aspx?lang=eng](https://www.international.gc.ca/world-monde/in-international_relations-relations_internationales/sanctions/types.aspx?lang=eng).

- c. provides info that seems unrealistic or that cannot be supported by documents;  
and/or
  - d. appears to be living beyond their means.
2. The transaction is inconsistent with the client's apparent occupation, financial standing, or usual pattern of activity.
  3. There is a sudden change in the client's financial profile, pattern of activity, or transactions.

### Submission of Offer

#### *Person Submitting Offer*

1. Client appears to be or states they are acting on behalf of someone else.
2. Someone other than the person named on the offer conducts the majority of the transaction activity, which seems unnecessary or excessive.
3. Client uses a different name on the offer than is on the deposit you receive.
4. Client refuses to put own name on documents.

#### *Client Unusually Disinterested*

1. Size or type of transaction is atypical of what you expect from this client.
2. You notice suspicious features of the transaction and the client refuses or is unable to answer questions related to the transaction.
3. Client purchases property without viewing it.
4. Client seeks to complete the transaction quickly without good cause.
5. Client puts in offer without expressing interest in:
  - a. property characteristics;
  - b. property risks;
  - c. price; or
  - d. commissions.
6. Client offers unusually high bid relative to current value / industry standard.

### *Transacting Parties*

1. Client buys back a property that he or she recently sold.
2. You notice the same property has changed ownership multiple times in a short period of time, especially if transferred between related parties.
3. A property is resold shortly after purchase at a much different price, even though the market values in the area haven't changed that much.
4. On a Google search, you notice that the other party to the sale (not your client) was identified by the media, law enforcement, and/or intelligence agencies as being linked to criminal activities.

### Accepting Deposit

1. Client seems to be aware of FINTRAC's requirements for reporting, and seeks to avoid causing you to report.
2. Client asks you how to sell property below market value but with an additional "under the table" payment.
3. Client seeks to pay deposit:
  - a. in cash;
  - b. using a payment form that is unusual for that client;
  - c. with virtual currency like bitcoin;
  - d. in multiple transfers of \$10,000 or less;
  - e. by way of a series of complicated transfers, more complex than necessary;
  - f. with a cheque or bank draft from a third party that isn't a spouse or parent; or
  - g. of an unusually high amount;
4. Client uses multiple accounts at several financial institutions for no apparent reason.
5. While conducting the transaction, the client is accompanied, overseen, or directed by someone else.
6. You suspect the client is using personal funds for business purposes, or vice-versa.
7. The company that pays the deposit appears to be a shell company (i.e. appears to have no business operations).
8. Funds appear to come from a jurisdiction on a watchlist, or from a person/entity resident in or operating out of a jurisdiction on a watchlist.

### Closing of Transaction

1. The client defaults on the transaction shortly after paying the deposit, and/or seems not to care about losing the deposit.
2. At the last minute, the client wishes to switch the name in the contract.
3. The client purchases property in someone else's name (not their spouse or parent).
4. Transaction involves a person who lives in, or an entity that operates out of, a jurisdiction on a watchlist
5. When you ask about the financing of the transaction, you learn the buyer has a loan / financing from:
  - a. multiple unknown investors;
  - b. a private lending institution (i.e. not a financial institution);
  - c. a company that has no relationship to the client; or
  - d. a company operating outside of Canada.

### Post-Closing

1. Buyer of income-generating property shows no interest in generating profit by renting out vacant units or adjusting rent value to match market value.
2. You notice the property that was just sold is listed shortly afterwards, despite no appearance of any renovations.

## Chapter 17

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# Private Lending

Money laundering risks involving mortgage lending are by no means restricted to the mortgage broker industry, the focus of the last chapter. They arise more broadly with other forms of lending involving real estate. The intergovernmental, governmental, and academic commentary are consistent in concluding that mortgages may be used as a tool for laundering money through real estate. In this chapter, I examine how private lending can be used to launder proceeds of crime in British Columbia.

First, I provide relevant background information and describe money laundering typologies involving mortgages. I then outline the regulation and legislation applicable to mortgage lending, and types of mortgage lenders.

Second, I summarize a study, a data analysis performed for the Commission. That study, and a description of its methodology, was received into evidence as Exhibit 729.<sup>1</sup> It sought to (a) estimate the size of the unregulated or unregistered mortgage lending sector in BC; (b) estimate how much capital is invested with mortgage investment corporations (MICs) in BC and the geographic origins of that capital; and (c) identify lenders that meet one of the definitions of a mortgage broker under the *Mortgage Brokers Act* but yet have not registered with the Registrar of Mortgage Brokers (Registrar). The report also assessed data quality and accessibility, particularly with respect to Land Title and Survey Authority (LTSA) data, and its impacts on a user's ability to perceive anomalous lending activities, such as patterns of activity associated with money laundering typologies. I draw from that report to make conclusions about where money laundering vulnerabilities exist in the private lending sector.

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<sup>1</sup> Exhibit 729, Affidavit of Adam Ross, made on March 9, 2021 [Ross Affidavit], exhibit B, White Label Insights, *Private Lending in British Columbia* (March 9, 2021).

Third, I discuss the private lending activities of Paul Jin, which provide insights into the money laundering vulnerabilities associated with private lending.<sup>2</sup>

Finally, I conclude with a number of recommendations that will address identified money laundering vulnerabilities.

## Part 1: Background

### Definitions

The term “traditional lenders” – also commonly referred to as conventional lenders or financial institutions – is understood to encompass banks, credit unions, *caisses populaires*, loan and trust companies, and life insurers. Private lenders, on the other hand, are a diverse group encompassing all non-traditional lenders, including individuals, mortgage investment entities, and a variety of businesses, holding companies, and non-profits.

I use the term “unregulated” in this chapter to describe private lenders whose lending activity does not require them to be registered with any regulatory body. I use the term “unregistered” in this chapter for private lenders that are not registered with either the Registrar of Mortgage Brokers or the BC Securities Commission, but who meet at least one of the criteria for registration with those regulators.

### Typologies: Money Laundering Through Mortgages

The literature – including academic literature, publications by law enforcement and financial intelligence units, and media reports – establishes mortgages as a high-risk typology for the laundering of the proceeds of crime.<sup>3</sup> The typologies identified can be broadly divided into two categories: the borrowing side of the mortgage transaction (borrower typologies) and the lending side (lender typologies).

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2 Exhibit 1052 (previously marked as EX K), Overview Report: Paul Jin Debt Enforcement Against BC Real Estate (May 13, 2021).

3 Louise Shelley, “Money Laundering into Real Estate” in Michael Miklaucic and Jacqueline Brewer (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization* (Washington, DC: National Defense University Press, 2013); Government of Australia, Australian Transaction Reports and Analysis Centre, *Strategic Analysis Brief: Money Laundering Through Real Estate*, (2017) [AUSTRAC], p 7, online: [https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate\\_0.pdf](https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf); Exhibit 4, Overview Report: Financial Action Task Force, Appendix Q, *Concealment of Beneficial Ownership* (July 2018), pp 64–65, online: <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>; Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate & Response from Real Estate Industry, Appendix 1, Financial Action Task Force, *Money Laundering & Terrorist Financing Through the Real Estate Sector* (June 29, 2007) [FATF 2007]; Exhibit 7, Stephen Schneider, *Money Laundering in Canada: A Quantitative Analysis of RCMP Cases* (July 2004), pp 34–35; Brigitte Unger et al, *Detecting Criminal Investments in the Dutch Real Estate Sector* (January 19, 2010), online: <https://www.politieacademie.nl/kennisonderzoek/kennis/mediatheek/PDF/86218.pdf>; Joras Ferwerda, *Money Laundering in the Real Estate Sector: Suspicious Properties* (Massachusetts: Edward Elgar, 2011); Gordon Hoekstra, “BC Civil Forfeiture Case Alleges Drug Money Laundered in Real Estate,” *Vancouver Sun*, January 17, 2019, online: <https://vancouversun.com/news/local-news/b-c-civil-forfeiture-case-alleges-drug-money-laundered-in-real-estate/>.

## Borrower Typologies

**Repayment of mortgages with proceeds of crime:** by taking out a mortgage, a criminal borrower can use legitimate (or laundered) funds to finance part of a property purchase and then repay the loan using proceeds of crime. Subsequent mortgages can be taken out using the property as collateral to launder more money. Cash proceeds of crime can be deposited with financial institutions and will not trigger an obligation to make a large cash transaction report if the deposits are under \$10,000. Those funds can then be used to make mortgage payments. This typology may also be used during the layering and integration phase of money laundering, without actual cash. Early repayment and large lump sum payments can expedite the laundering process.<sup>4</sup>

**Leveraging proceeds of crime to purchase property:** in the same way that legitimate buyers can make leveraged purchases, criminal buyers can use mortgages to acquire property that they would otherwise be unable to afford (or which would draw unwanted attention if they were to acquire it outright<sup>5</sup>). In doing so, money launderers can scale up by acquiring multiple properties or higher value real estate. When properties are sold, the proceeds are used to repay mortgages and launder the deposits and down payments. In the interim, the criminal borrower can increase his equity in a property by making mortgage payments with proceeds of crime (as above), though the main objective is to launder the deposit or down payment by flipping the property.<sup>6</sup> A 2004 study of RCMP files found that, out of 83 money laundering cases linked to real estate, 78 percent involved a mortgage that was repaid with proceeds of crime.<sup>7</sup> Analysis done for the *Dirty Money 2* report found that of 154 properties targeted by the Civil Forfeiture Office since 2006, 92 percent (142) were mortgaged.<sup>8</sup> The analysis found that properties targeted by the Civil Forfeiture Office – which *Dirty Money 2* used as a proxy for properties through which money has been laundered<sup>9</sup> – were more likely to have multiple mortgages registered against them, with lenders repaid more quickly than average.<sup>10</sup>

4 Exhibit 729, Ross Affidavit, exhibit B p 11; see also Evidence of K. Best, Transcript, February 23, 2021 pp 35–38; Exhibit 652, Affidavit #1 of Karen Best Sworn February 12, 2021, p 6.

5 Sean Hundtofte and Ville Rantala, “Anonymous Capital Flows and US Housing Markets” (University of Miami Business School Research Paper No. 18-3, 2018), pp 9–10: All-cash (i.e., unfinanced) purchases of real estate have attracted the attention of regulators and reporting entities as being at high risk for money laundering.

6 British Columbia Real Estate Association, “The Role of REALTORS® in Helping the Government Stop Money Laundering” (December 2018), online: <https://www.bcrea.bc.ca/wp-content/uploads/2018-12/moneylaunderinginfographic-1.pdf>. The deposit for a property needs to have been already placed in the financial system in order to be used for a transaction, as payment in cash (i.e., hard currency) is no longer accepted for real estate purchases. Laundering the deposit falls within the layering / integration stages of the money laundering process.

7 Exhibit 7, S. Schneider, *Money Laundering in Canada: A Quantitative Analysis of RCMP Cases*, pp 34–35.

8 Exhibit 833, Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*], p 109.

9 Although this was the proxy employed by the authors of *Dirty Money 2*, I note here that the *Civil Forfeiture Act*, SBC 2005 c 29, also authorizes the Civil Forfeiture Office to pursue assets as instruments of crime, and that a Civil Forfeiture Office proceeding does not necessarily indicate that a property was targeted as proceeds of crime.

10 Exhibit 729, Ross Affidavit, exhibit B, pp 11–12.

## ***Lender Typologies***

**Lending proceeds of crime:** like legitimate capital, proceeds of crime can be loaned and secured by real estate. Loans can be registered on title as mortgages or be secured through promissory notes or contracts. They can be made directly by an individual or through a nominee or legal entity. Payments received on those loans, including any interest earned on the investments, can then be declared as legitimate income. Laundering through mortgage lending either needs to take place after the placement stage (i.e., when the money is already in the financial system) or the funds need to be used for purposes other than acquiring property, as it is difficult to buy real estate with cash in Canada.<sup>11</sup> Mortgages do not only finance property purchases but can be advanced in cash to pay for renovations, building work, or expenses unrelated to real estate.<sup>12</sup>

**Investing proceeds of crime with third-party lenders:** mortgage investment entities present another opportunity for laundering proceeds of crime through real estate. In this typology, a criminal would place funds with another private lender such as a mortgage investment corporation, which would lend against real estate. In this type of arrangement, the criminal would not be involved in originating loans or collecting on debts. It is a passive investment generating returns that can be reported as legitimate income. Institutional private lenders that raise outside capital are regulated and subject to statutory anti-money laundering obligations such as “know-your-client” due diligence. As such, proceeds of crime would generally need to be placed with a financial institution before being invested with a mortgage investment entity, and the investor would be subject to some scrutiny. Nonetheless, this typology would afford the prospective money launderer with a means of putting illicit income into real estate, while also generating income in apparently legitimate funds.<sup>13</sup>

## ***The Loan-Back Scheme***

Lending and borrowing typologies can be bridged in what is known as a “loan-back” scheme, whereby a criminal borrows and repays his own funds.<sup>14</sup> This method typically involves the use of a corporate entity acting as the lender, which is ultimately controlled by the borrower. The corporate entity is usually registered in an opaque jurisdiction – where shareholders and/or directors are not disclosed or where nominees are permitted – in order to conceal the link to the borrower. Less sophisticated loan-back schemes may use individual nominee lenders instead of corporate entities.<sup>15</sup>

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11 Law Society of British Columbia, Discipline Advisory, “Know Your Obligations Before Accepting Cash,” (November 8, 2013), online: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/november-8,-2013/>; The PCMLTFA and associated Regulations require real estate agents and financial institutions to report suspicious activity and large cash transactions to FINTRAC. Since 2004, the Law Society of has precluded its members from accepting cash payments amounting to more than \$7,500 limit for cash payments that can be accepted by its members.

12 Exhibit 729, Ross Affidavit, exhibit B, p 12.

13 Ibid, p 12.

14 Exhibit 601, Appendix 1, FATF 2007, pp 7–8.

15 Exhibit 729, Ross Affidavit, exhibit B, p 13.

Professor Stephen Schneider’s 2004 study of RCMP money laundering cases found that 20 of 83 cases (24%) involved loan-back schemes under which the criminal would set up a “fake” mortgage to lend against a property he owned either directly or indirectly through a company or nominee.<sup>16</sup>

## Regulatory and Legislative Structure

### PCMLTFA and Associated Regulations

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (PCMLTFA) and associated Regulations impose obligations on individuals and entities in prescribed sectors with respect to due diligence, anti-money laundering training and reporting to FINTRAC.<sup>17</sup> In the context of mortgage lenders in Canada, the PCMLTFA and associated Regulations cover banks, credit unions, *caisses populaires*, trust and loan companies (collectively, “financial entities”), life insurers, and securities dealers. These lenders are “reporting entities” under the PCMLTFA and associated Regulations. This status imposes obligations – including conducting know-your-client due diligence; maintaining anti-money laundering compliance programs; keeping records; and reporting suspicious and large cash transactions to FINTRAC.<sup>18</sup>

The PCMLTFA and associated Regulations do not apply to individuals, most private companies – including mortgage investment corporations<sup>19</sup> – and non-profit entities (i.e. charities, foundations, and endowments) that engage in mortgage lending.

### Provincial Legislation and Regulation

The private mortgage lending industry in BC is regulated under the provincial *Mortgage Brokers Act (MBA)*<sup>20</sup> and the *Securities Act*.<sup>21</sup> Though neither of those laws explicitly addresses money laundering, the MBA, *Securities Act*, and supporting regulations do apply oversight and rules of conduct to those mortgage lenders. Of particular relevance to private lenders:

- The MBA applies to any person who “carries on a business of lending money secured in whole or in part by mortgages,” who “in any one year, lends money on the security of 10 or more mortgages,” and/or who “carries on a business of buying and selling

16 Exhibit 7, S. Schneider, *Money Laundering in Canada: A Quantitative Analysis of RCMP Cases*, p 33.

17 FINTRAC, “Securities Dealers” (modified July 12, 2021), online: <https://www.fintrac-canafe.gc.ca/re-ed/sec-eng>.

18 FINTRAC, “Reporting Entities” (accessed April 15, 2021), online: <https://www.fintrac-canafe.gc.ca/re-ed/intro-eng>.

19 FINTRAC, “FINTRAC Policy Interpretations” (accessed March 2, 2021), online: <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2-eng?s=2>. FINTRAC takes the position that MICs issuing only their own shares to investors are not considered securities dealers and are not reporting entities under the PCMLTFA and associated Regulations.

20 *Mortgage Brokers Act*, RSBC 1996, c 313, s 1.

21 RSBC 1996, c 418; Canadian Securities Administrators, “CSA Staff Notice 31-323: Guidance Relating to the Registration Obligations of Mortgage Investment Entities” (February 25, 2011) [CSA Notice], online: [https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities\\_Law/Policies/Policy3/31323\\_CSA\\_Staff\\_Notice2.pdf](https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy3/31323_CSA_Staff_Notice2.pdf).

mortgages or agreements for sale.”<sup>22</sup> The *MBA* definition therefore captures not only those brokering transactions between borrowers and lenders but also includes an array of lenders themselves, including mortgage investment corporations.

- The *Securities Act* and associated regulations place know-your-client obligations on mortgage investment entities<sup>23</sup> that are registered with the BC Securities Commission, though those obligations do not include source-of-fund checks or anti-money laundering focused due diligence.<sup>24</sup>
- From August 2010 through February 2020, mortgage investment entities were not required to register with the BC Securities Commission as investment fund managers, advisers and/or exempt market dealers. This was due to a temporary exemption that was renewed repeatedly until 2019, when mortgage investment entities were given a one-year grace period to register with the securities regulator.<sup>25</sup>
- The regulators tasked with enforcing the *MBA* and the *Securities Act* – the Registrar / BCFSa and the BC Securities Commission, respectively – do not have an anti-money laundering mandate. The Registrar and BCFSa are concerned with consumer protection and maintaining the stability of BC’s financial services industry.<sup>26</sup> For its part, the BC Securities Commission’s mandate concerns investor protection and preserving the integrity of capital markets.<sup>27</sup>

In addition, the *Business Practices and Consumer Protection Act* applies to mortgage lending in BC to the extent that the Act covers unfair practices and disclosure of the cost of consumer credit, including interest rate calculations and fees.<sup>28</sup>

22 *MBA*, s 1.

23 CSA Notice, p 1: MIE is a term used by securities regulators, which encompasses MICs and other lenders “whose purpose is to directly or indirectly invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property.”

24 BC Securities Commission, “Expiry of BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities and Registration Requirements for Persons Relying on BCI 32-517 on February 15, 2019” (January 21, 2019), online: [https://www.bsc.bc.ca/-/media/PWS/Resources/Securities\\_Law/Policies/PolicyBCN/BCN-201901-January-21-2019.pdf](https://www.bsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/PolicyBCN/BCN-201901-January-21-2019.pdf); BC Securities Commission, “Companion policy 31-103 CP: Registration Requirements, Exemptions and Ongoing Registrant Obligations” (February 2012), p 37, online: [https://www.bsc.bc.ca/-/media/PWS/Resources/Securities\\_Law/HistPolicies/HistPolicy3/31103CP\\_CP\\_Feb2012.pdf](https://www.bsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy3/31103CP_CP_Feb2012.pdf).

25 BC Securities Commission, “Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities – BC Instrument 32-517” (August 15, 2018) online: [https://www.bsc.bc.ca/-/media/PWS/Resources/Securities\\_Law/Policies/Policy3/32517-BCI-August-15-2018.pdf](https://www.bsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy3/32517-BCI-August-15-2018.pdf). That exemption took effect in BC on December 3, 2010.

26 BC Financial Services Authority, “What We Do – Mandate and Values” (accessed December 14, 2020), online: [https://www.bcfsa.ca/index.aspx?p=about\\_us/mandate](https://www.bcfsa.ca/index.aspx?p=about_us/mandate).

27 BC Securities Commission, “About - Mission, Values & Overall Benefits” (accessed December 14, 2020), online: <https://www.bsc.bc.ca/about/what-we-do/mission-values-benefits>.

28 *Business Practices and Consumer Protection Act*, SBC 2004 c 2, Part 5; Mortgage Brokers Association of BC, Cathy Swallow, “Business Practices and Consumer Protection Act: What Does It Mean To You?” (February 2007), online: [http://www.mbabc.ca/wp-content/uploads/2011/01/disclosure\\_seminar\\_feb\\_2007.pdf](http://www.mbabc.ca/wp-content/uploads/2011/01/disclosure_seminar_feb_2007.pdf).

## Types of Private Mortgage Lenders

### *Background*

According to figures published in October 2021 by Canada Mortgage and Housing Corporation (CMHC), 93 percent of the \$1.73 trillion in residential mortgages in Canada is financed by banks, credit unions, and *caisses populaires* – each of which have anti-money laundering reporting and due diligence obligations under the *PCMLTFA* and associated Regulations.<sup>29</sup> Most of the remaining residential mortgages are funded by lenders who are not reporting entities.<sup>30</sup>

Mortgages provided by private lenders typically involve rates higher than those charged by financial institutions. But they offer more flexibility or more lenient terms, such as relaxed standards for the borrower’s debt load, employment history, or citizenship status. As such, these mortgages are attractive to would-be borrowers who do not qualify for loans with regulated financial institutions.<sup>31</sup>

Private lending is increasing across Canada, driven in part by mortgage “stress test” regulations rolled out by the federal Office of the Superintendent of Financial Institutions (OSFI) in January 2018 (known as the B-20 rules).<sup>32</sup> The B-20 rules apply to lenders regulated by OSFI, and impose a “stress test” requiring borrowers to demonstrate an ability to withstand shocks such as income interruption or rising interest rates. The B-20 guidelines also require rigour in a lender’s verification of a borrower’s income. A private lender who is not subject to the B-20 guidelines, on the other hand, may be satisfied simply by the security of a mortgage registered on title where there is sufficient equity in the property.

For the purposes of this chapter, mortgage lenders are categorized by reference to the extent to which they are regulated.

### *Lenders with PCMLTFA Obligations*

This category of lenders includes traditional lenders that have obligations under the *PCMLTFA* and associated Regulations, including banks, credit unions, and *caisses populaires*, which do approximately 93 percent of mortgage lending in Canada.<sup>33</sup>

29 CMHC, “Residential Mortgage Industry Report” (October 2021) [CMHC 2021], p 3, online: <https://assets.cmhc-schl.gc.ca/sites/cmhc/professional/housing-markets-data-and-research/housing-research/research-reports/housing-finance/residential-mortgage-industry-report/2021/residential-mortgage-industry-report-2021-10-en.pdf?rev=e269b608-9ebc-4e28-ae3e-1629f9a5a674>. A further 5 percent of residential mortgages are financed by mortgage finance companies, which comply with OSFI guidelines in order to qualify for securitization programs and funding from banks. However, they are not explicitly covered by anti-money laundering regulations and reporting is voluntary.

30 Ibid.

31 Ibid; CMHC 2021; Shop The Rate, “When You Should Consider a Private Mortgage” (updated September 16, 2019), online: <https://shoptherate.ca/blog/mortgages/when-you-should-consider-a-private-mortgage>; Chrissy Kapralos and Caitlin Wood, “Loans for Newcomers to Canada” (updated December 3, 2021), Loans Canada, online: <https://loanscanada.ca/loans/loans-for-newcomers-to-canada/>.

32 OSFI, “Residential Mortgage Underwriting Practices and Procedures – Guideline B-20” (updated February 18, 2021), online: <https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b20-nfo.aspx>.

33 CMHC 2021, p 3.

### **Regulated Lenders *with no* PCMLTFA Obligations**

These lenders are not (currently) directly covered by the *PCMLTFA* and associated Regulations but have other regulatory obligations, either because they voluntarily uphold OSFI standards (in the case of mortgage finance companies) or because they are covered under provincial regulations (registered mortgage brokers, including mortgage investment corporations, and issuers / arrangers of syndicated mortgage investments).

As recently observed by the Financial Action Task Force in a public consultation on a revised guidance document for money laundering through real estate, mortgage lenders are well positioned to observe indicators of suspicion:

While mortgage lenders that are separate from banks may not have the same visibility into account and payment information that banks do, these lenders do have insight into key beneficial ownership and financial details provided by those seeking mortgages. *This arrangement makes mortgage lenders a key player in the [anti-money laundering / counterterrorist financing] efforts for the sector as real estate agents and other professionals providing similar services will not be in a position to access this information and evaluate it for any ML/TF [money laundering / terrorist financing] risk. Additionally, mortgage lenders' ability to approve mortgages puts them in an effective position to immediately address any ML/TF risk by choosing not to approve certain mortgages that may be indicative of ML/TF activity. [Emphasis added.]*<sup>34</sup>

Each of the mortgage lenders described here is, to some degree, vulnerable to facilitating, unwittingly or otherwise, money laundering by way of the typologies described above, either by lending out funds that are the proceeds of crime, or by providing financing to borrowers who are dealing in the proceeds of crime.

Shortly before the release of this report, the federal government released the 2022 budget. The 2022 budget proposes extending anti-money laundering obligations to “all businesses conducting mortgage lending in Canada” within the next year.<sup>35</sup> I commend this proposed change and have taken it into account in the recommendations made in this chapter.

The federal budget does not set out precisely how this will take place, and what obligations private mortgage lenders will be subject to. Depending on the specific obligations imposed on private lenders by the federal amendments, the provincial government may well still have a role to play in managing the money laundering risks associated with private lending. In particular, the provincial government will need to be

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34 Financial Action Task Force, “Public Consultation on the FATF Risk-Based Guidance to the Real Estate Sector” (2nd Draft Guidance Paper for considering and agreement to public consultation) (April 2022), para 110, online: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-guidance-real-estate.html>.

35 Government of Canada, Federal Budget 2022, “Chapter 1: Making Housing More Affordable” (updated April 7, 2022), online: <https://budget.gc.ca/2022/report-rapport/chap1-en.html#wb-cont>.

attentive to whether the anti-money laundering due diligence and reporting obligations of private lenders extends to investors as well as borrowers. Later in this chapter, I make a recommendation that the Province create a new regulator of private mortgage lenders. I recommend that the Province create a positive obligation on mortgage lenders to make source-of-funds inquiries of investors providing capital for the lending business, if such obligations are not included in the federal reforms and specifically in private mortgage lenders' new obligations under the *PCMLTFA* and associated Regulations.

**Recommendation 26:** I recommend that the Province create a positive obligation on mortgage lenders to make source-of-funds inquiries of investors providing capital for the lending business, if such obligations are not included in the federal reforms to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and associated Regulations.

This obligation can be addressed by way of the new legislation addressing private mortgage lending that I recommend later in this chapter.

### ***Mortgage Investment Corporations***

Mortgage investment corporations are private lenders whose borrower base does not typically qualify for loans from traditional lenders. Mortgage investment corporations issue equity to outside investors and lend out the capital raised as mortgage loans. FINTRAC does not consider mortgage investment corporations to be securities dealers, and most do not meet the criteria for any other type of reporting entity under the *PCMLTFA* and associated Regulations.<sup>36</sup>

As issuers of securities, mortgage investment corporations are regulated by provincial securities commissions and are expected to comply with relevant securities legislation where they operate (e.g., the *Securities Act*). In BC, mortgage investment corporations must also be registered under the *MBA* and are regulated by BCFSA.

While mortgage investment corporations are subject to some regulation, neither the BC Securities Commission nor the Registrar of Mortgage Brokers have an anti-money laundering mandate. For its part, the BC Securities Commission regulates capital raising and dealings with investors. The BC Securities Commission's focus is on "protecting investors and the integrity of BC's capital markets."<sup>37</sup> The Registrar and BCFSA are concerned with consumer protection and the stability of the province's financial services sector.<sup>38</sup>

36 FINTRAC, "FINTRAC Policy Interpretations" (accessed March 2, 2021) online: <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2-eng?s=2>. This reflects the situation prior to the implementation of the Budget 2022 commitment to bringing private mortgage lenders into the *PCMLTFA*.

37 BC Securities Commission, "Mission, Values & Overall Benefits," online: <https://www.bsc.bc.ca/about/what-we-do/mission-values-benefits>.

38 BC Financial Services Authority, "Mandate and Values," online: [https://www.bcfesa.ca/index.aspx?p=about\\_us/mandate](https://www.bcfesa.ca/index.aspx?p=about_us/mandate).

Mortgage investment corporations that are registered with the BC Securities Commission (as well as their registered managers and advisers) have responsibilities with respect to know-your-client due diligence. That know-your-client process is intended to determine “whether trades in securities are suitable for investors ... [to] protect the client, the registrant and the integrity of the capital markets.”<sup>39</sup> Ascertaining the source of funds and mitigating money laundering risk are *not* objectives of due diligence under the *Securities Act*.

Mortgage investment corporations are predominantly active in the residential property market. By law, at least half of their assets must be invested in residential mortgages or insured deposits.<sup>40</sup> A 2015 study commissioned by CMHC found that 74 to 83 percent of mortgage investment corporation lending was for residential mortgages.<sup>41</sup> Mortgage investment corporations also lend against other classes of property, however, and are a common source of financing for real estate development.<sup>42</sup>

For borrowers, MIC-funded mortgages often serve as bridge financing until other more favourable loans can be obtained. Most mortgage investment corporations provide loans for terms of six to 24 months, with the median term for a MIC-funded mortgage being one year, as opposed to five years for banks and credit unions.<sup>43</sup> Interest rates for MIC-funded mortgages tend to be higher than those of traditional lenders, with average rates of 9 to 10 percent. These higher rates reflect the risk profile of borrowers, who tend to be self-employed, real estate investors, and borrowers with short-term liquidity issues.<sup>44</sup> There are money laundering risks on the lending side of the operation of mortgage investment corporations, as there is less scrutiny of borrower source of funds and a borrower’s ability to service debt. Mortgage investment corporations are not obligated, for instance, to apply the B-20 “stress test” that applies to lenders regulated by OSFI.

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39 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, para 72; Appendix O, BCSC BC Notice 2019/01 Expiry of BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities and Registration Requirements for Persons Relying on BCI 32-517 on February 15, 2019 (January 21, 2019); Exhibit L, Companion Policy 31-103 CP Registration Requirements, Exemptions and Ongoing Registrant Obligations, p 35; Appendix P, Companion Policy 31-103 CP Registration Requirements, Exemptions and Ongoing Registrant Obligations (February 2012), p 37.

40 *Income Tax Act*, RSC 1985, c1 (5th Supp), s 130.1(6).

41 CMHC, Fundamental Research Corp, “Growth and Risk Profile of the Unregulated Mortgage Lending Sector” (October 9, 2015), online: [https://www.baystreet.ca/articles/research\\_reports/fundamental\\_research/Unregulated-Mortgage-Lenders-Oct-2015.pdf](https://www.baystreet.ca/articles/research_reports/fundamental_research/Unregulated-Mortgage-Lenders-Oct-2015.pdf).

42 *Ibid*.

43 Benjamin Tal, CIB Economics, “Mortgage Stress Test: The Operation Was a Success, but ...” (April 16, 2019) (accessed February 9, 2021) [CIBC 2019], online: [https://economics.cibccm.com/economicsweb/cds?ID=7069&TYPE=EC\\_PDF](https://economics.cibccm.com/economicsweb/cds?ID=7069&TYPE=EC_PDF); CMHC, “Research Insight: Mortgage Investment Corporations Update” (December 2018) (Manager: Richard Gabay and Michael Oram), online: [http://publications.gc.ca/collections/collection\\_2019/schl-cmhc/NH18-33-10-2018-eng.pdf](http://publications.gc.ca/collections/collection_2019/schl-cmhc/NH18-33-10-2018-eng.pdf).

44 Janet McFarland, “Non-Bank Lenders Attract Wave of Money, CMHC Report on Mortgages Says,” *Globe and Mail*, July 16, 2019, online: <https://www.theglobeandmail.com/business/article-non-bank-lenders-attract-wave-of-money-cmhc-report-on-mortgages-says/>.

Mortgage investment corporation loans tend to have lower loan-to-value ratios<sup>45</sup> than mortgages issued by banks, credit unions and monoline lenders. According to a CMHC report, the average loan-to-value ratio for mortgage investment corporations was 58.6 percent in the first quarter of 2021.<sup>46</sup>

According to CMHC, mortgage investment corporations account for 1 percent of total residential mortgages nationwide – around \$13 to 14 billion<sup>47</sup> – and there are approximately 200 to 300 mortgage investment corporations operating in Canada. CMHC estimates that 78 percent of mortgage investment corporation mortgages are in BC and Ontario, with the majority concentrated in the Vancouver and the Toronto areas.<sup>48</sup>

BC Securities Commission filings for 119 mortgage investment corporations that have filed reports with the regulator since 2011 indicate that these corporations raised approximately \$6.7 billion for mortgage lending between 2011 and 2019.<sup>49</sup> There are money laundering risks on the investment side of mortgage investment corporations, as they do not have source-of-funds obligations requiring them to ascertain the origin of funds they receive as investments.

### **Mortgage Finance Companies**

Mortgage finance companies, often referred to as “monoline lenders,” are non-depository financial institutions whose only line of business is underwriting and administering mortgages. Unlike mortgage investment corporations and syndicated lenders, mortgage finance companies securitize their mortgages and sell them to banks (whereas mortgage investment corporations and syndicated lenders keep the loans on their own books). Mortgage finance companies, insurance and trust companies accounted for approximately 5 percent of residential mortgage loans in Canada as of 2021.<sup>50</sup>

CMHC refers to mortgage finance companies as being “quasi-regulated” because, although they are not directly captured by the *PCMLTFA*, they rely on public mortgage securitization programs and funding methods that require them to comply with regulations<sup>51</sup> and guidelines such as those published by OSFI on deterring and detecting money laundering.<sup>52</sup> Money laundering risk related to mortgage finance companies is limited on the lending side, because they obtain most of their funds through public securitization programs and wholesale funding from banks.<sup>53</sup> In order to qualify for those sources of capital, mortgage finance companies adhere to the same underwriting

45 Loan-to-value determines the maximum amount of a secured loan, in reference to the market value of the property or asset that is being pledged as collateral.

46 CMHC 2021, p 20

47 Ibid, p 20.

48 Ibid, p 27.

49 Exhibit 729, Ross Affidavit, exhibit B, para 40.

50 CMHC 2021, p A12.

51 Ibid, p 16.

52 Ibid, p 15.

53 Ibid, p 17.

standards as banks and other OSFI-regulated lenders, which reduces money laundering risk from borrowers because there is generally considerable scrutiny of borrowers' source of funds and creditworthiness. Mortgage finance companies do not have statutory anti-money laundering obligations under the *PCMLTFA* and associated Regulations (though they may nevertheless voluntarily submit information regarding suspicious transactions to FINTRAC).

### ***Syndicated Mortgage Investments***

Syndicated mortgage investments involve multiple investors pooling funds to finance a real estate project or purchase. Syndicated mortgage investments enable investors to spread risk and finance loans that might otherwise be too large for one party to fund on their own. Unlike investment in a mortgage investment corporation, where investors own shares in the lender, with a syndicated mortgage investment, the lenders take a position on each loan.<sup>54</sup>

Syndicated mortgage investment lenders include banks, credit unions, and institutional investors, as well as individuals. Syndications can also be used to pool funds from wider groups of retail investors. Syndicated lending can be used as an alternative to bank financing for commercial real estate investments or development projects, with funds often going toward early-stage costs such as permits and planning expenses. Where larger numbers of co-lenders are involved, syndicated mortgage investments are often managed by an administrator, who may also be the lead lender.<sup>55</sup>

In BC, syndicated mortgage investments are either “qualified” or “non-qualified.”<sup>56</sup> Qualified syndicated mortgage investments involve co-lending by institutional investors and/or loans where multiple parties pool funds to finance a specific residential mortgage. Their issuers (i.e., lenders) and arrangers (i.e., administrators and arranging co-lenders) are largely exempt from BC Securities Commission regulations (requiring them to file investment prospectuses and register as securities dealers, respectively), providing they meet certain requirements.<sup>57</sup> They may nevertheless be required to register as mortgage brokers under the *MBA*. On the other hand, issuers and arrangers of non-qualified syndicated mortgage investments *are* regulated by the BC Securities Commission and are required to file offering memoranda and register as dealers, respectively.<sup>58</sup>

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54 Exhibit 729, Ross Affidavit, exhibit B, para 44.

55 Ibid, para 45.

56 BC Securities Commission, “Commission Rule 45-501 (BC) Mortgages” (September 28, 2009) [BCSC Rule 45-501], online: [https://www.bsc.bc.ca/-/media/PWS/Resources/Securities\\_Law/HistPolicies/HistPolicy4/45501\\_BCI.pdf](https://www.bsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy4/45501_BCI.pdf).

57 BC Securities Commission, “Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations related to Syndicated Mortgages” (August 6, 2020) [CSA Notice 2020].

58 BC Securities Commission, “Annex F – Local Matters (British Columbia)” (August 6, 2020), online: <https://www.bsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-Local-Matters-August-6-2020.pdf>.

Securities administrators have amended the regulatory regime for syndicated mortgages, including enhanced reporting and controls such as mandating independent appraisals of properties prior to issuing syndicated mortgage investments.<sup>59</sup> Amendments to syndicated mortgage rules by the BC Securities Commission (and its counterparts in other provinces)<sup>60</sup> went into effect on March 1, 2021.

Presently, there is no reliable way to identify syndicated mortgage investments through publicly available LTSA records. In some cases, known as direct participation, each syndicated mortgage investment co-lender is identified on the Form B charge registration document and has a direct relationship with the borrower. In other cases, an administrative agent is listed as the charge holder, and co-lenders register their interest through a loan agreement or commitment letter. In those cases of indirect participation, there is often no record with LTSA to indicate that a loan is syndicated.<sup>61</sup>

Information on the identity of mortgage lenders *should* be available through LTSA. The absence of such information is a barrier to the regulation and oversight of mortgage lenders. An absence of visibility into mortgage lenders may also encourage mortgage lending activity by those wishing to invest illicit funds in the real estate market. I recommend that the Province amend Form B so that all legal owners of mortgage charges are reported, and that this information be available through the land titles registry.

**Recommendation 27:** I recommend that the Province amend Form B (the form for registration of a mortgage under section 225 of the *Land Title Act*) so that all legal owners of mortgage charges are reported, and that this information be available through the land titles registry.

An additional measure to increase the visibility of interests in real property, is to ensure that mortgages fall within the Land Owner Transparency Registry regime. I recommend that Province amend the definition of “interest in land” in the *Land Owner Transparency Act* to include mortgages, in order to ensure that the beneficial owners of a charge cannot obscure their ownership.

<sup>59</sup> Canadian Securities Administrators, “CSA Second Notice and Request for Comment: Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations Relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations” (March 15, 2019), online: [https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/03/5452130-v1-CSA\\_Notice\\_re-Syndicated\\_Mortgages\\_Proposed-Amendments-45-106\\_-31-103.ashx](https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/03/5452130-v1-CSA_Notice_re-Syndicated_Mortgages_Proposed-Amendments-45-106_-31-103.ashx).

<sup>60</sup> BC Securities Commission, “Annex F: Local Matters (British Columbia)” (August 6, 2020), online: <https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-Local-Matters-August-6-2020.pdf>.

<sup>61</sup> Exhibit 729, Ross Affidavit, exhibit B, p 21.

**Recommendation 28:** I recommend that Province amend the definition of “interest in land” in the *Land Owner Transparency Act* to include mortgages, in order to ensure that the beneficial owners of a charge cannot obscure their ownership.

### ***Non-Mortgage Investment Corporation Mortgage Brokers***

As I mentioned in Chapter 16, the *MBA* requires registration not just for those performing loan origination services – what the public typically associates with the term “mortgage brokering” – but also for some mortgage *lending* activity. This is not intuitive. Several witnesses suggested that the *MBA* requires amendment to make it clearer who is required to register. I return to this issue below, in the context of discussing the results of Adam Ross’s review of *LTSA* filings for the purpose of identifying mortgage lenders who are not registered with the Registrar of Mortgage Brokers.

### ***Unregulated and Unregistered Lenders***

**Unregulated lenders** include lenders whose mortgage lending activity does not require them to register with any regulatory body as a lender, as well as those who are specifically exempt from registering. **Unregistered lenders** are those that appear to meet at least one criterion for registration under the *MBA* or *Securities Act*, but who have not registered.

These unregulated or unregistered lenders include:

- **Individuals:** private individuals account for slightly more than half of private mortgage lending, according to figures from Ontario.<sup>62</sup> Individual lenders can be arm’s-length investors or associates of the borrower. One analysis from Ontario estimates that intra-family loans account for 10 percent of mortgage lending by individuals.<sup>63</sup> While individual lenders and borrowers may know one another, in other instances they may be paired by a broker and have no direct interaction. While some individual lenders in BC are registered with BCFSAs as mortgage brokers or sub-brokers, the vast majority are not (see the next section of this chapter).
- **Private legal entities:** privately held corporations, societies, and other legal entities also feature as mortgage lenders. Legal entities may be established with the specific purpose of mortgage lending, or they may register mortgages alongside other business activities or investments. They are a diverse group. They include: sellers of properties that issue vendor take-back mortgages;<sup>64</sup> small businesses whose owners

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62 CIBC 2019, p 3.

63 Ibid.

64 Dalia Barsoum and Enza Venuto, “Ins and Outs of the Vendor Take-Back Mortgage,” *Canadian Real Estate Magazine*, August 27, 2012, online: <https://www.canadianrealestatemagazine.ca/news/ins-and-outs-of-the-vendor-takeback-mortgage-184019.aspx>.

prefer to lend through their company for tax reasons;<sup>65</sup> and a multitude of others. In BC (and much of Canada), private legal entities are not required to publicly identify their shareholders or beneficial owners, so in most cases there is no information about the individuals behind these lenders.<sup>66</sup>

- **Crowdfunding:** this relatively new real estate investment mechanism allows investors to partially fund individual projects, typically through online platforms. Real estate is a growing application for the financing model.<sup>67</sup> There are very few real estate crowdfunders operating in Canada.

In BC, crowdfunding in real estate has been regulated by the BC Securities Commission since May 2015, with a \$1,500 cap on each deal per individual investor, a \$500,000 annual limit for each fundraiser, and a \$250,000 limit on each project.<sup>68</sup> Crowdfunders are required to register as exempt market dealers.<sup>69</sup> Shortly before the release of this Report, in April 2022, the federal government announced its intention to bring crowdfunding platforms into the scheme of the *PCMLTFA*.<sup>70</sup>

## Part 2: Land Title and Survey Authority Data Analysis

How much private lending occurs in British Columbia? The Commission sought to answer this question. Using charge and title data from the LTSA, BC Assessment Roll data, reports of exempt distribution filed by mortgage investment corporations with the BC Securities Commission, and the names of mortgage brokers and sub-brokers registered with the Registrar/BCFSA, a report prepared for the Commission sought to quantify the extent of private lending in British Columbia. This would assist in understanding how much private lending is unregulated, or conducted by persons

65 Bakertilly Publications, “Should You Put Your Investments into a Corporation?” *Bakertilly*, October 15, 2005, online: <https://www.bakertilly.ca/en/btc/publications/should-you-put-your-investments-into-a-corporation>; Jamie Golombek, “Small Business Owner Dilemma: Invest in an RRSP, or Do The Investing Through Your Corporation?” *Financial Post*, February 10, 2017, online: <https://financialpost.com/personal-finance/taxes/small-business-owner-dilemma-invest-in-a-rrsp-or-do-the-investing-through-your-corporation>.

66 Exhibit 729, Ross Affidavit, exhibit B, para 51(b); BC Ministry of Finance, B.C. Consultation on a Public Beneficial Ownership Registry (January 2020) (Chair: Carol James), online: <https://engage.gov.bc.ca/app/uploads/sites/121/2020/01/386142-BCABO-Consultation-Document-For-Release.pdf>.

67 Ernst & Young, *Real Estate Crowdfunding: Introduction to an Alternative Way of Investing* (March 2019) online: <https://vdocuments.mx/real-estate-crowdfunding-ernst-young-global-real-estate-crowdfunding.html>.

68 BC Securities Commission, “Private Placements – Guidance on Crowdfunding” (accessed October 18, 2017), online: [https://web.archive.org/web/20170511003455/https://www.bsc.bc.ca/For\\_Companies/Private\\_Placements/Crowdfunding](https://web.archive.org/web/20170511003455/https://www.bsc.bc.ca/For_Companies/Private_Placements/Crowdfunding).

69 In February 2022, the federal government invoked the *Emergencies Act* to address circumstances arising from protests and blockades in respect of COVID-19 vaccination mandates (particularly in Ottawa). Pursuant to its authority under the *Emergencies Act*, the federal government issued the *Emergency Economic Measures Order*, SOR/2022-22. That order extended the scope of the *PCMLTFA* to crowdfunding platforms and the payment processors they use, requiring them to register with FINTRAC and to report suspicious and large value transactions. With the revocation of the *Emergencies Act* at the end of February 2022, the registration and reporting requirements were lifted.

70 Government of Canada, Federal Budget 2022, “Chapter 5, Canada’s Leadership in the World” (updated April 7, 2022), online: <https://budget.gc.ca/2022/report-rapport/chap5-en.html#2022-3>.

who ought to be but are not registered with the Registrar. This section summarizes those findings and comments on the implications for money laundering through real estate.<sup>71</sup> The report was authored by Adam Ross, an analyst and investigator specializing in anti–money laundering, corruption, fraud, and white-collar crime.

## Summary of Findings

The study conducted for the Commission provides insight into the types of lenders registering mortgages in British Columbia. This analysis assists in understanding the scope of unregulated and unregistered private lending in British Columbia, and hence the size of the potential risk for money laundering that may exist.

The study looked at mortgage charges to determine how much mortgage activity can accurately be described as unregulated and unregistered private lending.

The study reviewed active and cancelled mortgage charges registered against active residential property titles in British Columbia between January 1, 1999, and December 31, 2019, as well as mortgage charges registered against titles that were cancelled between January 1, 2014, and December 31, 2019. The data, obtained from LTSA, included the names of mortgagees (lenders) and the dates of registration or discharge. The value of a mortgage is not available from LTSA filings, and so it was not possible to assess how much mortgage funding was provided by different types of lenders.<sup>72</sup>

The review of mortgages found that 96.10 percent of mortgages in the LTSA data set analyzed (2,848,798 out of 2,964,393 mortgages) are issued to registered or regulated lenders. Of those:

- 93.04 percent (2,757,935 mortgages) are with OSFI-regulated lenders;
- 55.54 percent (1,646,511 mortgages) are with issuers, registrants and/or exempt market dealers regulated by the BC Securities Commission; and
- 5.32 percent (157,735 mortgages) are with lenders registered with BCFSAs.<sup>73</sup>

As the totals above suggest, many mortgage lenders are regulated by both OSFI and the provincial regulators, while others are registered with both BC Securities Commission and the Registrar/BCFSA.

This figure – over 96 percent – shows that the vast majority of mortgages involve regulated or registered lenders.

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71 Exhibit 729, Ross Affidavit, exhibit B: A more complete discussion can be found here.

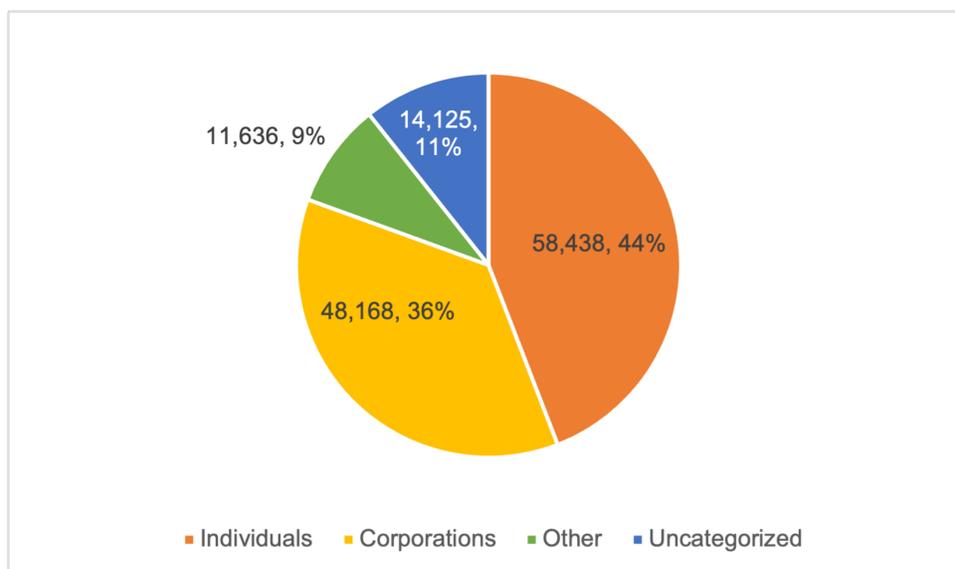
72 Ibid, exhibit B, para 55.

73 Ibid, exhibit B, para 57.

The study found 115,595 mortgages (3.9%) involved lenders *not* registered with any regulatory body. Of those, 58,438 (50.55%) were individuals. In 22 percent of that subset, the lender and borrower shared a surname, suggesting a loan between family members. 48,168 (41.67%) of lenders in the unregistered / unregulated category were corporate entities (2,706 of which were numbered companies). A small number of these mortgages (10%) were held by institutions such as government agencies and universities. Approximately 12 percent of mortgages had no names in the charge owner field.<sup>74</sup>

The chart below (Figure 17.1) provides a visual representation of mortgages provided by unregulated or unregistered lenders. There is some double-counting due to mortgages with multiple lenders.<sup>75</sup>

**Figure 17.1: Mortgages Provided by Unregulated or Unregistered Lenders**



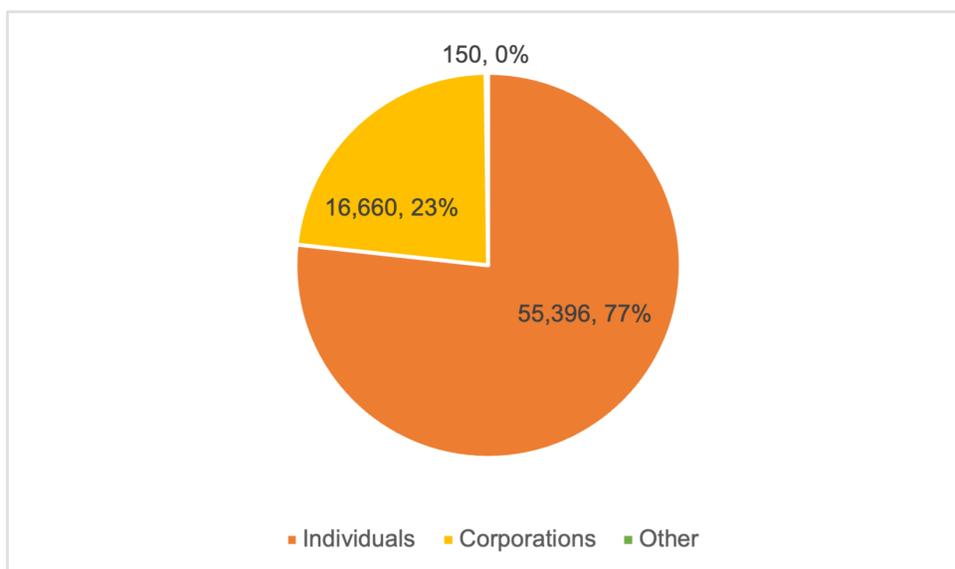
Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 60.

Analyzed by lender, those 132,367 mortgages are held by 72,206 lenders: 55,396 individuals, 16,660 companies, and 150 other institutions.<sup>76</sup>

<sup>74</sup> Ibid, exhibit B, para 60: This missing lender information would presumably be available in the mortgage documents filed with the LTSA but is unavailable online.

<sup>75</sup> Ibid: there were 16,772 mortgages with multiple lenders included in this count (132,367), which is why the total does not match the total number of mortgages by unregulated and unregistered lenders (115,595).

<sup>76</sup> Ibid, exhibit B, para 62.

**Figure 17.2: Mortgages Held by Individual Lenders vs. Corporations**

Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 62.

Among these lenders, the mean number of mortgages for individual lenders is 1.54, while it is 3.15 for corporate entities.<sup>77</sup>

### ***Findings Regarding Mortgage Investment Corporations***

Mortgage investment corporations are a small but quickly growing segment of mortgage lenders in BC, and account for much of the private lending in the province.<sup>78</sup>

#### ***Size of the Mortgage Investment Industry***

The mortgage investment industry has seen significant growth in the past decade. There was approximately \$230 million invested in BC mortgage investment corporations in 2012. The industry experienced a peak in 2018, with more than \$2 billion in disclosed investment.<sup>79</sup> According to BCFSA, as of May 31, 2020, registered BC mortgage investment corporations had lent \$5.5 billion with \$3.8 billion secured by mortgages in BC.<sup>80</sup>

Analysis of BC Securities Commission filings by mortgage investment corporations on an annual basis offers perspective into the growth of the industry during the 2011–2019 period. Over the course of that period, 80 mortgage investment corporations filed reports for the first time. Approximately twice as many mortgage investment corporations filed for the first time as stopped filing during that period. The increase in

<sup>77</sup> Ibid, exhibit B, para 63.

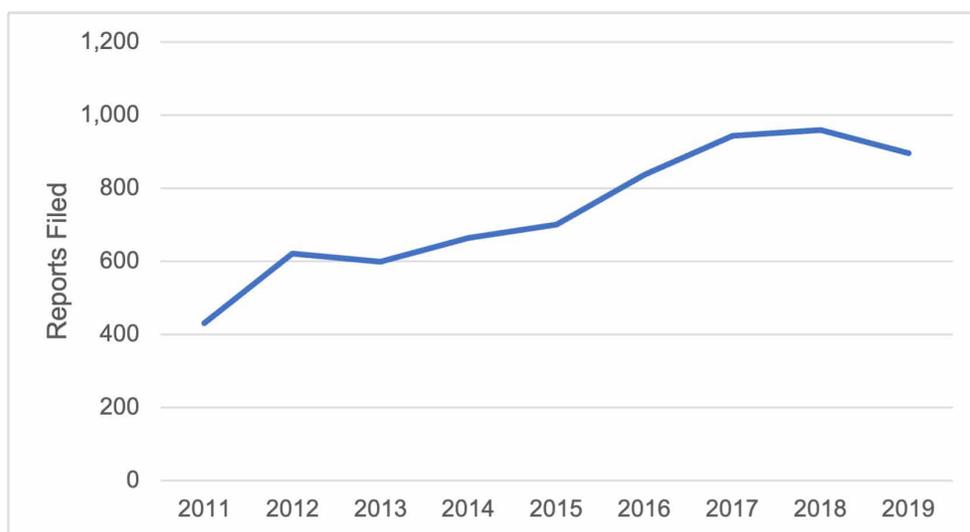
<sup>78</sup> Ibid, exhibit B, para 39.

<sup>79</sup> Ibid, exhibit B, para 69; British Columbia Mortgage Investment Corporation Managers Association, “About Us,” online: <https://www.bcmma.org/about-us>.

<sup>80</sup> Exhibit 729, Ross Affidavit, exhibit B, para 69.

reporting largely aligns with a rise in investment in the industry during that period.<sup>81</sup>

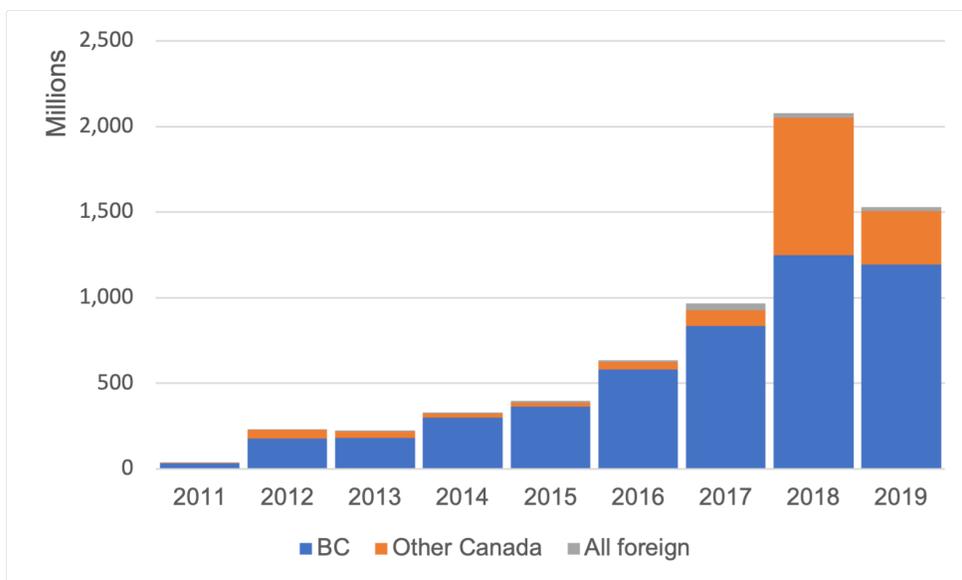
**Figure 17.3: Number of Mortgage Investment Corporation Reports Per Year**



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 70.

Figure 17.4 shows the total value of investment reported by the 119 mortgage investment corporations each year from 2011 to 2019. In total, approximately \$6.4 billion was invested in BC mortgage investment corporations between 2011 and 2019.<sup>82</sup>

**Figure 17.4: Total Investment in BC Mortgage Investment Corporations by Origin, 2011–2019**



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 71.

<sup>81</sup> Ibid, exhibit B, para 70.

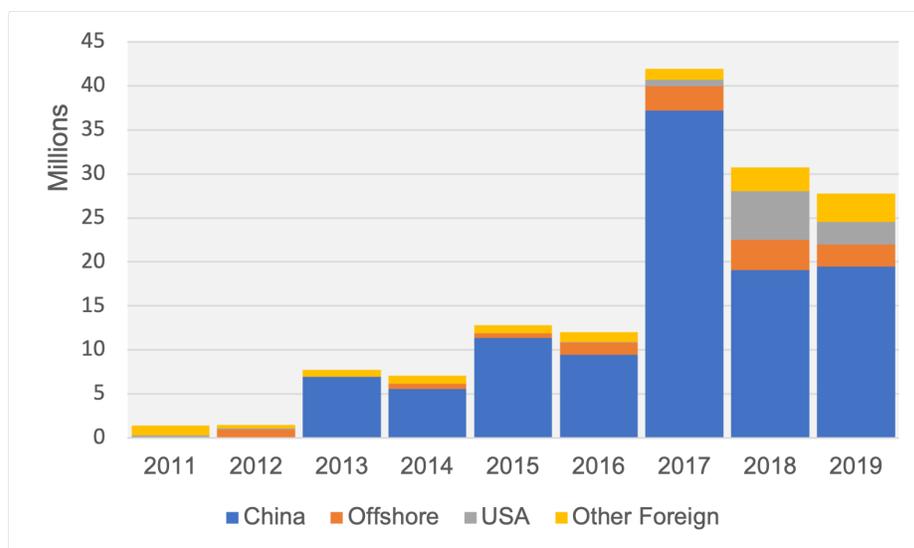
<sup>82</sup> Ibid, exhibit B, para 71.

In February 2019, a BC Securities Commission notice exempting mortgage investment corporations from registering as investment dealers expired.<sup>83</sup> When the registration exemption expired in February 2019, there was an immediate spike in reporting by BC mortgage investment corporations (from 70 reports in January to 101 reports in February).<sup>84</sup>

### **Domestic and Foreign Investment**

The vast majority of funds invested in BC mortgage investment corporations originate from Canadian sources, according to data filed with the BC Securities Commission. It is important to note that the data do not necessarily capture the origins of capital invested in BC mortgage investment corporations. Rather, they reflect the residency of investors, which may, with caution, be taken as a proxy for the geographic location of funds immediately prior to their investment with those mortgage investment corporations. Capital that has transited into Canada from abroad prior to being invested by Canadian resident investors cannot be measured through the data disclosed in BC Securities Commission filings, the data source for this analysis.

**Figure 17.5: Foreign Investment in BC Mortgage Investment Corporations, 2011–2019**



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 75.

From 2011 to 2020, 97.78 percent of all investment was declared to have come from Canadian residents. On an annual basis, Canadian sources have never fallen below 95 percent of the total investment in the data set. Overall, BC sources account for 76.4 percent of total investment in BC, while investment from other provinces amounts to 21.4 percent.<sup>85</sup> Annual investment from BC fluctuates between 77 and 91 percent.

<sup>83</sup> Exhibit 729, Ross Affidavit, exhibit B, para 72: There was a one-year grace period for registering, which expired in February 2020.

<sup>84</sup> Ibid, exhibit b, para 73.

<sup>85</sup> Ibid, exhibit B, para 75: \$1.44 billion in extra-provincial Canadian investment comprises Ontario (42.26%), Alberta (23.77%), Quebec (20.65%), Newfoundland (6.93%), PEI (4.77%), Manitoba (0.86%), Saskatchewan (0.69%), and other provinces and territories (0.07%, collectively).

The data shows that 2018 was an anomalous year, in which total investment more than doubled, from \$970 million in 2017 to a little over \$2 billion. That increase came entirely from domestic capital: BC investment grew by around 50 percent to \$1.25 billion, and investment from other provinces increased nearly nine-fold, from \$92 million to \$801 million.

Throughout the period analyzed (2011–2020), investment from foreign sources remained below 5 percent of annual mortgage corporation investment. In total, it accounts for just 2.2 percent of total investment, or \$150 million.

By far the largest constituent of that foreign investment is China, including Hong Kong, which accounts for around 78 percent of the total. Chinese investment in BC mortgage investment corporations amounts to \$116 million since 2013 (no investment from China or Hong Kong was recorded in 2011 or 2012).

The next largest contributor, the United States, makes up just 6 percent of foreign investment. Other substantial contributors are Taiwan (3.1%) and several offshore financial centres (8%, collectively). Iran and Italy each account for around 1 percent of foreign investment, and all other foreign countries are below 1 percent – each of their total cumulative investment is less than \$1.5 million.

Foreign investment is concentrated in a small minority of mortgage investment corporations. Around 92 percent of Chinese investment has been made with four mortgage investment corporations, with the remaining 8 percent spread between another four firms. All of the \$116 million invested from China and Hong Kong in the past decade has been placed with those eight mortgage investment corporations.

Several mortgage investment corporations have reported investment from offshore financial centres deemed by some to be high-risk jurisdictions for tax evasion and other financial crime.<sup>86</sup> In aggregate, \$11.71 million has been invested since 2012 from four offshore centres:

- Bahamas – \$7.24 million invested with two mortgage investment corporations since 2016
- Malta – \$1.65 million invested in one mortgage investment corporation since 2014
- Marshall Islands – \$250,000 invested in one mortgage investment corporation in 2019
- Turks and Caicos – \$2.57 million invested in one mortgage investment corporation since 2012

That investment was reported by five BC mortgage investment corporations.

<sup>86</sup> Ibid, exhibit B, para 81; European Parliamentary Research Service, Cecile Remeur, *Briefing – Listing of Tax Havens by the EU* (May 2018), online: <https://www.europarl.europa.eu/cmsdata/147404/7%20-%2001%20EPRS-Briefing-621872-Listing-tax-havens-by-the-EU-FINAL.PDF>; OXFAM International, Johan Langerock, *Off the Hook: How the EU Is About to Whitewash the World's Worst Tax Havens* (March 7, 2019), online: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620625/bn-off-the-hook-eu-tax-havens-070319-en.pdf>; Tax Justice Network, Financial Secrecy Index, (February 18, 2020), online: <https://fsi.taxjustice.net/en/>.

## Findings: Identifying Unregistered Mortgage Lenders

LTSA data can also be used to identify lenders that meet one of the criteria for registration as mortgage brokers under the *MBA*. Although the definition of mortgage broker in the *MBA* is imprecise, one criterion states that a person must register as a mortgage broker under the Act if the person “during any one year, lends money on the security of 10 or more mortgages.”<sup>87</sup> That 10-mortgage threshold can be applied to a review of LTSA data.

The study conducted for the Commission filtered LTSA mortgage data for lenders that have registered 10 or more mortgages in a 365-day period, then cross-referenced those results with a list of all mortgage brokers and sub-brokers registered since 2012 (no electronic mortgage broker list existed prior to 2012).<sup>88</sup> OSFI-regulated financial institutions, which are exempt from the *MBA*, were filtered out, leaving a list of lenders who appear to meet this definition of mortgage broker, but have not registered with the Registrar.

This analysis only captures lenders that have registered 10 or more mortgages in a 365-day period and whose names appear directly on the LTSA’s title search form. It would not capture a lender who is lending under multiple names or through nominees. The study author advised that lenders using multiple distinct legal personalities (i.e., subsidiaries or companies with shared beneficial ownership) *cannot* be captured in the absence of publicly available shareholder and beneficial ownership data on BC companies.<sup>89</sup> Some of the unregistered lenders identified through this analysis appear to conduct their lending through a third-party broker that is registered with the BCFSA. For instance, a company that holds 32 active mortgages was flagged for registering 32 mortgages within a 365-day period. However, its Form B mortgage registration documents all provided a mailing address care of a registered broker. Other unregistered lenders may have similar arrangements with registered brokers, albeit ones that are not reflected on the Form B for their loans. These lenders are still required to register as mortgage brokers if their lending activity crosses the 10-mortgage-per-year threshold.<sup>90</sup> The findings described above may indicate a lack of industry understanding as to the requirement for registration.

The report identified 493 individuals and entities that had registered 10 or more mortgages each within a 365-day period dating back to January 1, 2012, but who were not registered with the Registrar during that period.<sup>91</sup>

A manual review of those lenders found that 16 were likely exempt from registering as mortgage brokers due to their status as financial institutions, trust companies, insurers, or government bodies. The remaining 477 appear to have met the 10-mortgage-per-year registration threshold, but they were not registered.<sup>92</sup>

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87 *MBA*, s 1: As defined, “person” includes an individual, corporation, firm, partnership, association, syndicate, any unincorporated organization and an agent of any of them.”

88 Exhibit 729, Ross Affidavit, exhibit B, paras 90–91.

89 *Ibid*, exhibit B, para 91.

90 *Ibid*, exhibit B, para 95.

91 *Ibid*, exhibit B, para 96.

92 *Ibid*, exhibit B, para 97.

Of the unregistered brokers, 247 are corporations, 220 are individuals, and 10 are non-profit societies or foundations.

The 247 unregistered corporate entities have registered a combined 5,808 mortgages. The individual lenders have registered 4,766 mortgages.<sup>93</sup>

A selection of nine individuals and entities of the 477 flagged by the report's author for their lending activity were examined in more detail by a review of the records of mortgage documents pulled from the LTSA. These nine were chosen from the larger group of 477 at random. Of that group of nine, three were individuals or apparent family units, five were corporations, and one was a non-profit society. Available records indicated that, collectively, these nine persons and entities had made at least 590 mortgage loans in a 365-day period. The average number of mortgages registered by each within a 365-day period was 66. The median number was 69. In terms of actively held mortgages, these persons / entities collectively held 250 active mortgages, with a total value of \$203,739,420. The average number of active mortgages currently held by these entities was 28, and the average value of all mortgages currently held was \$25,467,427. The median number of active mortgages was 23.

Commission counsel wrote to each of the nine lenders set out above to advise them of the results of the analysis and to provide an opportunity for response. Of the six that did respond, three indicated that they were unaware that they were required to register as a mortgage broker, one disputed that it met the definition of a mortgage broker, and one furnished a letter from the Registrar advising the lender that it need not register so long as it conducted all lending through a registered mortgage broker and had no interaction with members of the public.<sup>94</sup>

One of the lenders, in a response to Commission counsel, described having contacted the Registrar (described in the email as "FICOM") after receiving the Commission's letter and reported being advised by an unnamed staff member that "if we [i.e., the lender] are using a mortgage broker then we don't need any licence to lend money." This highlights the apparent confusion over the *MBA's* application to private lenders – not just among registrants but within the regulator itself.<sup>95</sup>

Based on the findings of the study described above, and the evidence before me about private lending, I recommend that the Province enact legislation directed at private mortgage lenders providing for registration, oversight, and enforcement. This regime should be separate from the scheme applicable to those engaged in brokering loans. I suggest that this regulatory authority be located within BCSFA.

<sup>93</sup> Ibid, exhibit B, para 99: Note that some loans would have been double counted in cases where multiple lenders are involved.

<sup>94</sup> Ibid, exhibit B, para 101.

<sup>95</sup> Ibid, exhibit B, para 102: British Columbia advises that, at various points in time, the Registrar has taken the position that lenders with 10 or more mortgages who have used a registered mortgage broker to complete those transactions need not register themselves as mortgage brokers. This is still the case in some other provinces, such as Ontario. However, it is not the current practice in BC.

**Recommendation 29:** I recommend that the Province enact legislation directed at private mortgage lenders providing for registration, oversight, and enforcement. This regime should be separate from the scheme applicable to those engaged in brokering loans.

I am of the view that the Province should be able to determine who is engaged in private lending and should be registered with the regulator, and yet is not. To this end, having access to land title information, and particularly new mortgage registrations, is important.

**Recommendation 30:** I recommend that the Province ensure that the regulator of private mortgage lenders has access to land title data, including new mortgage registrations, in a form that allows it to identify private lenders that ought to be registered with the regulator but are not.

Upon discovering a person or entity engaged in private lending who is not registered, the regulator of private mortgage lenders will, I expect, promptly take action to bring the unregistered mortgage lender within the private lending registration regime as a registrant, or compel them to stop conducting business as a private mortgage lender.

In the meantime, BCFSa must be clear and consistent in its communications with industry as to the requirement to register. As I discussed in Chapter 16, the circumstances in which a person is required to register as a mortgage broker under the *MBA* are not clear. Internal consistency in messaging from BCFSa will no doubt be improved by a clearer expression of the requirement in the *MBA*.

Because a mortgage cannot be registered without going through LTSA, the registration process would be an opportune time to alert lenders and their agents as to the requirement to register. The regulator of private mortgage lenders should work with LTSA to increase lenders' awareness of their obligations. A simple notice of the circumstances under which a mortgage lender must register, attached to a Form B, to be completed by the lender, would accomplish this.

## Part 3: Paul Jin Debt Enforcement

The study discussed above provides some insight into the size and scope of the private lending industry in British Columbia. It is important to understand that not all private lending is associated with money laundering. There are many legitimate reasons for borrowers to seek funds from unregulated and unregistered private lenders. At the same time, the private lending industry can be exploited – by organized crime groups, fraudsters, and professional money laundering networks – to launder illicit funds.

An overview report on Paul Jin’s private lending activity<sup>96</sup> (which was filed as evidence in the Commission’s public hearings) illustrates the vulnerability of private lending to money laundering through the first lender typology identified above (lending proceeds of crime). It also exposes a number of gaps and vulnerabilities in the courts and land title system, which make them vulnerable to abuse.

In basic terms, the overview report reviews the court actions brought by Mr. Jin and his associates between January 2013 and March 2018 to recover funds that were lent to borrowers and not repaid. It also contains a list of mortgages registered by Mr. Jin in the Land Titles Office, to secure certain loans made to borrowers in the Lower Mainland.

While the amounts claimed on these documents are significant, they are likely a small percentage of the private lending activity carried out by Mr. Jin during this time frame.<sup>97</sup>

Table 17.1 provides a list of the court proceedings commenced in British Columbia Supreme Court by Mr. Jin involving private lending activity. In every case but one,<sup>98</sup> the plaintiff or petitioner was (or included) Mr. Jin or his spouse, and the defendants were all individuals (and one company), some of whom filed responses asserting that the loans were *not* related to real estate but were funds borrowed for casino gambling.

<sup>96</sup> Exhibit 1052 (previously marked as Exhibit K), Overview Report: Paul Jin Debt Enforcement Against BC Real Estate (May 13, 2021) [OR: Jin]. Under the commission’s Rules of Practice and Procedure, “overview reports” may be prepared by those at the commission, circulated to all participants with an opportunity for input, and then, once finalized, entered into evidence as exhibits during the hearings.

<sup>97</sup> A financial analysis conducted by the RCMP in connection with the E-Pirate investigation indicates that Mr. Jin received almost \$27 million from Silver International in the four and a half months between June 1, 2015, and October 15, 2015: Exhibit 663, Affidavit of Melvin Chizawsky, made on February 4, 2021 [Chizawsky Affidavit], para 100, and exhibit 53, p 24.

<sup>98</sup> Exhibit 1052, OR: Jin, Appendix 7, NOCC 142623: *Chunjun Xiang v Paul King Jin, Xiaoqi Wei, Jiexi Zhao* (April 4, 2014): the plaintiff was an individual and Mr. Jin was one of three defendants. This claim alleged that a friend of the plaintiff owed Mr. Jin a gambling debt, which Mr. Jin sought to enforce against the plaintiff’s property.

**Table 17.1: Court Proceedings Commenced in BC Supreme Court by Mr. Jin**

<b>Court File Number</b>	<b>Date Filed</b>	<b>Amount Claimed</b>	<b>CPL</b>
130346	January 16, 2013	\$500,000	Yes
136457	August 27, 2013 (amended April 17, 2015)	\$892,500	Yes
136760	October 10, 2013	\$500,000	Yes
137023	September 19, 2013	\$660,000	Yes
131403	November 29, 2013	\$750,000	Yes
140079	January 17, 2014	\$750,000 <sup>99</sup>	No
142623	April 4, 2014	\$70,000	n/a
146494	August 20, 2014	\$570,000	Yes
151858	March 5, 2015	\$300,000	Yes
152698	March 31, 2015	\$405,000	Yes
154010	May 15, 2015	\$250,000	Yes
154011	May 15, 2015	\$50,000	Yes
154354	May 27, 2015	\$300,000	Yes
154355	May 27, 2015 (amended May 5, 2017)	\$1 million	Yes
155331	June 29, 2015	n/a <sup>100</sup>	Yes
156710	August 17, 2015	\$2.3 million	Yes
164148	May 9, 2016	\$80,000	Yes
165528	June 16, 2016	\$2.68 million	No
168205	September 7, 2016	\$600,000	No <sup>101</sup>
168302	September 9, 2016	\$400,000	No
174286	May 5, 2017 (amended May 12, 2017)	\$200,000	Yes
184259	March 30, 2018	\$8 million	No

Source: Exhibit 1052, Overview Report: Paul Jin Debt Enforcement Against BC Real Estate, para 4.

Notes: Amounts claimed are exclusive of interest and costs. “CPL” means certificate of pending litigation, which a plaintiff may have put on the title of real property, to encumber title to the property until the litigation is resolved.

<sup>99</sup> Same debt as Exhibit 1052, OR: Jin, Appendix 5, *Petition for Foreclosure to the Court 131403: Paul King Jin v Daqing Wang and Xiao Ju Guan* (November 29, 2013) and Exhibit 1052, OR: Jin, Appendix 9, *NOCC 151858: Paul King Jin v Daqing Wang* (March 5, 2015).

<sup>100</sup> Unspecified damages and costs. This case is related to the \$1 million debt pursued in Exhibit 1052, OR: Jin, appendix 14, *NOCC 154355: Xiao Qi Wei v Hua Feng* (May 8, 2017).

<sup>101</sup> An injunction (charge CA6366019) was filed against the property on October 12, 2017, and a judgment (charge CA7178322) was registered against the property on November 7, 2018.

Table 17.2 contains a list of mortgages filed by Mr. Jin and his spouse which were identified through searches of the land titles registry for active or cancelled charges. In all but the last two mortgages, Mr. Jin or his spouse was recorded as the lender, and the borrower was an individual. The lenders on the last two mortgages were numbered companies, shown through corporate records<sup>102</sup> and in one case the evidence of a borrower<sup>103</sup> to be associated with Mr. Jin and family members.

**Table 17.2: Mortgages Filed by Mr. Jin and His Spouse**

<b>Charge Number</b>	<b>Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Term</b>
CA2985493	February 6, 2013	\$750,000	2.99%	On demand
CA3211764	July 2, 2013	\$30,000	40%	On demand
CA3978265	September 24, 2014	\$60,000	n/a	3 mo.
CA4327706	April 9, 2015	\$110,000	5%/mo.	1 mo.
CA4356217	April 24, 2015	\$1 million	12%	1 yr.
CA4412834	May 22, 2015	\$1.2 million	3.5%/mo.	3 mo.
CA5031739	March 8, 2016	\$8 million	15%	6 mo.
CA5986431	May 10, 2017	\$300,000	2%/mo.	2 mo.
CA6334674	September 28, 2017	\$125,000	4%/mo.	6 mo.
CA7262007	December 19, 2018	\$3 million	6%	1 yr.
CA7997305	January 23, 2020	\$400,000	24%	1 yr.

Source: Exhibit 1052, Overview Report: Paul Jin Debt Enforcement Against BC Real Estate, para 5.

While there is limited evidence before me concerning the provenance of the funds given to these individuals, and in particular, whether they were derived from profit-oriented criminal activity, the affidavit evidence filed in legal actions provide some insight into that issue. One of the best examples comes from the Affidavit #1 of Sepehr Motevalli, who described himself as a “close family friend” of Mr. Jin and claims to have witnessed a transaction in which Mr. Jin provided two bundles of cash to a customer. Importantly, the affidavit was commissioned by *Mr. Jin’s lawyer* and filed in support of Mr. Jin’s debt collection claim. Mr. Motevalli states:

Partway through the meeting, the plaintiff handed the defendant a piece of paper. The defendant signed the piece of paper and returned it to the plaintiff.

As I did not have an opportunity to observe the piece of paper closely, I do not know the content of the piece of paper.

<sup>102</sup> Exhibit 1052, OR: Jin, Appendix 32, *BC Company Summary for 1116909 B.C. LTD*; Appendix 33, *BC Company Summary for 1233543 B.C. LTD*.

<sup>103</sup> Exhibit 766, Affidavit of Jian Wei Liang, made on March 8, 2021.

Prior to the meeting, the plaintiff had kept a plastic grocery bag on the ground next to his chair.

After the defendant returned the piece of paper to the plaintiff, the plaintiff retrieved two bundles of bills from the plastic grocery bag.

The two bundles of cash appeared to consist of twenty-dollar Canadian bills.

Each bundle included five stacks of bills. More particularity [*sic*], each stack was bound together by a rubberband or rubberbands. Then, five stacks would in turn be bound together by a rubberband or rubberbands.

I believe that the two bundles of bills to be cash in the amount of 20,000 CAD, due to the way the bundles and stacks were put together. However, I did not have the opportunity to count the bundles of bills.

The plaintiff handed the two bundles of bills to the defendant.

...

Several days later, I was hanging out at the plaintiff's office again.

Once again, the defendant attended the plaintiff's office.

As before, the plaintiff gave a piece of paper to the defendant, and the defendant signed the piece of paper. After the defendant returned the piece of paper to the plaintiff, the plaintiff retrieved one bundle of bills (put together in the same way as described above) from a plastic grocery bag, and gave it to the defendant. Then, the defendant left.<sup>104</sup>

Mr. Jin's own evidence also suggests a significant portion of the loans he made to his customers were in cash. For example, an affidavit sworn by Mr. Jin in one action indicates that he gave the defendant a cash loan of \$200,000 on November 16, 2014, and that his wife subsequently provided the defendant with an additional \$205,000 in cash. On both occasions, Mr. Jin and his wife were able to provide the cash the same day that the request was made even though the first request was made on a Sunday and the second was made outside of regular banking hours.<sup>105</sup> These factors suggest that Mr. Jin had the cash on hand and that lending cash to his customers was a regular part of his business model.

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<sup>104</sup> Exhibit 1052, OR: Jin, Appendix 17, paras 11–23.

<sup>105</sup> Exhibit 1052, OR: Jin, Appendix 10(b), pp 2–3. It is also noteworthy that more than \$4 million bundled in the manner described by Mr. Motevalli was found in a safe owned or controlled by Mr. Jin when investigators executed a search warrant at his residence on October 15, 2015: Exhibit 663, Chizawsky Affidavit, paras 22–24.

When Mr. Jin was interviewed by the RCMP in connection with the E-Pirate investigation, he confirmed that he often used Silver International to move funds held as Chinese currency (RMB) in China to Canadian currency in Canada:

MC [Corporal Melvin Chizawsky]: Let me get this straight (clears throat) just so I have it in my head.

PJ [Paul Jin]: Yeah,

MC: Um money in China

PJ: Yeah,

MC: – is yours.

PJ: Yeah,

MC: And then instead of going to let's say the Bank of Nova Scotia

PJ: Yeah, yeah,

MC: and – or Calforex

PJ: Yeah.

MC: Silver International was doing the exact same thing

PJ: Yeah.

MC: and then you would uh, do you phone them up and say hey I'll be taking out a hundred thousand dollars

PJ: Yeah.

MC: Canadian from my Chinese account, can you convert it to me please from RMB into Canadian and then they do the math for you?

PJ: Yeah, yeah, yeah. Because they – they all received ... money ... already you know.

MC: Mmhm ...

PJ: after they give me the money you know.

MC: Yeah. So basically what you're doing is when – like what I'm hearing from you is you were just taking money from Silver International money that is already yours?

PJ: Yeah. Yeah. Yeah ...

MC: So you're not borrowing from them?

PJ: No not borrowing,

MC: They're not loaning money to you?

PJ: No, no, no.

...

MC: But that's your money that uh comes from your account

PJ: Yeah. –

MC: ... and all they did was covert it from RMB into Yeah, – Canadian dollars for you.

PJ: Yeah, yeah.

MC: And then you take that money and you do whatever you want with it?

PJ: Yeah.

MC: Okay. Now have you ever taken money there for them to deposit so they can go back into RMBs or?

PJ: No. No? They don't – they don't do that They don't, okay. They don't do that thing, only I give them some RMB ... money for – have some loan there right, loaning me money they want the cheque ... the cheque ... I give it to them, they give some cash.<sup>106</sup>

Mr. Jin also confirmed that he received the Canadian currency in cash, broke it down into smaller amounts, and provided it to his customers in small bags:

MC: Yeah. Now um our surveillance teams have you going from um Silver to Jones Road

PJ: Yeah.

MC: – and then shortly leaving Jones Road uh with small boutique bags that we know contain cash and then you would hand off the cash to a – a customer who would then go to the casino to

PJ: Yeah.

MC: – spend it any way he wants.

PJ: Yeah.

MC: Is – is that your sort of like methodology for uh distributing your money? Like – like I don't know how else to say it?

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106 Exhibit 663, Chizawsky Affidavit, exhibit 50, pp 50–53.

PJ: Yeah ... hard to say ... right.

MC: Yeah so you get money from Silver ... and you take it to Jones Road and then you break it down into smaller amounts for customers because that's what they're going to borrow from you. And then you take the – the money in – in small bags because it's convenient, and you then give it to the customer who's borrowing from you because you – you know that person, it's not like you're giving it to stranger.

PJ: No, no, no, all the time I know the people.

MC: And these people then they use the money for whatever reason. Yeah. Gambling is one reason, uh paying off debts is another reason. For whatever reason –

PJ: Yeah.<sup>107</sup>

A forensic accounting analysis conducted by Elise To in connection with that investigation confirms that Mr. Jin received almost \$27 million from Silver International in the four and a half months between June 1 and October 15, 2015.<sup>108</sup> Moreover, the police seized a batch of promissory notes recording more than \$26 million in loans when they executed search warrants at Mr. Jin's properties.<sup>109</sup>

I have previously concluded that most, if not all, of the cash being left at Silver International was derived from profit-oriented criminal activity such as drug trafficking (see Chapter 3). I have no trouble finding that a significant portion of that illicit cash was provided to Mr. Jin to supply his private lending activity.

While Mr. Jin was likely aware of the provenance of that illicit cash, I need not resolve that issue for the purpose of this Report. The important point is that illicit cash generated by profit-oriented criminal activity such as drug trafficking was being used to make private loans to high-stakes gamblers and other individuals who needed access to funds.

When payments were made on those loans, the illicit cash provided to those individuals was effectively substituted for legitimate funds transferred to the lender through traditional means, such as cheques and wire transfers.

Moreover, the existence of legal documentation such as a settlement agreement or a court order has the effect of “legitimizing” the funds that were repaid to Mr. Jin, thereby allowing him to claim that the funds were received for a legitimate purpose (i.e., satisfaction of a legal obligation).

While there is no evidence that Mr. Jin was involved in generating the illicit cash that was provided to his customers (that is, the initial crimes that generated the illicit

<sup>107</sup> Ibid, pp 63–64.

<sup>108</sup> Ibid, para 100, p 24.

<sup>109</sup> Exhibit 663, Chizawsky Affidavit, paras 76, 82, 85, 89.

cash), his private lending activity in effect completed the money laundering cycle by allowing the illicit cash “deposited” at Silver International by organized crime groups to be repurposed and reintroduced into the legitimate economy.

Another feature of Mr. Jin’s debt enforcement claims is that the Notice of Civil Claim and underlying loan documents often indicate that the purpose of the loan is to acquire or renovate real property. For example, an affidavit filed by the defendant in BC Securities Commission File No. 152698 indicates that he expressly advised Mr. Jin that he would be using the money for gambling purposes and not – as stated in the Notice of Civil Claim – for the purpose of renovating his home:

I met the Plaintiff at the Water Cube massage parlour [in Richmond] on November 16, 2014. I was introduced to the Plaintiff by an acquaintance, whom I had met at a casino. The acquaintance knew that I was seeking money with which to gamble. I knew that Mr. Jin was a loan shark and there would be high rates of interest when I borrowed money from him.

The Plaintiff provided me with \$200,000 cash on November 16, 2014. In response to paragraph 9 of the Affidavit, I received the money in cash; I did not sign a receipt, though he did take a copy of my identification. I never told Mr. Jin that the money was for household renovations, or anything similar to that. I never told the Plaintiff the money was for the purposes of renovation on our home. I never told the Plaintiff that I was acting as an agent for my ex-wife. I did not say that I would pay the proceeds of the loan from the sale of the residence. The Plaintiff knew that I was going to use the money for gambling purposes as I told him so.<sup>110</sup>

While the stated purpose of the loan may seem inconsequential, there is a legal and strategic advantage to pleading a connection to real property in civil proceedings. In such cases, the plaintiff can claim an interest in the property and file a certificate of pending litigation in the Land Titles Office. A certificate of pending litigation restrains and encumbers the owner’s ability to deal with real property. It hangs overhead and means, in lay terms, that the owner cannot be said to have clear title for the purpose of selling or borrowing against the property. If the civil claim is successful, the plaintiff may be able to obtain an order compelling the sale of the property. Moreover, a certificate of pending litigation can be extremely difficult to remove, which gives the plaintiff significant leverage in negotiating a favourable settlement with the borrower.

I pause to note that Mr. Jin was assisted in the filing of the actions and mortgages described here by legal professionals. At some point, he also learned of the utility of inserting a reference to the acquisition or improvement of real property in his promissory notes and claims. In Chapter 26, I comment on the role that professional gatekeepers such as lawyers play in some money laundering typologies, including

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<sup>110</sup> Exhibit 1052, OR: Jin, para 6; Appendix 10(d) (PDF pp 312–13), paras 4–5, and appendices 13(a), 15(b), 18(a), 19(a).

private lending. This is a concrete example of professionals being used to access the mechanisms of the courts and the land registry to further money laundering schemes. Lawyers are responsible for ensuring that they are not used as tools of money laundering, and for safeguarding the courts from such abuse. It is essential that they remain vigilant in circumstances where they are asked to enforce agreements or debts involving funds of uncertain provenance.<sup>111</sup>

After reviewing the pleadings and affidavits attached to the overview report as well as the evidence of Corporal Chizawsky concerning Mr. Jin's frequent presence at Lower Mainland casinos, I find it wholly implausible that Mr. Jin was lending money to his clients for the purpose of acquiring or renovating real property. While it may be that some of the funds were used for that purpose, I find that the predominant purpose of these loans was to allow high-stakes gamblers to make large cash buy-ins at Lower Mainland casinos and that Mr. Jin described the loans as relating to the acquisition or renovation of real property to obtain a strategic advantage in the litigation process.<sup>112</sup> It would be unsettling to many individuals to have their family home encumbered by a debt claim.

While the creation of a provincial regulator for private mortgage lending will help in addressing money laundering risks in the private lending industry, it is important to note that private lending activity can occur without a mortgage being filed against real property (as was the case for most of Mr. Jin's private lending activity) and it is essential that the dedicated provincial money laundering intelligence and investigation unit (recommended in Chapter 41 of this Report) develop ways of identifying that activity. One of the lessons that can be drawn from the overview report is that those involved in private lending activity can rely on the court system to enforce debt obligations that are not paid, and a review of court records may allow for the identification of individuals and groups involved in private lending activity.

There may also be specific instances in which private lenders take mortgage security or file a certificate of pending litigation against property within the province, which may allow for the effective identification of individuals and groups involved in private lending activity through LTSA filings, even where they are not required to register with the new provincial regulator.

I note, however, that the use of corporate vehicles to make loans to borrowers who are in need of capital can obscure the individual behind the transaction. For example, a

111 To this effect, lawyers should be mindful of the risk advisories issued by the Law Society of British Columbia and Federation of Law Societies of Canada, as set out in Chapter 26; Exhibit 191, Overview Report: Anti-Money Laundering Initiatives of the LSBC and FLSC, Appendix J, *Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing*, pp 8-9; Law Society of British Columbia, "Discipline Advisory - Private Lending" (April 2, 2019), online: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019/>.

112 In making these findings, I have not considered or otherwise relied on any information in Part 3 of the Jin overview report, which seeks to connect the borrowers and other defendants named in actions commenced by Mr. Jin to large cash transactions at Lower Mainland casinos. All of the findings made in this chapter are based on evidence available to Mr. Jin.

review of the mortgages set out in Table 17.2 (above) indicates that two mortgages were registered in the name of numbered companies that listed one of Mr. Jin’s adult children as a director. Because the mortgage was registered by the numbered company, it is not apparent on the face of the mortgage documents available from the land titles registry that Mr. Jin had any involvement with this loan. It is only through a review of records maintained by the corporate registry and evidence provided to the Commission that the connection to Mr. Jin becomes apparent.<sup>113</sup>

While my hope is that the provincial *Land Owner Transparency Act* will assist in identifying individuals like Mr. Jin who engage in private lending activity through the use of shell companies and nominee owners, it is essential that the dedicated provincial money laundering intelligence and investigation unit be aware of the potential for individuals like Mr. Jin to use corporate vehicles and nominee owners to engage in private lending activity in order to avoid scrutiny by law enforcement bodies and regulators.

I am also highly concerned about the ability of a private lender to make use of the court process to enforce loan agreements in which illicit funds are advanced to the borrower as part of a money laundering scheme. Such use of the legal process tends to undermine public confidence in the courts. I address this in the following section of this chapter.

## **Part 4: Further Recommendations Regarding Private Lending**

### **Money Laundering Vulnerabilities of Private Lenders**

I accept that the private lending secured by mortgages presents a risk of money laundering on both the borrower and lender sides of the transaction, as described in the section above, “Typologies: Money Laundering Through Mortgages.”

I identify the following vulnerabilities to money laundering based on the evidence and the discussion above:

- gaps in lenders’ obligations to make source-of-funds inquiries of investors and borrowers alike;
- gaps in entities currently required to make reports to FINTRAC;
- the ability to avoid (intentionally or otherwise) the requirement to register on the part of mortgage lender, and the consequent lack of regulatory oversight of any kind on a large number of private lenders;
- contradictory messaging from BCFSA employees to lenders as to the requirement to register;

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<sup>113</sup> See Exhibit 766, Affidavit of Jian Wei Liang, made on March 8, 2021, paras 5–15 for evidence that Mr. Jin was, in fact, involved with this transaction.

- an inability to conclusively determine, from LTSA filings, all of the owners of a registered mortgage charge;
- the ability to conceal personal mortgage lending by way of corporate vehicles;
- a lack of education / understanding within the industry as to the requirement to register;
- the ease with which a private lender can register a certificate of pending litigation against real property (which then encumbers title to the property); and
- the inability of the courts to refuse to enforce debts made with funds of suspicious origin, and to otherwise protect themselves from being used as tools of money laundering.

The recommendations made in this chapter are intended to address these identified vulnerabilities.

In light of the concerns arising with respect to potential abuse of the court system as a tool of money laundering, I recommend that the Province implement a mandatory source-of-funds declaration to be filed with the court in every claim for the recovery of a debt, such that no action in debt or petition in foreclosure can be filed (except by an exempted person or entity) in the absence of such a declaration. Consequently, no certificate of pending litigation will be permitted to be registered on title in respect of such a claim in the absence of showing a filed source-of-funds declaration.

**Recommendation 31:** I recommend that the Province implement a mandatory source-of-funds declaration to be filed with the court in every claim for the recovery of a debt, such that no action in debt or petition in foreclosure can be filed (except by an exempted person or entity) in the absence of such a declaration.

To complement this source-of-funds declaration for debt recovery actions in court, in my view the courts should be afforded the discretion to determine, on a case-by-case basis, when it is appropriate to decline to make an order. I recommend that the Province enact legislation authorizing the court, in its discretion, to refuse to grant the order(s) sought by the plaintiff in a debt action or foreclosure petition if it is not satisfied that the declaration is truthful and accurate, or if it concludes that the funds advanced by the lender were derived from criminal activity.

**Recommendation 32:** I recommend that the Province enact legislation authorizing the court, in its discretion, to refuse to grant the order(s) sought by the plaintiff in a debt action or foreclosure petition if it is not satisfied that the declaration is truthful and accurate, or if it concludes that the funds advanced by the lender were derived from criminal activity.

While I appreciate that these recommendations may raise concerns about expense and delay in civil proceedings, I tend to think that any added expense or court time required will, in fact, be relatively minimal and can be managed efficiently by the court. For most plaintiffs, the exercise should begin and end with filling out the declaration and filing it. I anticipate that the vast majority of plaintiffs who come to court seeking to enforce a debt will be equipped already with the information and documents that support their claim, and such documents and information will include the source of funds. If counsel or defendants seek to strategically use the requirement to make excessive discovery demands or to tie up the process, the courts are equipped to manage that.

I would add that the scope of this requirement could be curtailed by carving out exceptions for certain lenders such as federally regulated financial institutions, government agencies, and other entities that pose a low money laundering risk.

## **The Enduring Nature of the Private Lending Vulnerability**

As noted by Professors Jonathan Caulkins and Peter Reuter, the drug trade will continue to operate on a cash basis for the foreseeable future and will generate enormous amounts of proceeds of crime that need to be disposed of.<sup>114</sup> The laundering of the proceeds of crime through real estate is common throughout the world, but I see the British Columbia real estate market as particularly vulnerable, given the substantial rise in residential home values over the past decade.<sup>115</sup>

A rise in property value on paper does not translate into funds in the hands of the homeowner, unless the owner sells or borrows on the security of their home. For some homeowners with great theoretical wealth in the form of home equity, but insufficient income or domestic credentials to demonstrate an ability to service a loan from a traditional lender, a private loan from an individual operator will be tempting. For the lender, there is little perceived risk. History has shown real estate in the Lower Mainland of BC to be a relatively safe investment. So long as the lender is willing to invest in the legal costs associated with foreclosure, recovery is almost certainly assured. Some such lenders are simply investing their own legitimately earned funds into what they see as a secure investment. But others will see an opportunity to divest themselves of cumbersome and risky cash, and to convert that into something less

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114 Evidence of J. Caulkins and P. Reuter, Transcript, December 8, 2020, pp 14–16, 118–23.

115 Evidence of B. Ogmundson, Transcript, February 17, 2021, p 172.

conspicuous. Still others will see a business opportunity on both sides: bridging the gap between those holding vast amounts of suspect cash and wanting to get rid of it, and those with available home equity and a need for cash or money. So long as real estate values climb, creating equity in the hands of homeowners, and criminal organizations continue to accrue cash that needs to be disposed of, this will be a serious money laundering vulnerability in British Columbia.

In the example of Mr. Jin set out above, tens of millions of dollars, much of it loaned out in the form of cash, was transformed through the use of the legal process into more legitimate forms of wealth. A party seeking repayment of debt will most likely be repaid by traditional means: personal cheques, wire transfers, or cheques issued from the trust account of a law firm. The court may unintentionally end up playing a role in legitimizing such money: by making an order finding a defendant liable in debt, which can then be enforced through the court process, the court process is engaged to obtain payment (by traditional means) or to obtain an order compelling the sale of land.<sup>116</sup>

That the judicial system can be and likely is being used as an instrument of money laundering is profoundly disturbing. My recommendation – for the implementation of a source-of-funds declaration as a prerequisite to bringing certain types of claims – is directed at giving courts and participants in the judicial process a tool for preventing such abuse.

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<sup>116</sup> *Court Order Enforcement Act*, RSBC 1996, c 78, s 96.

## Chapter 18

# Data and Information Sharing in Real Estate

In this chapter, I consider how data and information are best used to address money laundering in real estate.

The real estate sector, perhaps more than any of the other sectors examined in the course of the Commission, produces an enormous amount of data. Some of this data is publicly accessible, but some is not. It has historically been more difficult for the public to access data in this area.

Things are not static. The real estate sector has recently been the focus of transparency measures introduced by the provincial government, most notably by way of the Land Owner Transparency Registry (LOTR). This registry contains information about beneficial owners – that is, the persons who actually hold an interest in land (not just the “owner on paper,” but the true owner). I discuss the LOTR below.

During the hearings, I heard evidence about what data is available and to whom, what data is missing but would be useful for anti-money laundering efforts, and efforts to use the large data sets created by the real estate industry to identify money laundering. Such information, of course, may be useful for both government and the private sector. I also heard from participants about privacy concerns relating to the collection and use of such data.

## Beneficial Ownership Issues in Real Estate

Commentators such as Transparency International and Transparency International Canada point out that money launderers are attracted to jurisdictions where they can find ways to disguise ownership.<sup>1</sup> One expert called the lack of beneficial ownership transparency the “most important single factor facilitating [money laundering in real estate] in the US.”<sup>2</sup> On this view, the lack of data collected by corporate and land registries (i.e. the collection of legal titleholder information but not information on beneficial owners) creates impediments to combatting money laundering. It impedes investigation by law enforcement, prevents real estate professionals from conducting due diligence, and obscures insight into the flow of funds into networks that are laundering money.<sup>3</sup> In sum, they say, the anonymity afforded by land and corporate registries “make[s] trafficking into real estate a very viable option for laundering significant sums.”<sup>4</sup>

## British Columbia Beneficial Ownership Measures

I begin my discussion of measures in this province with British Columbia’s best-known measure to provide transparency around the ownership of real estate in the province: the Land Owner Transparency Registry.

### Land Owner Transparency Registry

The British Columbia LOTR was created by the *Land Owner Transparency Act*, SBC 2019, c 23 (*LOTA*), enacted in May 2019. The Act came into force on November 30, 2020, some seven months after the pre-pandemic target date of April 30, 2020.

The purpose of the *LOTA* is to create a registry of indirect ownership of land. The Land Titles Registry records the legal owner (or lessor) of a property, but not the holder of the beneficial interest.<sup>5</sup> The beneficial owner could be the shareholder of a

- 1 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate & Response from Real Estate Industry, Appendix 11, Transparency International Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts* (Transparency International, 2016), also online: <https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/5dfb8a955179d73d7b758a98/1576766126189/no-reason-to-hide.pdf>; Louise Shelley, “Money Laundering into Real Estate” in Michael Miklaucic and Jacqueline Brewer (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization* (Washington, DC: National Defense University Press, 2013), p 141; Transparency International, *Doors Wide Open: Corruption and Real Estate in Four Key Markets* (Transparency International, 2017), online: [https://images.transparencycdn.org/images/2017\\_DoorsWideOpen\\_EN.pdf](https://images.transparencycdn.org/images/2017_DoorsWideOpen_EN.pdf).
- 2 Exhibit 1041, Affidavit #3 of Adam Ross affirmed May 19, 2021, exhibit B, “Assessing the Impacts Of Beneficial Ownership Disclosure on Residential Property Holdings in BC” (May 13, 2021) [PTT Study], p 5, citing Terrorism, Transnational Crime and Corruption Center at the Schar School of Policy and Government of George Mason University, “Money Laundering in Real Estate” conference report (March 25, 2018), p 1.
- 3 Ibid.
- 4 L. Shelley, “Money Laundering into Real Estate,” p 141. See also, Mohammed Ahmad Naheem, “Money Laundering and Illicit Flows from China – The Real Estate Problem” (2017) 20(1) *Journal of Money Laundering Control*, pp 21–22; Fabian Maximilian Johannes Teichmann “Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland” (2018) 21 (3) *Journal of Money Laundering Control*, p 327.
- 5 Evidence of C. Dawkins, Transcript, June 12, 2020, p 70.

corporation, the beneficiary of a trust, or a partner in a partnership that owns land. The beneficial owner in some instances may be the person behind a nominee – a nominee being a “stand-in” who appears on title in place of the real owner.

The *LOTA* creates a publicly accessible beneficial ownership registry, the LOTR. The Act requires corporations, trustees, and partners to identify the individuals who have (a) a beneficial interest of 10 percent or more in land;<sup>6</sup> (b) a significant interest in a land owning corporation; or (c) an interest in land via a partnership. The *LOTA* requires this disclosure of beneficial ownership for all land in British Columbia, unless the reporting body is specifically excluded.

There are two types of filings that are made with the LOTR: (a) a transparency declaration, which is filed by anyone making an application to register an interest in land; and (b) a transparency report, which is required to be filed by “reporting bodies.”

A **transparency declaration** is filed by a person seeking to register an interest in land as defined by the *LOTA*, for example a transfer of ownership. It requires the transferee (that is, the person to whom the transfer is made) to declare whether they are a reporting body as defined in the *LOTA*.<sup>7</sup> In a simplified way, the requirement is that a corporation, trustee, or partner must identify themselves accordingly when acquiring real property. The Registrar of Land Titles must refuse to accept an application to register an interest in land if the transferee does not submit the transparency declaration with the application.<sup>8</sup> It used to be that a company could acquire title, and thus own real estate, without identifying who actually owns and controls that company. The LOTR puts an end to that, and mandates that such a company (or trust or partnership) properly identify itself, thus revealing the “true” owner of the land.

A **transparency report** is completed and filed by a reporting body. A transparency report must be submitted when a reporting body seeks to register an interest in land (s 12(1)), and by pre-existing owners before a prescribed date (now November 30, 2022)<sup>9</sup> (s 15(1)). Transparency reports are also required to be filed when there is a change in interest holders, for example, a change in the composition of shareholders holding or controlling over 10 percent of the issued shares of a corporation (s 16(1)).

A “reporting body” is defined in the *LOTA*; it includes a corporation, trustee of a trust, and a partner of a partnership that holds an interest in land in British Columbia.<sup>10</sup>

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6 Exhibit 756, LOTR Policy Presentation, p 7.

7 *LOTA*, ss 1, 10.

8 *Ibid*, s 11.

9 *Land Owner Transparency Regulation*, BC Reg 250/2020, s 19.

10 *LOTA*, s 1.

An “interest in land” is defined in the Act as any of:

- a) an estate in fee simple [what most people consider “owning” land];
- b) a life estate in land;
- c) a right to occupy land under a lease that has a term of more than 10 years;
- d) a right under and agreement for sale to
  - i) occupy land, or
  - ii) require the transfer of an estate in fee simple;
- e) A prescribed estate, right or interest[.]<sup>11</sup>

Other interests in land can be made registrable by way of regulation. One interest in land notably *absent* from the definition is a mortgage.

A transparency report must disclose the following information about a reporting body’s “interest holders”: primary identification information;<sup>12</sup> date of birth; last known address; social insurance number, if any; any individual tax number assigned by the Canada Revenue Agency; whether the person is resident in Canada for the purposes of the *Income Tax Act*;<sup>13</sup> and a description of how the person is an interest holder.<sup>14</sup> The transparency report does as its name suggests: it reports in a transparent way who really owns the real estate. While the purchaser may have been Company X (or Trust X, Nominee X, etc.), by way of the transparency report, one can ascertain that the real owner is John Doe, with a particular date of birth, address, and the like.

There are different definitions for who qualifies as an “interest holder,” depending on the entity involved. For corporations, “interest holders” are those individuals who own or control, directly or indirectly, 10 percent or more of the issued shares or voting rights for the company, or individuals who have the ability to appoint or remove a majority of the company’s directors.<sup>15</sup> For trusts, persons who are “interest holder” are persons with a beneficial interest in the land, and those who have the power to revoke the trust and receive the interest in land (including if the person is a corporate interest holder in a corporation that has these powers). As for partnerships, the term “interest holder” means a partner in the partnership, or a corporate interest holder of a corporation that is a partner.<sup>16</sup>

<sup>11</sup> Ibid.

<sup>12</sup> Primary identification information is defined in sections 7 (corporations), 8 (individuals), and 9 (partnerships) of the *LOTA*.

<sup>13</sup> *Income Tax Act*, RSC 1985, c 1 (5th Supp.), s 19.

<sup>14</sup> *LOTA*, s 19.

<sup>15</sup> Ibid, s 3.

<sup>16</sup> Ibid, s 4.

Failure to file a transparency report or providing false or misleading information in declaration or report can result in a financial penalty of \$25,000 for an individual, \$50,000 for a corporation, or 5 percent of the assessed value of a property, whichever is greater.<sup>17</sup>

The LOTR has been operational since November 30, 2020. Transparency disclosures are now required on the registration of an interest in land. Transparency reports must also be made by pre-existing land owners.<sup>18</sup> Initially, pre-existing interest holders were given one year, until November 30, 2021, to make their transparency reports. On November 2, 2021, the Ministry of Finance extended that deadline to November 30, 2022, citing feedback from legal professionals that more time was needed to gather information about ownership and to file with the registry.<sup>19</sup>

As of February 22, 2022, LOTR had received 263,373 transparency declarations and 40,967 transparency reports.<sup>20</sup>

The registry became searchable on April 30, 2021. While the LOTR is accessible to the public, not all of the information recorded is publicly available. For a fee, members of the public can search a limited subset of prescribed primary identification information. Members of the public are able to search for information about associated reporting bodies, interest holders, and settlors of trusts.<sup>21</sup>

Certain specified entities are entitled to inspect records and reported information. There are five classes of entities that are entitled to access *all* of the information in the registry searching based on the specific property (the parcel identifier). The five who can have this comprehensive access are:

1. the enforcement officer (a position created by *LOTA*);
2. Ministry of Finance employees;
3. taxation authority employees;
4. law enforcement officers; and
5. regulators, including the BC Financial Services Authority (BCFSA), the BC Securities Commission, FINTRAC, and the Law Society of BC.<sup>22</sup>

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17 Ibid, s 61.

18 Ibid, s 15.

19 Ministry of Finance Information Bulletin, “Land Owner Transparency Registry Filing Deadline Extended” (November 2, 2021), online: <https://news.gov.bc.ca/releases/2021FIN0057-002082>; *Land Owner Transparency Regulation*, s 19.

20 This figure was provided by the Land Owner Transparency Registry Services.

21 *LOTA*, s 30(2), s 35.

22 *LOTA*, ss 28, 30(1), 31–34.

As of February 22, 2022, 2,835 searches of the public registry had been made. The administrator of the LOTR provided the Commission with the following breakdown of searching parties (meaning, who did the searches):

**Table 18.1: Searches of Information Contained in Transparency Records under Section 30(2))**

<b>Parties Conducting a Search</b>	<b># of Searches</b>
Members of the General Public	2,695
Ministry of Finance	18
Canada Revenue Agency	58
BC Assessment Authority	15
BC Securities Commission	1
BC Financial Services Authority	3
Society of Notaries Public of British Columbia	29
Ministry of Attorney General	10
Ministry of Forests, Lands, Natural Resource Operations and Rural Development	2
Legislative Library of BC	4
<b>Total</b>	<b>2,835</b>

*Source:* Land Owner Transparency Registry

As can be seen, it is largely members of the public, which includes the media, who have accessed the public registry since April 2020.

The LOTR administrator also provided the Commission information as to the *searches* of the transparency records that can be done for certain entities (those that have permission to obtain the records). These are known as section 30(1) searches of transparency records; that provision of the *LOTA* provides that transparency records held in the LOTR database may be made available for inspection and search to the regulators, law enforcement, and tax officers listed earlier. This is the breakdown of searches conducted:

**Table 18.2: Searches of Transparency Records under Section 30(1)**

<b>Parties Conducting a Search</b>	<b># of Searches</b>
BC Securities Commission	4
BC Financial Services Authority	3
Financial Transactions and Reports Analysis Centre of Canada	0
Law Society of British Columbia	0
Society of Notaries Public of British Columbia	9
Director of Civil Forfeiture	1
Taxing Authority	0
Law Enforcement	4
Enforcement Officer and Ministry Officials	351,923

*Source:* Land Owner Transparency Registry

There has been relatively little use of the section 30(1) search power by regulators and law enforcement who might be expected to find this information useful. This could be due to a number of factors, including the fact that the registry is still relatively new. It could also be because, to date, only a small number of historical transparency reports have been filed. As experience with the LOTR is developed, it will be insightful to learn whether enforcement and regulatory bodies begin to use the information available through section 30(1) to improve their own investigations and processes. Later in this chapter, I recommend that there be an assessment of effectiveness of the registry, once there is more experience with the LOTR. During that review and assessment – which I recommend be handled by the new AML Commissioner – the commissioner should engage with the entities that fall under section 30(1). This will enable the commissioner to determine whether these entities are finding the LOTR useful for law enforcement or regulatory functions, and to learn if information or access might be improved.

The search fee for the LOTR is currently set at \$5 per search.<sup>23</sup> I pause to note a distinction between information on a database of corporations and other legal persons, and a registry of owners of real estate. There is a compelling rationale for ensuring that a beneficial ownership transparency registry for *companies* has no search fee. Individuals who contract with or otherwise deal with a company should be able to ascertain the identity of those individuals who own and control it, and they should not have to pay to access this information (as I address in Chapter 24). On the other hand, there is a strong tradition of requiring the payment of a fee to access records about ownership of property, and the business model of the Land Title and Survey Authority (LTSA)<sup>24</sup> relies on such fees to operate.<sup>25</sup> Insisting on free access to the LOTR would, based on the evidence available to me, give rise to financial consequences to LTSA. I therefore have not recommended free access generally, although it is open to government to take that approach if satisfied it is appropriate.

The payment of fees for LOTR access, however, does give rise to a difficulty for law enforcement agencies. The Ministry of Finance does not pay to access this information. But other entities, including law enforcement agencies, are subject to a fee for searching. I heard evidence that this fee-for-search structure is a concern for law enforcement.<sup>26</sup> Beneficial ownership information would be useful to law enforcement conducting investigations into money laundering, and I therefore recommend that the Province remove, by way of amendment to the *LOTA* and/or its Regulations, the fee requirement for law enforcement and regulators with an anti-money laundering mandate. The Province may also consider removing the fee requirement for others such as academics and non-profits.

**Recommendation 33:** I recommend that the Province remove, by way of amendment to the *Land Owner Transparency Act* and/or its Regulations, the fee requirement for law enforcement and regulators with an anti-money laundering mandate who wish to access the Land Owner Transparency Registry.

Enforcement of the *LOTA* is a responsibility that falls outside of the land titles system. The Registrar of Land Titles receives the transparency reports and declarations and accompanying fees, and the administrator of the LOTR maintains the registry, but neither has legislative authority to ensure compliance with the Act.<sup>27</sup> The *LOTA*

23 Exhibit 756, LOTR Policy Presentation, slide 18.

24 Evidence of C. MacDonald, Transcript, March 12, 2021, p 139. The Land Title and Survey Authority is discussed later in this chapter. The LTSA was established in 2005, and is a statutory corporation, independent from government. It is responsible for managing the land title and survey systems of British Columbia. Its mandate and responsibilities are set out in the *Land Title and Survey Authority Act*, SBC 2004, c 66, and its operating agreement with the Province.

25 Evidence of C. MacDonald, Transcript, March 12, 2021, pp 139–40.

26 Evidence of R. Danakody, Transcript, March 12, 2021, p 190.

27 *LOTA*, s 47; Exhibit 756, LOTR Policy Presentation, slide 11.

creates an enforcement officer, who is to be appointed by the minister of finance.<sup>28</sup> I am informed that the head of the property taxation branch within the revenue division of the Ministry of Finance has been appointed to this role.<sup>29</sup> The enforcement officer conducts inspections, can require information to be provided to the enforcement division, and can use the tools available to the enforcement officer under the *LOTA* to compel compliance, including the imposition of penalties. The enforcement officer is also responsible for providing education and awareness about *LOTA*.<sup>30</sup>

While the *LOTR* is relatively new, both the Act and the registry it creates have already been the subject of criticism. In a report to provincial and federal ministers of finance, the federal-provincial ad hoc working group on real estate suggested that British Columbia consider:<sup>31</sup>

- further measures to improve the accuracy of the *LOTA* registry, such as requiring the collection of tax numbers from foreign entities that do not have a Canadian tax number;
- monitoring the privacy concerns that emerge from the creation of the public-facing *LOTR*;
- facilitating the sharing of *LOTA* data with other agencies to allow for data analytics; and
- working with *LTSA* after the launch of the registry to compile a list of lessons learned in operationalization of the registry.

Implementation of the first suggestion would be subject to the outcomes of the research I will recommend below, but I encourage the Ministry of Finance to take up the last three recommendations, if it has not already done so.

Transparency International, Canadians for Tax Fairness, and Publish What You Pay Canada (together, the Transparency Coalition), a participant in the Inquiry, articulated the following criticisms of the *LOTR* in their closing submissions:

- There is a lack of verification and validation of information, with no requirement that the *LOTR*, or any independent third party, verify the information filed. The integrity of the registry depends on the assertion of veracity made by the reporting bodies and their representatives (such as the lawyers or notaries who file the declarations and reports). There is no requirement for reporting entities to provide supporting documentation such as copies of passports. Information is only verified by way of random checks by the enforcement officer.

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28 Ibid, s 50.

29 Evidence of J. Primeau, Transcript, March 8, 2021, p 39.

30 Evidence of R. Danakody, Transcript, March 12, 2021, pp 203–5.

31 Exhibit 706, Final Report to Finance Ministers (January 2021), p 5.

- There are inadequate penalties for the intentional submission of false information. The Transparency Coalition advocates for the availability of prison terms as an enforcement tool.
- Searches are not free, which will limit the use and effectiveness of the LOTR.
- There are no clear means for whistle-blowers to report false or inaccurate filings.
- There is no unique identifier for individuals, which creates problems for common names that cannot be distinguished.
- There is limited searchability of the LOTR by members of the public.<sup>32</sup>

On the other side, the British Columbia Civil Liberties Association (BCCLA) expressed reservations about the privacy implications of beneficial ownership registries generally, and the lack of evidence around their effectiveness. BCCLA argues that the LOTR should be accessible only to law enforcement, tax authorities, and perhaps other regulators. It says this approach strikes a more appropriate balance between transparency and privacy. BCCLA also expressed a concern that open access to beneficial ownership information could create risks of fraud, identity theft, and harassment.<sup>33</sup>

I note that the *LOTA* already contains provisions allowing an individual submitting a report to apply to the LOTR administrator to omit their information from a public search, on the grounds that the individual has a reasonable belief there is a threat of harm or safety to themselves or a member of their household.<sup>34</sup> There is, as a result, already a set of exemptions that prevent public access to personal information when appropriate and necessary. I am not persuaded that there is a compelling justification for providing greater privacy protections to individuals who own real estate through a company or similar vehicle, as compared to the vast majority of British Columbians property owners, who register their property in their own name.

With respect to effectiveness, BCCLA references Professor Jason Sharman's report to the Commission, in which he states:

Yet despite the current popularity of beneficial ownership registries there is a striking lack of evidence that they do actually help in deterring, detecting or combatting money laundering and related financial crime. The UK government has been the main champion of this policy on the international stage, but it is hard to see either any general decline in financial crime, or even any particular case that has succeeded because of this new level of transparency.<sup>35</sup>

<sup>32</sup> Closing submissions, Transparency Coalition, July 20, 2021, paras 100, 107–12.

<sup>33</sup> Closing submissions, BCCLA, July 8, 2021, paras 76–88.

<sup>34</sup> *LOTA*, s 40(1).

<sup>35</sup> Exhibit 959, Jason Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 10; Closing submissions, BCCLA, para 77.

Professor Sharman commented on the effectiveness of beneficial ownership registries inasmuch as they contain low-quality information. Interestingly, Professor Sharman's criticism relates to his conclusion of ineffectiveness, but from a different perspective (that of proponents of beneficial ownership registries). The Transparency Coalition likewise has concerns about low-quality information.<sup>36</sup> In his report, Professor Sharman writes:

The danger with registries is that they contain a large volume of low-quality information. In particular, the information is unverified, and there is almost no enforcement against false ownership declarations. In Canada, there are something like 2.6 million companies; who, specifically, will verify the information they lodge on beneficial ownership, and how will this requirement be enforced?<sup>37</sup>

In his testimony before the Commission, Professor Sharman repeated his view that beneficial ownership information relating to real property should be available for both law enforcement and non-law enforcement purposes, and that the creation of LOTR is positive. He warned, however, against passing laws that will not be effectively enforced, stating “legislation is good, but enforcement is really the name of the game.”<sup>38</sup>

Both the Transparency Coalition and BCCLA voice valid concerns. The LOTR is in a nascent stage, and there is reason for optimism that the registry will produce positive changes. First, an abundance of specific information about the actual beneficial owners of real estate is already available, with significantly more being added (the historical information). This should prove useful and informative for regulators and law enforcement, as well as journalists and policy organizations working in the area. It is not speculative to say that the ability to access this type of information will make a difference in combatting money laundering. Second, the very existence of the LOTR will have some deterrent effect on sophisticated jurisdiction-shopping money launderers who want to maximize secrecy over their ownership of property. In my view, they will be less likely to purchase real estate in a jurisdiction that requires them to divulge their name and penalizes them for failure to do so. In saying this, I accept Professor Sharman's point – echoed by the Transparency Coalition – that without verification and enforcement against anyone providing inaccurate information to the LOTR, the effect of the measure will be muted.

I hope it is the case that my optimism proves to be well placed. It is important, whether one adopts an optimistic or cynical view of the LOTR, that research and analysis are conducted on the compliance with, and effectiveness of, the system.

In Chapter 8, I recommend the creation of a new office of the AML Commissioner. This office will be optimally placed to determine the effectiveness and impact of the LOTR, once it is populated with historical data, and to report to the Province on its

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36 Closing submissions, Transparency Coalition, paras 100–5.

37 Exhibit 959, Jason Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 10.

38 Evidence of J. Sharman, Transcript, May 6, 2021, pp 31–32.

conclusions (and if appropriate to the public as well). In my view, the following steps would evaluate the effectiveness and the impact of the LOTR:

- engaging and consulting with the regulatory and enforcement bodies permitted to perform *Land Owner Transparency Act* section 30(1) searches to determine whether they have found LOTR information valuable for their investigations and anti-money laundering efforts;
- analyzing the extent to which reporting bodies:
  - are complying with the requirement to file;
  - are complete and accurate in their filings;
- researching the extent and result of any enforcement measures taken;
- determining what impact, if any, the *LOTA* has had on the legal ownership of real property by corporations, trusts (including nominees), and partnerships, as opposed to natural persons (a point I return to below); and
- drawing on insights and experience from other jurisdictions around the world.

I therefore conclude that, once there is more experience with the LOTR, there should be an assessment of the effectiveness of the registry. I recommend that, within three years of the Land Owner Transparency Registry being populated with historical data, the AML Commissioner report to the Province with any recommendations for improvement to the registry. These recommendations should be informed by the AML Commissioner's study of the effectiveness of the registry and consultation with entities that are permitted to perform section 30(1) *Land Owner Transparency Act* searches.

**Recommendation 34:** I recommend that, within three years of the Land Owner Transparency Registry being populated with historical data, the AML Commissioner report to the Province with any recommendations for improvement to the registry. These recommendations should be informed by the AML Commissioner's study of the effectiveness of the registry and consultation with entities that are permitted to perform section 30(1) *Land Owner Transparency Act* searches.

This assessment of the LOTR by the AML Commissioner should enable the Province to make any improvements required to ensure that information in the registry is accurate and of optimal utility to regulators and enforcement agencies. Such analysis may provide insights of broader relevance to beneficial ownership transparency registries, a topic I discuss in relation to legal persons (such as companies) in Chapter 24.

## **Collection of Beneficial Ownership Information Pursuant to the Property Transfer Tax Act**

In British Columbia, a person, on gaining or purchasing an interest in property, must file a property transfer tax return and, in most cases, pay property transfer tax. Starting in 2016, prior to the enactment of *LOTA*, the provincial government began using the property transfer tax return as an opportunity to collect information about the beneficial purchasers of real property.

The first set of changes to the *Property Transfer Tax Act*, RSBC 1996, c 378, implemented in June 2016, required the collection of data on the citizenship of transferees, as well as the identity and citizenship of the directors of corporate transferees and settlors and beneficiaries of bare trusts. In September 2018, further changes were made requiring corporate transferees to identify beneficial owners with ownership or controlling interests of 25 percent or more, and requiring trustees to identify the settlors and beneficiaries of their trusts. Transferees holding a property on behalf of a partnership are also required to disclose that fact.<sup>39</sup>

The inspiration for the study was similar work performed by two academics, Sean Hundtofte and Ville Rantala, assessing the impact of orders by FinCEN in the United States that required the collection and disclosure of beneficial ownership information in certain circumstances.<sup>40</sup> The FinCEN orders, and the study by Professors Hundtofte and Rantala, are described briefly below.

## **United States Experience with Beneficial Ownership Disclosure**

A brief review of the United States' use of geographic targeting orders is required before turning to the work of Hundtofte and Rantala.

A geographic targeting order (GTO) is, as the name suggests, a measure that focuses on a particular geographic area. A GTO allows FinCEN, the American financial intelligence unit, to direct entities and businesses in a certain geographic area to collect and report information to FinCEN.<sup>41</sup> GTOs can be issued for a six-month period and renewed if needed.<sup>42</sup>

In 2016, FinCEN issued GTOs that required title insurance companies to collect and report information regarding the beneficial ownership of companies that purchased residential real estate.<sup>43</sup> (Unlike in Canada, in the United States, real estate agents are not

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39 Exhibit 1041, exhibit B, PTT Study, pp 24–25.

40 C. Sean Hundtofte and Ville Rantala, “Anonymous Capital Flows and U.S. Housing Markets” (University of Miami Business School Research Paper No. 18-3, 2018).

41 Evidence of S. Brooker, Transcript, May 11, 2021, p 53; See 31 USC § 5326(a); 31 CFR§ 1010.370.

42 Exhibit 973, Stephanie Brooker, *The Role of FinCEN, the US Financial Intelligence Unit, in the US Anti-Money Laundering Regime and Overview of the US Anti-Money Laundering Structure and Authorities* [Brooker Report], pp 6–7.

43 S. Hundtofte and V. Rantala, “Anonymous Capital Flows and U.S. Housing Markets,” p 8.

subject to due diligence and suspicious activity reporting.<sup>44</sup>) FinCEN GTOs require title insurance companies, within 30 days of closing, to report to FinCEN any non-financed residential real estate sales in a number of major US counties, when certain criteria are met: (a) the buyer is not a real person but a legal entity (other than a US public company); (b) the purchase is for \$300,000 or more; and (c) the purchase is made in part (or entirely) with currency, money instruments, wire transfers, and/or virtual currency.<sup>45</sup> The reports were required to include beneficial ownership information at a “25% or more” threshold for the purchasing legal entity, and the title insurance companies were required to verify the identity of the beneficial owners and their representatives using documentary means.<sup>46</sup>

Initially, on January 13, 2016, FinCEN issued GTOs that applied to Manhattan and Miami-Dade County.<sup>47</sup> On July 27, 2016, FinCEN expanded the order by issuing GTOs to 12 additional counties in California, Florida, and Texas.<sup>48</sup> These temporary orders have been continually renewed and expanded to different cities.<sup>49</sup>

The GTOs were responsive to FinCEN’s perception that the purchase of high-end real estate in certain cities were being used to launder proceeds of criminal activity from around the world.<sup>50</sup> Professors Hundtofte and Rantala describe the ability to make all-cash purchases of residential real estate by using a limited liability company (LLC) as a loophole in US anti-money laundering regulations.<sup>51</sup> By using an LLC, all-cash (unfinanced) purchasers of real estate could avoid triggering the banking system’s “know your customer” requirements, and could avoid identifying themselves to law enforcement authorities.<sup>52</sup>

FinCEN has stated that “GTOs have provided FinCEN with valuable insight into the ways that illicit actors move money in the US residential real estate market, and help us better understand how actors in markets with relatively fewer anti-money laundering protections respond to new reporting requirements.”<sup>53</sup> As an indication of the usefulness of such reports in identifying potentially suspicious transactions, FinCEN reported in May 2017 that 30 percent of reports made pursuant to the GTOs involved either a beneficial owner or purchaser representative that had been the subject of suspicious activity reports.<sup>54</sup>

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44 Brooker Report, p 26.

45 Ibid, pp 26–27.

46 Ibid, p 27.

47 Ibid, p 7.

48 Ibid.

49 Evidence of S. Brooker, Transcript, May 11, 2021, pp 53–54.

50 Ibid; Exhibit 973, Brooker Report, p 26.

51 S. Hundtofte and V. Rantala, “Anonymous Capital Flows and U.S. Housing Markets,” pp 2–3.

52 Ibid. Note that “all-cash” does not mean the physical transfer of cash, but rather that the real estate was purchased without a mortgage or other bank financing. Obtaining a mortgage or other new financing would trigger US banks’ “know your customer” requirements, putting those purchasers outside of this loophole: S. Hundtofte and V. Rantala, “Anonymous Capital Flows and U.S. Housing Markets,” p 9; speech of Jamal El-Hindi, deputy director of FinCEN, at the Institute of International Bankers Annual Anti-Money Laundering Seminar, May 16, 2016, online: <https://www.fincen.gov/news/speeches/jamal-el-hindi-deputy-director-financial-crimes-enforcement-network>.

53 Exhibit 973, Brooker Report, p 27.

54 Ibid, p 27.

## Evaluation of the Effectiveness of American GTOs

In an attempt to better understand the influence of anonymity (particularly the use of shell companies) in proceeds of crime entering real estate, Professors Hundtofte and Rantala examined the rate of all-cash purchases of real estate – both before and after the introduction of the GTOs. They found that all-cash purchases by corporate entities comprised 10 percent of the dollar volume of housing purchases prior to the GTOs.<sup>55</sup> This figure *fell by 70 percent* upon the introduction of a GTO.<sup>56</sup> The authors concluded that the availability of anonymity was a key incentive for all-cash purchases of real estate by LLCs, suggesting that these LLCs were being used as shell corporations: “The evidence on the whole suggests that anonymity-preferring buyers made up the majority of corporate cash purchases in the US prior to the policy change.”<sup>57</sup>

Professors Hundtofte and Rantala also found declines in the luxury home markets in places where the GTO had been implemented; such declines were *not* observed in comparable jurisdictions in which no GTO applied.<sup>58</sup> After the GTOs were introduced, the prices of high-end houses in targeted counties dropped by 4.2 percent more than prices in other counties.<sup>59</sup>

The results of this study suggest that some buyers in the targeted US jurisdictions were, in fact, using corporate structures for anonymity purposes, and that the implementation of beneficial ownership disclosure requirements has a negative impact on the use of such structures for the purchase of real estate. Removing a tool for obscuring beneficial ownership had the effect of reducing the number of people using the tool, and it reduced the demand for luxury property in those markets. In other words, the GTO had an impact.

## The Impact of Beneficial Ownership Disclosure in British Columbia

Returning to this province, the study by Adam Ross, Dr. Tsur Somerville, and Dr. Jake Wetzel sought to evaluate whether a similar impact on corporate ownership could be measured following the implementation of disclosure requirements through British Columbia’s property transfer tax (or PTT) return.<sup>60</sup>

The implementation of disclosure requirements through the property transfer tax return created an opportunity to measure their impact on rates of corporate ownership.

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55 Ibid, p 18.

56 Ibid.

57 Ibid, p 19.

58 Ibid, pp 5–6 and 20–21.

59 Ibid, p 20. The authors noted that “even a drop of 4–5% indicates that billions of dollars of market value is wiped out in the GTO counties, which include many of the largest cities in the U.S.”

60 Exhibit 1041, exhibit B, PTT Study.

To this end, the Commission retained Ross, Somerville, and Wetzel to answer the following questions:

- How has the introduction of beneficial ownership disclosure for BC property transactions impacted the ways in which people own real estate?
- Specifically, has the monitoring of identity led to a decline in property ownership through legal entities?<sup>61</sup>

It is worth noting that at the time the study was commissioned, the LOTR was not yet operational. As outlined earlier in this chapter, I recommend that the new AML Commissioner should, within three years of the LOTR being populated with historical data, study its effectiveness. Because of the ambiguous results (as will be seen) of the BC study performed for the Commission, I recommend above that, in the course of this assessment, the AML Commissioner study and report on the impact of the LOTR on the ownership of real property by non-natural persons.

The specific question addressed by the authors of the PTT Study was “whether the introduction of enhanced ownership reporting and registration in 2016 and in 2018 affected the likelihood that a newly purchased property had at least one owner that was a corporation.”<sup>62</sup> The study relied on LTSA title information, BC Assessment roll data, and data collected by the Ministry of Finance through property transfer tax returns. Because of gaps in available data for commercial property transactions, the study focused on residential property.<sup>63</sup> It focused on holdings by corporations because of the difficulty in identifying, through land titles data, bare trusts (i.e., nominee owners) and property held for the benefit of partnerships, making a “before and after” comparison of holdings by such entities impossible.<sup>64</sup>

The study targeted changes to corporate disclosure to the property transfer tax return occurring at two points in time: June 2016 and September 2018. As mentioned above, in June 2016, corporate transferees (purchasers) were required to report the identity and citizenship of their directors. In September 2018, corporate transferees were required to identify beneficial owners with 25 percent or more equity interest.<sup>65</sup>

While the Hundtofte and Rantala study showed a clear response in the market to the implementation of the geographic targeting orders by FinCEN, there was no such clear response in the BC market following the implementation of beneficial ownership disclosure requirements through the property transfer tax.<sup>66</sup> In the year after the implementation of the 2016 changes, LTSA data indicated that the probability that a

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61 Ibid, p 6.

62 Exhibit 1041, exhibit B, PTT Study, p 17.

63 Ibid, p 18.

64 Ibid.

65 Ibid, p 79.

66 Ibid, p 19.

residential property in BC would be held through a legal entity increased from a baseline probability of 2.37 percent to 3.01 percent.<sup>67</sup> Following the September 2018 property transfer tax changes (requiring the disclosure of corporate beneficial ownership), the data were mixed. LTSA data indicate that the probability that a residential property in BC would be held through a legal entity increased from 3.52 to 4.15 percent.<sup>68</sup>

Property transfer tax data, on the other hand, indicated that from June 2016 until September 2018, 3.8 to 5.1 percent of residential transactions reportedly involved a corporation. After the September 2018 update to property transfer tax disclosures, the rate of corporate ownership decreased to 3.0 percent from 4.2 percent, amounting to a 12 to 16 percent drop in transfers into corporations.<sup>69</sup> The decrease was most pronounced among single family / duplex properties in metropolitan areas, amounting to a 30 percent drop in transfers into corporations.<sup>70</sup> The authors of the report did have questions about the reliability of the data.<sup>71</sup>

The analyses suggest that “anonymity may not be a primary motivator for most buyers using corporations to hold property in BC.”<sup>72</sup> Alternately, as explained by the study’s authors, the measures may not be deterring anonymity-seeking buyers as they are not perceived as a threat:

It is possible that unlike GTOs in the US, which had a clear and immediate impact on anonymity-seeking buyers of property, the BC Government’s initiatives have not spurred behaviour change due to perceptions that this additional data collection by the government is not a threat. The collection of beneficial ownership information in [property transfer tax] returns has not been coupled with enforcement or independent verification. In contrast, data gathered through the GTO is shared with the enforcement branch of the US Treasury Department, which has a mandate to combat money laundering, and there are unlimited civil and criminal penalties for non-compliance. The relative strength of the GTO policy and the agency enforcing it may have spurred higher rates of compliance and behaviour change among buyers in the US than for their counterparts in BC.<sup>73</sup>

The study also reports on the number of trusts being reported as transferees through property transfer tax returns. From approximately June 2016 to September 2018, 0.3 percent to 0.9 percent of residential property transfers were reported to involve a bare trust.<sup>74</sup> Following the September 2018 update, 1.3 percent to 1.8 percent of transfers disclosed that the purchaser / transferee was a trustee. In September 2018, the property

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67 Ibid, p 19.

68 Ibid, p 19.

69 Ibid, p 20.

70 Ibid.

71 Ibid.

72 Ibid.

73 Ibid, pp 20–21.

74 Ibid, p 21.

transfer tax return was changed to require reporting of all trustees, not just bare trusts (the arrangement most often associated with nominee ownership). The authors suggest this change makes it difficult to assess how much of the increase is merely owing to accuracy in reporting (because the data field captures a broader category of trusts), as opposed to an actual increase in purchases by trusts.<sup>75</sup>

The PTT Study suggests there is an under-reporting of properties held through trusts for several reasons, including a lack of understanding of the meaning of a “bare trust” and difficulties in identifying bare trusts, as they can exist with no formal agreement or documentation of any kind.<sup>76</sup> The authors suggest measures to address under-reporting, including requiring titleholders to declare whether they hold property on behalf of a third party, coupled with sanctions for false declarations.<sup>77</sup>

In considering this suggestion, I note that titleholders of residential property in British Columbia are already required to make an annual declaration as to whether their property is occupied.<sup>78</sup> Requiring an additional declaration as to nominee ownership does not seem an undue burden in this context. I stop short of making a recommendation here, because I believe that additional information is required before determining the best course of action. One benefit of a declaration regime would be to provide a data point that could be used by the Ministry of Finance to measure how comprehensively the LOTR is capturing information about nominee ownership of property. And with respect to money laundering specifically, it is not apparent that the creation of a declaration regime in addition to the LOTR will achieve anti-money laundering goals. In my view, those seeking to hide their beneficial ownership behind a nominee for nefarious reasons are unlikely to honestly disclose this on a declaration. Law enforcement tools will likely be required to identify the use of nominees by criminal actors.

## Real Estate Information Collection and Use

I heard from a number of witnesses about research projects and project development using available data to identify suspicious transactions and properties, and networks of relationships between individuals. I review some of this evidence below.

### Canada Mortgage and Housing Corporation

I heard from two witnesses from Canada Mortgage and Housing Corporation (CMHC), Albertus (“Bert”) Pereboom, senior manager of the housing market policy team, and Wahid Abdallah, a policy analysis specialist with CMHC’s housing market policy team. They described CMHC’s efforts to make use of existing data sets in the real estate sector in order to detect potential fraud and money laundering.

<sup>75</sup> Ibid, pp 21–22.

<sup>76</sup> Ibid, p 22.

<sup>77</sup> Ibid.

<sup>78</sup> *Speculation and Vacancy Tax Act*, SBC 2018, c 46.

CMHC began work on what Mr. Pereboom called a “market integrity index” in 2018, consequent to a direction in CMHC’s mandate letter to develop a mortgage fraud action plan.<sup>79</sup> As part of delivering on that mandate, CMHC consulted with Professor Brigitte Unger (also a witness in these proceedings) with respect to her work on anti-money laundering in the Netherlands.<sup>80</sup>

In order to provide context for CMHC’s undertaking, a summary of the study by Professor Unger and her colleagues is required. Professor Unger and Professor Joras Ferwerda conducted a study of criminal investment in Dutch real estate in 2010. The purpose of the study was to identify indicators of suspicion (“red flags”) in real estate transactions that may indicate money laundering. With access to extensive data from Dutch land registry and tax authorities, Professors Unger and Ferwerda applied a list of 17 indicators of suspicion to identify 200 real estate transactions. Those transactions were analyzed by criminologists on a case-by-case basis to determine which were, in fact, associated with criminal activity. The purpose of the study was to determine which indicators can detect real estate that might be associated with criminal activity, and which do not.<sup>81</sup>

The authors first developed a list of 17 red flags, based on a review of the literature, which included Financial Action Task Force publications.<sup>82</sup> The indicators fell under the following categories: (a) characteristics of the party providing financing; (b) characteristics of the transaction; (c) characteristics of the owner/purchaser; (d) characteristics of the property; and (e) characteristics of the price. The indicators of suspicion are:

1. The financier is from abroad.
2. The financier is a natural person rather than a company (or financial institution).
3. The financing is disproportionately high compared to the value of the property.
4. There is no financing (i.e. no mortgage).
5. Financing is provided by the owner themselves (usually through complex financial arrangements).
6. The owner is from abroad.
7. The owner has an unusual number of properties or performs an unusually high number of transactions.
8. The owner is a company in a business that is associated with criminality or the risk of criminality.

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79 Evidence of B. Pereboom, Transcript, March 11, 2021, pp 5–6.

80 Ibid, pp 7–8.

81 Exhibit 718, Joras Ferwerda and Brigitte Unger, “Detecting Money Laundering in the Real Estate Sector,” in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Northampton, UK: Edward Elgar Publishing, 2013), pp 268–82.

82 Ibid, pp 271–72.

9. The owner is a newly created company.
10. The owner is a “shell” company or company with no employees.
11. The owner is a “world citizen” whose tax jurisdiction is unknown.
12. The property in question is involved in multiple transactions (for example, it is sold several times over a short period).
13. The property is either in a very upscale or in a marginalized and economically depressed neighbourhood.
14. The purchase amount is unusual compared to the assessed value (either much higher or much lower).<sup>83</sup>

The authors then applied these indicators to a data set consisting of land registry information from two Dutch cities, as well as information on their owners obtained from Dutch tax authorities. They found that many transactions or properties had a couple of red flags, but very few displayed five or more. Criminologists were provided with 150 of the highest “scoring” properties, along with 50 “lower” scoring properties for analysis.<sup>84</sup> The criminologists analyzed the properties and transactions presented to them, and ultimately identified 36 as “conspicuous.” Five were linked with drugs, 27 with fraud, and four with “renting irregularities.” Nine cases were deemed “strongly conspicuous.”<sup>85</sup>

One notable finding of the study was that the red flag analysis identified individuals that were not identified as suspicious or conspicuous by “on the ground” stakeholders, such as law enforcement. The stakeholders were asked to identify subjects that had raised their awareness in the two Dutch cities. This survey identified 356 individuals. When compared with 1,130 individuals associated with the 200 properties analyzed by criminologists, only two matched.<sup>86</sup> The authors note that this could indicate that the red flag analysis was not identifying properties associated with criminal activity, or that it was identifying properties and persons not yet known to local law enforcement.<sup>87</sup>

The study concluded that a property that raised more red flags did, in fact, have an increased chance of being related to money laundering or other criminal investments.<sup>88</sup> Certain indicators – unusual price in comparison to assessed value, ownership by a recently created company, and foreign ownership – were more likely than others to be associated with properties the criminologists concluded were conspicuous.<sup>89</sup>

83 Ibid, pp 272–75: There are 17 indicators, but some were collapsed by the authors into single descriptions, and the list is reproduced here as organized by the authors with small grammatical changes for clarity. For instance, while a purchase amount much higher than assessed value is one indicator and a purchase price much lower than assessed value is a separate indicator, they are grouped for the purpose of description.

84 To increase impartiality, 50 properties “with less than five red flags” were added as a control group without signalling the criminologists: *ibid*, pp 275–76.

85 *Ibid*, pp 276–77.

86 *Ibid*, p 277. Two of the matches did concern one of the “strongly suspicious” cases.

87 *Ibid*, p 277.

88 *Ibid*, p 277.

89 *Ibid*, p 279.

Building on the model established by Professors Unger and Ferwerda, CMHC developed a list of 35 indicators, and narrowed that to 17 to reflect the availability of information in Quebec. The indicators identified by CMHC largely mirror those identified by Unger and Ferwerda.<sup>90</sup> Each indicator was assigned a value between 0 and 1 (1 being more suspicious).<sup>91</sup> The data sets available to CMHC were analyzed through the lens of these 17 indicators and properties with a high number of indicators were identified. CMHC then conducted a second step (much like the criminologists in the Dutch study) and, based on open source information, attempted to determine if the identified properties were, in fact, associated with suspicious persons, suspicious activity, or foreign politically exposed persons.<sup>92</sup> Those open sources included the notaries records in Quebec, politically exposed persons databases, commercially available databases for ultimate beneficial ownership, federal and provincial corporate registries, the Canadian Legal Information Institute (CanLII), and the International Consortium of Investigative Journalists (ICIJ) database.<sup>93</sup>

CMHC first conducted this analysis with Quebec real estate, due to the availability of relevant data.<sup>94</sup> Mr. Pereboom explained why Quebec was chosen:

Quebec is unique among registries at least for the data that we're able to receive in reporting buyer and seller names ... [T]o trace money laundering, to have a ghost of a chance at doing it, you need to know who buyers are and what pattern of transactions they have. So without that name, you can associate multiple transactions with the same individual to see their pattern of activity.<sup>95</sup>

CMHC “scored” 1,612,630 Quebec real estate purchases between 2000 and 2018, applying the values assigned to suspicious indicators (the market integrity index). Out of a maximum market integrity index score of 17, the mean score was 3.67. Ninety-four percent of purchasers had a market integrity index score of five or lower. 3,297 purchasers scored eight or higher. The maximum observed score was 11.<sup>96</sup>

The CMHC analysis did more than simply identify transactions with “red flag” characteristics. Of importance for understanding trends in the real estate market and for better comprehending what is “unusual” (and by extension, perhaps suspicious depending on the circumstances), it provides data relating to each of the suspicious indicators used, across all properties in Quebec, over the 2000–2018 period. This

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90 Exhibit 719, Defining a Housing Market Integrity Index (MII): A Methodology and Application to Quebec's Housing Market – Draft (February 19, 2021) [Quebec Housing Integrity Index], pp 12–19.

91 Ibid, p 20. An indicator value of one by itself does not suggest a transaction is suspicious. The methodology requires several indicators to be at or near a value of one to reach range of more suspicious transactions (p 12).

92 Evidence of B. Pereboom, Transcript, March 11, 2021, pp 11–13.

93 Exhibit 719, Quebec Housing Integrity Index, pp 21–22.

94 Evidence of B. Pereboom, Transcript, March 11, 2021, pp 33–34.

95 Ibid, p 49.

96 Exhibit 719, Quebec Housing Integrity Index, pp 23–24.

information provides valuable context for what may be considered normal or unusual in the real estate market. For instance, the CMHC study indicates that only 2.4 percent of properties sold in Quebec in this time frame were sold five times, and less than 1 percent were sold six or more times.<sup>97</sup> Between 2014 and 2018, only 0.45 percent of real estate transactions were financed by a natural person, 0.01 percent by a foreigner, and 15.33 percent had no associated mortgage record.<sup>98</sup>

Using the red flag analysis, CMHC, through open-source research, detected a number of properties with connections to suspicious circumstances. However, given a lack of “confirmed cases” of money laundering to test against (reflecting a lack of prosecutions of money laundering offences in Canada), neither Dr. Abdallah nor Mr. Pereboom could conclusively say whether any one indicator is a better or worse indicator of money laundering in real estate.<sup>99</sup> In order to determine which indicators were more valuable, Mr. Pereboom said that CMHC would need to collaborate with experts who could identify cases in which money laundering was at least suspected, to allow for the application of regression analysis to identify “true” indicators of suspicion.<sup>100</sup> But, as Mr. Pereboom pointed out, CMHC is not part of the formal federal anti-money laundering regime, and does not have access to information – such as suspicious transaction reports filed with FINTRAC – that might inform the assessment of which indicators are most probative in terms of identifying money laundering activity.<sup>101</sup>

The authors of the study suggest the market integrity index tool could be used in the following ways:

- to identify suspicious transactions in a relatively unbiased way, free of more subjective assessments made of those expected to file suspicious transactions reports;
- to focus information gathering on higher risk transactions, relative to random audits, out of hundreds of thousands of other legitimate transactions – especially when the launderers attempt to camouflage their activities from individual observers (the methods can also be used to evaluate historical transactions, with the potential to indicate whether money laundering risk is rising or falling over time);
- to pull together a history of transactions over times and places, revealing patterns that would not be observable by individual professionals in the existing anti-money laundering regime; and
- to deter money laundering in real estate by identifying potential suspicious transactions.<sup>102</sup>

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97 Ibid, p 25.

98 The time frame for this analysis begins in 2014 when mortgage finance data became available: *ibid*, p 27.

99 Evidence of W. Abdallah, B. Pereboom, Transcript, March 11, 2021, pp 39–40.

100 Evidence of B. Pereboom, Transcript, March 11, 2021, p 43.

101 *Ibid*, pp 44–45.

102 Exhibit 719, Quebec Housing Integrity Index, pp 9–10.

As noted by Mr. Pereboom, use of the market integrity index is supplemental to the obligations of professionals involved in real estate transactions to submit suspicious transaction reports.<sup>103</sup> What the market integrity indicator approach avoids, however, is the inherent conflict of interest involved in asking industry actors to report on – and perhaps distance themselves from – transactions in which they have a direct financial interest.<sup>104</sup>

CMHC did attempt to complete a similar analysis for British Columbia, but encountered issues with accessing the required data.<sup>105</sup> Part of the issue was that some of the necessary information for the analysis was captured only in PDF format, rather than in captured “fields” that were more readily analyzed.<sup>106</sup> In total, only six indicators were capable of being analyzed in British Columbia, as compared to the 17 in Quebec.<sup>107</sup> A key data gap was the absence of buyer and seller names:

Like the method that we’re doing with Quebec and applying it requires you to know ... what a buyer has paid for and when a transaction has been transacted and to whom they sell it. So you need the pattern of transactions. You can’t just look at a transaction individually. So, again, our mortgage [market integrity index] requires to see a bigger picture rather than a single transaction. So as we’ve shown in the BC thing, you can only evaluate 6 of the 17 indicators that we can do with Quebec if you do not have more information about the buyers, sellers and the other persons associated with that transaction.<sup>108</sup>

In order to perform the required analysis, an enormous amount of work would have to go into data collection and cleaning to make the available data usable.<sup>109</sup> Mr. Pereboom also suspected some of the difficulty in accessing data related to privacy concerns, but said the continued barriers had not been communicated by the BC LTSA.<sup>110</sup> LTSA witnesses indicated there were concerns about violating privacy legislation by providing bulk data sets to CMHC, and that they would need clear direction on their legal authority to share that information. They also adverted to the significant resources that would be required to provide data in the format required by CMHC, as well as concerns that providing data as requested could undermine LTSA’s business model, in that they rely on the ability to charge a fee for access to registry data.<sup>111</sup>

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103 Evidence of B. Pereboom, Transcript, March 11, 2021, p 27.

104 Ibid, pp 46–47.

105 Exhibit 717, Bert Pereboom, Scoring and Flagging ML Risks in BC Real Estate ( October 2019); Evidence of B. Pereboom, Transcript, March 11, 2021, slides 51–52.

106 Evidence of B. Pereboom, Transcript, March 11, 2021, p 51.

107 Exhibit 717, Bert Pereboom, Scoring and Flagging ML Risks in BC Real Estate, pp 3–4.

108 Evidence of B. Pereboom, Transcript, March 11, 2021, p 53.

109 Ibid, pp 55–56.

110 Ibid, pp 56–57.

111 Evidence of C. MacDonald, Transcript, March 12, 2021, pp 194–95; Evidence of G. Stephens, Transcript, March 12, 2021, p 195–96.

Because the British Columbia data allowed for analysis of only six indicators, the maximum possible market integrity index score for BC was six. The maximum score observed of 1,703,866 transactions analyzed was 5.96. The average score was 2.8.<sup>112</sup> Because of a lack of data, including, apparently, owner identities, CMHC was unable to complete the secondary step of verifying the scores against open-source information that might confirm a basis for finding the property or transaction suspicious, essentially rendering the exercise of very little utility.<sup>113</sup>

The data used in CMHC's Quebec study is specific to Quebec and cannot be safely used to contextualize transactions in the British Columbia real estate sector. The point is that the existence of such data seems enormously helpful for understanding what is normal, and what is out of the ordinary, in different real estate markets. For professionals with reporting obligations to FINTRAC, access to such information would help in determining when a transaction might be "suspicious," as determined by reference to objective criteria. I am recommending that the BC Ministry of Finance, either on its own or in cooperation with CMHC, conduct a similar analysis of the British Columbia real estate market. In addition to assisting reporting entities identify suspicious transactions, I anticipate that access to such information will be of assistance to regulators in detecting and monitoring market trends, and by extension, current behaviours and risks in the market. I see immense value in the type of analysis CMHC undertook with respect to Quebec real estate, and which it attempted to complete in respect of British Columbia. I recommend that the Ministry of Finance – either in conjunction with CMHC or on its own – develop the required data and conduct such an analysis.

**Recommendation 35:** I recommend that the Ministry of Finance – either in conjunction with Canada Mortgage and Housing Corporation or on its own – develop the required data and conduct a market integrity analysis in order to identify suspicious transactions and activity in real estate.

In addition, I consider that there would be significant benefits to equipping LTSA with a clear basis to factor in anti-money laundering when it conducts its work. This change in mandate will ensure LTSA is alert to money laundering risks and activity and responds to them when identified. It also ensures that LTSA can more easily share information with other agencies involved in the fight against money laundering. I recommend that the Province give LTSA a clear and enduring anti-money laundering mandate, including the ability to more readily share data with other agencies having a complementary anti-money laundering mandate.

<sup>112</sup> Exhibit 717, Bert Pereboom, Scoring and Flagging ML Risks in BC Real Estate, p 8.

<sup>113</sup> Ibid, p 11.

**Recommendation 36:** I recommend that the Province give the Land Title and Survey Authority a clear and enduring anti-money laundering mandate, including the ability to more readily share data with other agencies having a complementary anti-money laundering mandate.

The use of this type of information can be enormously valuable for identifying trends, developing policy and making determinations about the allocation of resources. It will be useful for the AML Commissioner. While it may also prove useful to law enforcement entities, the Province, in developing legislation and policies about access to the information, will have to be alive to privacy and constitutional issues that might impact the ability to use the information for tactical intelligence.

This type of project could benefit significantly from the (contemplated) enhanced anti-money laundering data framework that was a subject of the federal-provincial ad hoc working group on real estate, discussed below.

## Financial Real Estate Data Analytics

Following the release of the Maloney Report<sup>114</sup> in May 2019, the provincial Ministry of Finance established the Financial Real Estate and Data Analytics Unit (FREDA). The Maloney Report recommended the creation of a financial intelligence unit within the Ministry of Finance to address money laundering concerns:

The BC Ministry of Finance should create a specialized, multidisciplinary financial investigations unit that can make effective use of the available information and provide the basis for use of administrative sanctions and prosecution of provincial and criminal offences.<sup>115</sup>

The Maloney Report contemplated a financial intelligence unit with an investigative and tactical intelligence function.<sup>116</sup> FREDA is oriented to providing analysis and, perhaps down the road, strategic intelligence that could assist in combatting money laundering in the real estate sector. FREDA is located within the policy and legislative division of the Ministry of Finance. I heard evidence from Dr. Christina Dawkins, executive lead for FREDA within the Ministry of Finance. Without committing to the permanence of the unit, Dr. Dawkins indicated that FREDA was contemplated to be there to help develop real estate policy “as long as they are needed.”<sup>117</sup>

There are two branches to FREDA. The first is a **policy branch**, which is tasked with implementing recommendations of the Maloney Report. That branch has been working

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114 Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, “Combatting Money Laundering in British Columbia Real Estate,” Expert Panel, March 31, 2019 [Maloney Report].

115 Ibid, p 8.

116 Ibid, pp 92–94.

117 Evidence of C. Dawkins, Transcript, March 8, 2021, p 14.

on issues such as the regulation of money services businesses, exploring the possibility of unexplained wealth orders, amending the *Real Estate Services Act* to create a single real estate regulator, reviewing and consulting on the *Mortgage Brokers Act*, and creating a registry of corporate beneficial ownership.<sup>118</sup> The policy branch is also exploring giving anti-money laundering mandates to various regulators, as well as regulating developers and home inspectors.<sup>119</sup>

The second FREDA arm is a **data analytics branch**, which has a mandate to build data holdings for the purpose of data analytics within the Ministry of Finance.<sup>120</sup> Those holdings include data relating to land titles, the property transfer tax, income tax, provincial sales tax, speculation and vacancy tax, the Condo and Strata Assignment Integrity Register, corporate registries, and pandemic recovery benefits.<sup>121</sup> The work of the data analytics branch to date has involved assembling data from a number of different sources, and cleaning and documenting that data. Currently, its analytical work has been focused on supporting the work of the tax policy branch. Once the branch has built up more capacity, Dr. Dawkins testified, the ministry will turn its mind to issues like anti-money laundering for strategic intelligence purposes. This refers to the identification of trends and red flags – not the identification of individuals who may be involved in money laundering activities.<sup>122</sup>

According to Dr. Dawkins, the work of the data analytics branch will allow for an analysis of “more granular” data, to better understand what is happening in the BC real estate market.<sup>123</sup>

The provincial Ministry of Finance has been taking steps to make the vast data holdings (tax, land titles, BC Assessment) available for analysis. Jonathan Baron, for FREDA, gave evidence that one of the projects that FREDA is working on is migrating LTSA, BC Assessment, and provincial tax data to FREDA at the Ministry of Finance and “cleaning” it for better and easier use in answering analytical questions.<sup>124</sup> The process has involved a privacy impact assessment within government and ensuring that information is held securely on government servers.<sup>125</sup>

Mr. Baron advised me that FREDA uses the data it holds exclusively for the compilation of statistical information and informing policy decisions, and that the work product does not connect to individuals.<sup>126</sup> Mr. Baron said:

[T]he work that we do is almost exclusively what I would call the compilation of statistical information ... [W]e have access to the micro data, but what

118 Ibid, p 5.

119 Evidence of J. Primeau, Transcript, March 8, 2021, p 20.

120 Evidence of C. Dawkins, Transcript, March 8, 2021, pp 5–6.

121 Evidence of J Primeau, Transcript, March 8, 2021, pp 54–55.

122 Evidence of C. Dawkins, Transcript, March 8, 2021, pp 8–9, 18.

123 Ibid, pp 13–14.

124 Evidence of J. Baron, Transcript, March 11, 2021, pp 88–90.

125 Ibid, pp 87–88, 91–92.

126 Ibid, pp 92–93.

we're interested in is creating statistics that ... answer important questions for a policy decision or whatever it is ... [O]ur work product is aggregate information and it doesn't connect back to an individual.<sup>127</sup>

FREDA does not currently have an anti-money laundering mandate. If it did, Dr. Dawkins predicted that:

[I]t would take the work in a little bit of a different direction. It would be less driven by specific policy questions and would be more of a research type analysis in which we would take the data and look for flags and trends and correlations rather than ... right now being quite responsive to questions from the policy area.<sup>128</sup>

Appreciating that FREDA has multiple policy concerns to serve, the types of analysis and research described by Dr. Dawkins are needed to understand and combat money laundering through real estate. I recommend that the Province give FREDA an express anti-money laundering mandate so that it can prioritize data analysis and policy development that will further anti-money laundering objectives.

**Recommendation 37:** I recommend that the Province give the Financial Real Estate and Data Analytics Unit an express anti-money laundering mandate, so that it can prioritize data analysis and policy development that will further anti-money laundering objectives.

## Federal-Provincial Working Group on Real Estate

Dr. Dawkins described the federal-provincial working group on real estate as “a group of federal and provincial officials who have an interest in or a role related to money laundering in real estate and who have gathered together to explore various issues related to money laundering in real estate and to ... share experience, expertise, and to come up with a series of recommendations for [their] respective ministers.”<sup>129</sup>

The working group was formed in August 2018 by the federal and provincial ministers of finance, with a mandate “to enhance communication, information sharing and alignment amongst relevant operational and policy partners to explore and better address issues and risks related to fraud, money laundering and tax evasion through real estate in B.C.”<sup>130</sup> The group aimed to identify means of money laundering in British Columbia with respect to real estate, develop a clearer understanding of the challenges government agencies have in carrying out their mandates in the real estate sector, and identify gaps in the provincial and federal regulatory and enforcement

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127 Ibid, p 92.

128 Evidence of C. Dawkins, Transcript, March 8, 2021, p 67.

129 Ibid, p 84.

130 Exhibit 702, Terms of Reference on Real Estate Working Group, p 1.

frameworks.<sup>131</sup> The group produced a final report in December 2020, bringing its formal work to a conclusion.<sup>132</sup>

Members of the working group included federal and provincial agencies with an interest in money laundering in British Columbia. On the provincial side this included the Ministry of Finance, the Ministry of Attorney General, BCFSa, the Registrar of Mortgage Brokers, the Office of the Superintendent of Financial Institutions, the Office of the Superintendent of Real Estate, LTSA, and the BC Securities Commission. On the federal side, participants included the Department of Finance Canada, the RCMP, FINTRAC, the Canada Revenue Agency, CMHC, Statistics Canada, and the Bank of Canada.<sup>133</sup>

The working group had three “work streams” or topic areas: (1) data and information sharing, (2) regulatory gaps, and (3) enforcement. Work Streams 2 and 3 are discussed elsewhere in this report. I will focus here on the data workstream and its findings.

Under the first workstream, Statistics Canada was tasked with leading a feasibility study in co-operation with the BC Ministry of Finance. The study aimed to investigate data collection and data sharing options in order to support research, regulatory, and analytical functions relating to anti-money laundering in BC real estate.<sup>134</sup> The objective was to assess the feasibility of producing a data framework to facilitate information sharing among relevant government bodies, focused on British Columbia.

Some key findings of the study were:

- Laundering money through the Canadian real estate market uses a diverse array of methods.
- Court records do not reflect the full extent of money laundering efforts in Canada.
- Anti-money laundering efforts would be more effective by enhanced partner collaboration and data sharing.
- Canadian organizations engaged in anti-money laundering initiatives use real estate data for specific investigations and case-based approaches, and have participated in partnerships to facilitate a broader approach.
- Effective anti-money laundering initiatives could benefit from the participation of other relevant organizations, particularly those in the real estate sector.
- An anti-money laundering data framework for real estate can contribute to identifying money laundering in real estate.<sup>135</sup>

<sup>131</sup> Ibid, pp 1-2.

<sup>132</sup> Evidence of C. Dawkins, Transcript, March 8, 2021, pp 92-93.

<sup>133</sup> Evidence of C. Dawkins and J. Brown, Transcript, March 8, 2021, pp 93-95.

<sup>134</sup> Exhibit 703, BC-Canada Working Group on Real Estate, Work Stream 1: Data Collection and Sharing, *Anti-Money Laundering in the Real Estate Sector – Overview and Recommendations for Data Models Relating to Money Laundering in the Real Estate Sector For British Columbia* (December 9, 2020) [Work Stream 1 Feasibility Study], p 6.

<sup>135</sup> Exhibit 703, Work Stream 1 Feasibility Study, pp 7-11.

An anti-money laundering data framework could, as contemplated in the group's report to the federal and provincial ministers of finance, be applied for both strategic and tactical purposes:

Applying the framework for policy purposes could produce general estimates of money laundering in real estate at the aggregate level, useful for relevant governmental entities and policymakers. An application for strategic purposes could focus on more narrow metrics or trends that inform emerging patterns of illicit activity. An application for tactical purposes would focus on enforcement, analysing information with the intent of identifying and apprehending suspected money launderers.<sup>136</sup>

The study also concluded, however, that the efficacy of a data framework for anti-money laundering efforts in real estate is dependent on extensive and high quality data coverage.<sup>137</sup>

The workstream gathered information from federal and provincial agencies on their relevant data holdings – as well as the quality and format in which those data were held. The data holdings of various federal and provincial agencies were assessed, and data gaps identified. Key findings in respect of these data holdings were:

- Some data holdings are not leveraged for the purposes of anti-money laundering because the holder lacks an anti-money laundering mandate.
- Organizations involved in anti-money laundering activities tend to use a case-by-case approach to detect money laundering, rather than a systematic data-driven detection strategy, or use data-driven approaches that are limited by the data they can access.
- Recurring data gaps relate to information on beneficial ownership, property / financing legal arrangements, and mortgage and wealth data, as well as relationship data among those transacting property transfers.
- Several data gaps could be filled with increased sharing of data between public institutions, subject to the Canadian legal framework.<sup>138</sup>

The provincial data holders reviewed included BC Assessment, LTSA, BCFSA, the BC Ministry of Finance, the BC Real Estate Council, and the BC Securities Commission. Federal agencies whose data holdings were reviewed included CMHC, the RCMP, the Bank of Canada, the Canada Revenue Agency, FINTRAC, and Statistics Canada.<sup>139</sup>

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136 Ibid, p 6.

137 Ibid, pp 125, 133.

138 Exhibit 703, Work Stream 1 Feasibility Study, p 57.

139 Ibid.

Work Stream 1 learned the typologies of money laundering in real estate to gain an understanding of the available data that could be associated with them – in other words, indicators in the data that could point to suspicious circumstances.<sup>140</sup>

In reviewing the available data, key gaps were identified, including mortgage data, beneficial ownership data, relationship information, individual wealth data, rental income and rent payments data, and data on non-residents.<sup>141</sup> The report further relates each gap to a particular money laundering methodology. For example, Mr. Deschamps-Laporte, for Statistics Canada, explained that one money laundering scheme involves purchasing rental properties and “padding” ostensible rental income with the proceeds of crime, by either declaring rent for unoccupied units or undercharging on rent and making up the difference with the proceeds of crime. While rental income is required to be reported, there is little corresponding reporting from tenants that would allow for the detection of a discrepancy.<sup>142</sup> The report sets out in full the identified data gaps or quality issues, and how each data point relates to a particular money laundering methodology.<sup>143</sup>

“Relationship information” refers the information on connections between individuals, whether familial, business, or professional. The study suggests that through the identification of real estate professionals involved with a transaction, perhaps by assigning them each a unique identifier, clusters of money laundering activity could be revealed and networks better understood.<sup>144</sup> This suggestion is in line with my recommendation elsewhere that there be a record of professionals involved in real estate transactions. As illustrated in the case studies respecting mortgage brokers, incidents of fraud and suspicious transactions are often not isolated but are recurring within a broker’s practice.

(It does not appear that the federal-provincial working group was aware of or coordinated with CMHC in its creation of a market integrity index and its application in Quebec and attempted application in British Columbia. This is unfortunate, because CMHC’s analysis is a real-world application of the kind of intelligence analysis that the working group’s report contemplated. Certainly, there seemed to have been opportunity between CMHC and the working group to share theories and information as to what data points are needed or useful, and where the data are non-existent or falling short.)

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140 Evidence of H. McCarrell, Transcript, March 11, 2021, pp 114–17; Evidence of E. Bekkering, Transcript, March 11, 2021, pp 141–42; Exhibit 724, Presentation to Commission Counsel on Working Group Feasibility Study (March 11, 2021), pp 17–18; Exhibit 703, Work Stream 1 Feasibility Study, pp 85–87.

141 Exhibit 703, Work Stream 1 Feasibility Study, pp 93–96.

142 Evidence of J.P. Deschamps-Laporte, Transcript, March 11, 2021, pp 150–51; Exhibit 703, Work Stream 1 Feasibility Study, pp 95–96.

143 Exhibit 703, Work Stream 1 Feasibility Study, pp 85–97.

144 Ibid, pp 11, 15, 83.

The report concludes with a proposal of three concepts for the models that would govern data sharing:<sup>145</sup>

- A **distributed model** where data is held by the collecting agency (e.g., BC Assessment or LTSA), and enhanced access is authorized (or data is shared) among regime partners. Aside from the enhanced ability to access and share information across partners, this option represents the status quo.
- A **centralized model** where data is consolidated to be held and managed in one institution and made accessible to the regime partners.
- A **hybrid model** where data is organized by separate custodial and analytical functions undertaken by existing or new partners or units. A data custodian would be responsible for collecting, processing, and housing data. A separate coordinating organization or unit would lead access and analysis of the data for anti-money laundering purposes.

There are disadvantages to the first two concepts. The first has the weaknesses of the current system, in that it limits the ability to share and leverage data to its full potential for anti-money laundering purposes. The second model may unduly remove control over data necessary for the core functioning of a provincial or federal agency whose primary mandate is not related to anti-money laundering.<sup>146</sup>

The “hybrid” function contemplates data staying with its custodian (e.g., BC Assessment or LTSA), with a separate entity performing a “coordinating role” between agencies “to enable access, linking, and analysis of the data, as well as ensure that consistent data management practices are implemented.”<sup>147</sup> The agencies that currently house data would continue to be responsible for maintaining it and ensuring data quality, but the coordinating unit would be largely responsible for the anti-money laundering uses to which this data is put. To quote the report:

The coordinating unit as the locus of AML [anti-money laundering] expertise could be responsible for leading data linkage and access functions, particularly with respect to non-regime partners, as well as supporting analysis being undertaken by regime partners. This unit could also be charged with the responsibility to ensure appropriate scopes and safeguards for any analyses performed. It could lead in the maintenance and development of the typology data framework and for red flag analysis arising with shared data, leading to a better assessment and understanding of ML [money laundering] as practised in Canada. This unit could also lead the development of metrics aiming to measure the effectiveness of Canada’s AML regime and of relevant policy interventions.

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145 Ibid, p 98.

146 Exhibit 703, Work Stream 1 Feasibility Study, pp 98–99.

147 Ibid, p 99.

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The coordinating unit could conduct its analysis of the various custodial databases designated for investigative purposes, and share suspicious transactions with law enforcement, in keeping with data sharing practices currently in use among regime partners.<sup>148</sup>

There seems to me to be a great deal of merit in providing for improved data consistency and access. Steps must be taken to address the problems identified by the working group relating to data gaps and quality. The provincial Ministry of Finance is well placed to address this, and I appreciate the ministry is working on these issues already. I recommend that the Ministry of Finance develop an action plan for addressing the data gaps and data quality issues identified by the federal-provincial working group on real estate in its reports, focusing on data issues within the Province's jurisdiction.

**Recommendation 38:** I recommend that the Ministry of Finance develop an action plan for addressing the data gaps and data quality issues identified by the federal-provincial working group on real estate in its reports, focusing on data issues within the Province's jurisdiction.

Having canvassed the three models for data management above, my view is that a modified "hybrid" model is best suited for this province. In Chapter 8 of this Report, I recommend the creation of a new AML Commissioner. The commissioner would be optimally placed to fulfill the "coordinating unit" role for the purpose of data analysis, as set out in the working group's report. The Province will need to determine which body is best suited to address data access and management. I recommend that the Province adopt a modified "hybrid" model of data management (as contemplated in the federal-provincial working group on real estate reports) and that the AML Commissioner fulfill the function of analyzing data for anti-money laundering purposes.

**Recommendation 39:** I recommend that the Province adopt a modified "hybrid" model of data management (as contemplated in the federal-provincial working group on real estate reports) and that the AML Commissioner fulfill the function of analyzing data for anti-money laundering purposes.

I would offer one further comment. A provincial coordinating unit would be a second-best option to a coordinating unit that could access data from *all* anti-money laundering regime partners, whether provincial or federal. My recommendation above should not be considered a barrier to attempts by the two levels of government to create a coordinating

<sup>148</sup> Ibid, pp 99–100.

unit that straddles the jurisdictions. Given the various repositories of information at the federal and provincial levels, a cross-jurisdictional unit would be preferable.

## **Private Sector Use of Data for Money Laundering Detection**

Having considered how governments and public agencies may make use of real estate data to address money laundering, I turn to the private sector, which generates an enormous volume of information in a very active sector of the economy.

During our hearings I learned about data analysis software that works to detect fraud and money laundering through referencing a number of large data sets. Witnesses referred to the product as an “intelligence hub.” I also had the advantage of watching demonstrations of these systems, which illustrate their potential. Representatives from Deloitte (a large multinational professional services firm) and Quantexa (a “big data” and enterprise intelligence technology provider based in the United Kingdom) appeared before the Commission.<sup>149</sup> They described and ran demonstrations of “entity resolution” software, which collects information on individuals and entities from across different data sources, reconciling them to create a full picture of their connections and networks.<sup>150</sup> It is one example of many different technologies being developed to analyze large data sets for anti-money laundering and other purposes.<sup>151</sup>

The technology already being employed in the private sector to this end illustrates the possibilities for money laundering detection through aggregation of data. It also raises important considerations of privacy that I anticipate both private enterprises and government will have to grapple with.

The premise of the program is the same as that underlying the federal-provincial working group’s proposals for a data-sharing framework. In both cases, the idea is to bring together data from disparate sources, so that it is situated in one place, which allows for the identification of networks between individuals, entities, and transactions. One interesting functionality of such software, as suggested by the witnesses, is to verify information provided to beneficial ownership registries.<sup>152</sup>

As one of the witnesses pointed out, data sets will only continue growing in size and magnitude. When data holdings internationally are considered – for instance, information available on the beneficial ownership of foreign companies – the amount of data available for analysis is enormous. If data holdings are going to be used for the detection and prevention of money laundering, then the data analysis framework must be scalable.<sup>153</sup>

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149 Evidence of A. Bell, P. Dent, B. Dewitt, and D. Stewart, Transcript, March 2, 2021; Exhibit 667, Presentation – Application of Networks to Detect and Mitigate Organized Crime (March 2, 2021).

150 Evidence of A. Bell, Transcript, March 2, 2021, pp 18–19, 25–30.

151 Ibid, pp 82–83.

152 Evidence of P. Dent, Transcript, March 2, 2021, pp 59–60.

153 Evidence of D. Stewart, Transcript, March 2, 2021, p 20; Evidence of A. Bell, Transcript, March 2, 2021, pp 20–21.

Access to large amounts of data, including personal information about individuals, raises privacy concerns, as acknowledged by the witnesses who demonstrated the software. This will be a concern for governments as they determine, moving forward, how and for what purposes to use their available data holdings to combat money laundering. As BCCLA highlighted in its examination of witnesses and its final submissions, the implementation of such an intelligence hub would require an analysis of the legal and privacy implications, including consideration of privacy rights and interests as assured by section 8 of the *Canadian Charter of Rights and Freedoms*.<sup>154</sup> Essential questions such as what data are included and who has access and for what purposes would need to be answered. The answers would need to be tested against privacy concerns and constitutional constraints before any such intelligence hub can be implemented. Quite properly, the witnesses presenting the technology are alert to these issues.<sup>155</sup>

I decline to make recommendations about specific programs that the Province should employ. The private sector is developing the capability to deal with large sets of data for detecting fraud and money laundering. If governments do not develop their own ability to conduct analyses of this type, they will either fall behind industry and be at a disadvantage when it comes to the investigation of financial crime, or they will find it necessary to purchase or lease such technologies from the private sector to keep pace.

## Land Title and Survey Authority

I will conclude this chapter with a discussion of the Land Title and Survey Authority (referred to here as LTSA). I heard from a number of witnesses that regulatory and investigative processes could be enhanced by improvement of LTSA data and better access to that data. In short, LTSA finds itself in the position of having created a registry that works extremely well for one purpose – securing the integrity of title to land in British Columbia – but which anti-money laundering stakeholders wish would work better for their purposes.

I have already made some recommendations that impact on LTSA based on evidence heard on various topics in the real estate sector. I will not repeat those here but will make some comments on LTSA's views of the feasibility of implementation.

LTSA was established in 2005 and is a statutory corporation, independent from government.<sup>156</sup> It is responsible for managing the land title and survey systems of British Columbia.<sup>157</sup> Its mandate and responsibilities are set out in the *Land Title and Survey Authority Act*, and its operating agreement with the Province.<sup>158</sup> LTSA operates the provincial Land Title Register and the Land Owner Transparency Registry.

<sup>154</sup> Evidence of A. Bell, Transcript, March 2, 2021, pp 93–95.

<sup>155</sup> Evidence of B. Dewitt, Transcript, March 2, 2021, pp 102–3.

<sup>156</sup> Evidence of C. MacDonald, Transcript, March 12, 2021, pp 139–40.

<sup>157</sup> Exhibit 749, Presentation – The Land Title and Survey Authority of BC (February 26, 2020), p 2.

<sup>158</sup> See the LTSA Operating Agreement, online: <https://ltsa.ca/wp-content/uploads/2020/11/Operating-Agreement.pdf>.

There are two facts about LTSA that must inform the discussion and any changes to its fee structure or data collection and sharing practices:

1. LTSA does not have an anti-money laundering mandate. It is, as a representative of the authority agreed, a registry of land, not of persons.<sup>159</sup> In order to “repurpose” the LTSA and the registries it operates for anti-money laundering goals, this would have to change.
2. LTSA operates on a self-funded, not-for-profit basis and has an operating agreement with the Province that directs how its revenues are spent. Fifty-five percent of the fees collected goes back to the Province, and it must conduct its operations with the remaining 45 percent.<sup>160</sup>

In order to make some of the changes that I recommend in this Report, LTSA will need access to funds, and to an express legislative mandate to engage in certain activities, particularly information and data sharing for anti-money laundering purposes. I note that this was also the conclusion of the federal-provincial working group, who expressed that “[e]xpanded funding and an expanded mandate would be required to make changes necessary to make the data useable for AML purposes.”<sup>161</sup>

### ***Information Collected by and Accessible from the Land Titles Registry***

LTSA currently provides information to the Province for the operation of various programs, including the speculation and vacancy tax, and for supporting BC Assessment functions. While the land registry (and now LOTR) is a fee-for-search service, the Province is largely exempt from fees.<sup>162</sup>

A title in the land registry will contain the following information:

- registered owner’s name;
- registered owner’s occupation;
- an address for delivery of notices;
- legal description;
- parcel identifier (PID);
- a list of charges, including mortgages, rights of way, liens, and certificates of pending litigation;
- the owners of the charges, and the date and time the charge was filed; and/or
- pending applications.<sup>163</sup>

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159 Evidence of C. MacDonald, Transcript, March 12, 2021, p 143.

160 Ibid, pp 139–40.

161 Exhibit 703, Work Stream 1 Feasibility Study, p 77.

162 Evidence of C. MacDonald, G. Steves, Transcript, March 12, 2021, pp 145–46.

163 Evidence of L. Blaschuk, Transcript, March 12, 2021, p 148; Exhibit 753, Mock Up – Title Search.

This information is available to a member of the public when they search the registry.

LTSA depends on the filer and legal professional involved in the filing for the accuracy of the information about the owner. Over 95 percent of applications are received electronically, meaning that they are certified digitally by either a lawyer or a notary.<sup>164</sup> LTSA does not verify information provided about an owner – beyond determining that a British Columbia company, in fact, exists and is in good standing. LTSA has access to the corporate registry, which is maintained elsewhere. The two registries are not connected, and users are unable to navigate directly between them to examine beneficial ownership information.

Other documents provide further information. A “Form A freehold transfer” document includes the market value and the consideration (amount) paid for the property. Both figures are reported by the applicant and are not verified by LTSA, which does not have access to the supporting documentation (e.g., purchase of agreement and sale). A “Form B mortgage” document discloses details of a loan, including the principal amount, the rate of interest, and the amount of each payment. Again, this information is self-reported by the applicant and is not independently verified.<sup>165</sup> Also, these details will not always be filled out on Form B, but instead are contained in an attached schedule or not disclosed. The land titles registry will not necessarily disclose the value of a mortgage loan.

A member of the public searching land title information through the registry can search by name, PID or legal description of a parcel, title number, document number, and charge number. A search by name would provide owners of titles and charge holders (which includes mortgagees).<sup>166</sup> A search of a property will also return pending applications (i.e., applications pertaining to a property that have not been processed).

LTSA also confirmed that on receiving an application for a certificate of pending litigation, it checks only that the attached pleading has been filed in the court registry, and that an interest in land is being claimed in the legal proceeding. This screening is performed by deputy registrars, who have experience in the land titles registry but are not lawyers.<sup>167</sup> There is a similar “low bar” for the filing of a claim of builder’s lien: the registry simply ensures that the subject of the claim has added to the value of the land.<sup>168</sup>

These comments are not a preface to a recommendation that LTSA engage in independent verification of this kind of information – to do so is beyond its current mandate and could be cost prohibitive. That said, I find the evidence illustrative of two notable limitations: (a) an information gap, and (b) a reliance on professionals who make filings with LTSA to ensure the information provided is accurate.

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<sup>164</sup> Evidence of L. Blaschuk, Transcript, March 12, 2021, pp 149–50.

<sup>165</sup> Evidence of C. MacDonald, Transcript, March 12, 2021, pp 163–64.

<sup>166</sup> *Ibid*, pp 156–57.

<sup>167</sup> Evidence of L. Blaschuk, Transcript, March 12, 2021, pp 172–74.

<sup>168</sup> *Ibid*, p 175.

The LTSA witnesses identified a gap in the online searchability of the land registry. A person who physically attends the front counter of a registry can perform a historical name search, which will yield information on a person’s current and past titles or charges. But the same search cannot be performed online. Mr. MacDonald, the director of land titles, indicated this is one of the gaps in LTSA’s online services they are looking to resolve.<sup>169</sup> It is not clear whether the historical information available from a “front counter” request includes mortgages. What is clear, however, is that historical mortgage information is not available online and, unlike historical title information, LTSA has no plans to address this gap. Mr. MacDonald explained that providing online searchability of historical mortgages is not currently a priority, as it is outside LTSA’s traditional paradigm of tracking *ownership* of parcels of land.<sup>170</sup> I consider that the availability of a person’s historical property ownership *and* mortgage lending to be valuable information for anti-money laundering purposes, as it provides records of the movement of wealth. I recommend that LTSA make both types of information available through an online search.

**Recommendation 40:** I recommend that the Land Title and Survey Authority make information about historical mortgage and property ownership available through an online search.

I noted earlier that the LTSA system does not permit one to track transactions involving a real estate professional. LTSA witnesses confirmed there is currently no ability to identify mortgage broker or real estate licensee’s participation in a transaction. Mr. MacDonald confirmed that the issue was one of lack of a legislative mandate, and not technical capacity.<sup>171</sup>

I have found elsewhere that an ability to track the participation of individual real estate agents and mortgage brokers across transactions would be a useful tool for regulators (see Chapter 16). In certain cases, it would also be useful to law enforcement. I recommend that the Province amend LTSA’s enabling legislation to direct the collection of information on real estate agents and mortgage brokers involved in a property transaction. At a minimum, this information should be available to the Ministry of Finance, BCFSA, law enforcement, and other federal and provincial agencies with an anti-money laundering mandate. This would include the new regulator for private mortgage lending recommended in Chapter 17. I anticipate that this change would be best achieved by the addition of data fields for real estate agents and mortgage brokers in LTSA’s Form A and Form B, but I leave it to those with the relevant systems expertise to implement the recommendation as they see fit.

<sup>169</sup> Evidence of C. MacDonald, Transcript, March 12, 2021, pp 181–82.

<sup>170</sup> Ibid, pp 181–84.

<sup>171</sup> He reiterated that the purpose of the LTSA is to track ownership interest in land and that the ability to perform searches for agents or brokers falls outside of this: *ibid*, p 184.

**Recommendation 41:** I recommend that the Province amend the Land Title and Survey Authority’s enabling legislation to direct the collection of information on real estate agents and mortgage brokers involved in a property transaction. At a minimum, this information should be available to the Ministry of Finance, the British Columbia Financial Services Authority, law enforcement, and other federal and provincial agencies with an anti–money laundering mandate.

Another area that was canvassed was the possibility of implementing a “unique identifier” for owners into the LTSA database. This would involve assigning an identifying number or other unique signifier to an individual or entity to enable tracking across the land titles system.

The lack of unique identifiers can create ambiguity as to the identity of an owner. As noted in a report produced for this Commission (dealing with private lending):

The LTSA does not assign or collect unique identifiers for titleholders or charge holders, which means it is not possible to discern between people or entities that share names (e.g. 30 properties may be owned by “John Smith”, but it is not possible to determine how many of these properties are owned by the same John Smith).<sup>172</sup>

This is not a feature of the current LTSA regime in this province. While LTSA has given consideration to using a unique identifier, it was based on the desire to “preserve the integrity of the land title system.” As explained by Mr. MacDonald:

[I]nitially when we were thinking of a unique owner ID it was to preserve the integrity of the land title system. So you’ll have three James Smiths who own 30 different parcels, but you can’t tell which James Smith owns them. You can look at their occupation, you can look at the address, but those aren’t definitive. So the idea is that we would have a unique owner ID ... [This] was about making it more customer centric and with the idea of being able to strengthen the integrity of the land title system.

The implementation of a unique identifier has not been considered for anti–money laundering purposes for similar reasons for the exclusion of the identification of real estate professionals – it is inconsistent with the LTSA’s present mandate.<sup>173</sup>

I see benefits both for LTSA’s existing mandate of ensuring integrity of title and for anti–money laundering purposes to implement unique identifiers. To put it bluntly, there is little use in LTSA data for anti–money laundering intelligence purposes – strategic or tactical – if the identity of an owner cannot be confirmed even as across

<sup>172</sup> Exhibit 729, Affidavit of Adam Ross, affirmed March 9, 2021, exhibit B, “Private Lending in British Columbia (March 9, 2021), p 39.

<sup>173</sup> Evidence of G. Steves and C. MacDonald, Transcript, March 12, 2021, pp 186–88.

LTSA's own records. For these reasons, I recommend that the Province institute the use of unique identifiers for LTSA records.

**Recommendation 42:** I recommend that the Province institute the use of unique identifiers for Land Title and Survey Authority records.

The LTSA has had complaints from law enforcement that the registry is searchable only for a fee.<sup>174</sup> Similar concerns have been expressed about the LOTR. I have seen sufficient evidence about the utility of land title information in the investigation of financial crimes and money laundering that I am persuaded this information should be available to law enforcement *without a fee*.<sup>175</sup> Earlier in this chapter I recommended that the provincial government amend the LOTA and/or its regulations to remove the fee presently charged to access the LTSAs records for law enforcement and regulators with an anti-money laundering mandate. I now extend that recommendation to the land titles registry.

**Recommendation 43:** I recommend that the Province remove the fee requirement presently charged to access the Land Title and Survey Authority's records for law enforcement and regulators with an anti-money laundering mandate.

BCFSA believes that changes to the data collected and/or presented for LTSA records would assist its staff in assessing money laundering risks. BCFSA suggested that LTSA:

- a. collect and disclose identifiers for property owners and beneficial owners, as well as their primary addresses;
- b. collect and disclose values of purchase price for transactions, lending value for mortgages, and aggregate that information so that the total claims on each property can be viewed;
- c. in cases where mortgages are “re-advanceable” (i.e. mortgages with a line of credit), identify the initial draw or limit on the Form B;
- d. create categories of mortgage lender and disclose that information on Form B, such as credit union, bank, MIC [mortgage investment corporation] (a full list of proposed categories was not provided);

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<sup>174</sup> Evidence of C. MacDonald, R. Danakody, Transcript, March 12, 2021, pp 189–90.

<sup>175</sup> Although not discussed in detail in this chapter, an instance of this is found in the evidence of Brad Rudnicki, who appeared on behalf of the BC Lottery Corporation to discuss his open-source research for anti-money laundering purposes, which included mapping connections between people, entities, real estate transactions, and court proceedings using, among other sources, land titles data: Transcript, March 2, 2021, pp 119–25.

- e. collect identification (e.g. registration numbers) for professionals participating in each transaction, including (where applicable) the mortgage broker, real estate licensee, developer, securities registrant, lawyer and/or notary;
- f. create categorization in Form B to indicate the type of mortgage, such as syndications, reverse mortgages and different re-advanceable mortgage types;
- g. make the details of Form B machine-readable and improve search functionality;
- h. collect and disclose information on the source of funds for purchases and for funds loaned as mortgages, categorized by lender (e.g. Canadian financial institution, foreign financial institution, other) and by form of transfer (e.g. domestic wire transfer, international wire, cash, etc.); and
- i. include a disclosure on Form B to select whether a mortgage is income-qualified or non-income qualified (equity).<sup>176</sup>

Aside from those suggestions that are already addressed by specific recommendations above, I am of the view that these specific issues are best considered in the context of my recommendation above in relation to the data gaps identified across a number of provincial record holders. In its development of an action plan for addressing the data gaps and data quality issues identified by the federal-provincial working group in its final reports, the Ministry of Finance should take into account the data issues identified above by BCFSa in respect of the land titles registry at the same time.

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<sup>176</sup> Exhibit 729, Affidavit of Adam Ross, exhibit B, pp 39–40.

## Chapter 19

# Real Estate Values, Money Laundering, and Foreign Investment

British Columbia, particularly the Vancouver region, has become notorious for unaffordable housing. The issue has garnered significant attention – from citizens, commentators, and all levels of government. Understandably, when faced with a large imbalance between average earnings and the cost of buying a home, there is an impulse to find a culprit or blame someone. However, as this short chapter outlines, the reasons for increases to housing costs are many, and they are complicated. My intention is not to resolve the vexing and complex question of all the factors that influence housing costs. Instead, I have the more modest aim of focusing on money laundering, which has in various cases been identified as “the” (or “a main”) cause of housing unaffordability. And in addressing this question, I have taken time to consider the role of foreign investment in real estate, especially from China. In some parts of the public discussion, there is a shorthand that “criminal money from China” has flown freely into the province’s real estate market, leading directly to what is often described as an unaffordability crisis. This is overly simplistic and unfounded.

Public interest in the topic of money laundering in this province has been fuelled in part by rising real estate prices and the belief that those prices are the result of money laundering.<sup>1</sup> At the same time – in tandem – public attention has also been captured by the issue of foreign investment into British Columbia real estate. Among various culprits identified as the causes of housing unaffordability, these are the two that I focus on: (a) money laundering, and (b) foreign money moving into housing here. It is clear to me that in many instances, these two issues get conflated in the discussion. This is particularly so with respect to real estate investment originating from China.

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<sup>1</sup> Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, “Combatting Money Laundering in BC Real Estate,” Expert Panel, March 31, 2019 [Maloney Report], p 41.

The purpose of this chapter is to consider, to the extent possible, the connection between housing prices, money laundering, and foreign investment. Because money laundering and foreign investment are often connected in the discourse, this chapter also considers, in a limited way, the connection between foreign investment and housing prices, and the manner in which the issues of money laundering and foreign investment can become conflated. Finally, this chapter ends with a discussion of the discriminatory consequences of the focus on foreign investment, particularly foreign investment from Asia. It is entirely appropriate to examine the causes of huge increases to housing prices in the province. But it is wrong to leap to an unfounded conclusion that “dirty Chinese money” is to blame.

As this chapter explains, I am unable to conclude, based on the evidence before me, that either money laundering or foreign investment (however that is defined) is a primary cause of price increases in British Columbia residential real estate. There are strong reasons to believe that other factors, discussed above, are the drivers of housing unaffordability in this province.

## Money Laundering and Housing Prices

At the outset of my Report (in Chapter 1), I described four reports that pre-date this Commission but that speak directly to topics I am tasked with examining. One is the 2019 report of Professors Maureen Maloney, Tsur Somerville, and Brigitte Unger (the “Expert Panel”) entitled “Combating Money Laundering in BC Real Estate.” Their report offered an estimate of the impact of money laundering activity on the value of real estate in British Columbia, using the “gravity model” of estimating money laundering volumes as the “best available approach at this time.”<sup>2</sup>

The “gravity model” is described in more detail in Chapter 4, where I discuss various methods that attempt to ascribe an annual amount to the funds laundered in the province each year. The Expert Panel explained the gravity model as follows:

In essence, application of a gravity model to money laundering involves estimating how much of the proceeds of crime in a given country are laundered within that country and how much flows to each other country in the model. Those flows depend on an attractiveness index based on characteristics that measure how attractive a given country is to money launderers, including GDP per capita, and a distance index that measures how close each pair of countries is geographically and characteristics that measure distance from a cultural perspective. The money laundering in a country is the sum of domestic proceeds of crime that remain in the country plus the flow into the country of monies for laundering from all other countries.<sup>3</sup>

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2 Ibid, p 46.

3 Ibid, pp 45–46.

The Expert Panel noted the limitations of the gravity model, including a lack of accurate data respecting money laundering activity and the incomplete nature of crime reporting in both Canada and in countries that have what the model describes as “strong attraction factors” for British Columbia.<sup>4</sup>

The Expert Panel used a gravity model–derived approach, to reach an estimate that \$41.3 billion was laundered in Canada as a whole in 2015, and then \$46.7 billion in 2018. (This assumed that money laundering growth matched GDP growth.) With respect to this province, as opposed to the whole country, the Expert Panel estimated that \$7.4 billion was laundered in British Columbia in 2018.<sup>5</sup>

In order to explain the discussion that follows, I wish to draw a distinction between two things. First, the gravity model method of assessing the quantity of money laundered in the province annually, is described in significantly more detail, and with skepticism, in Chapter 4; it is only sketched briefly above. Secondly, taking the gravity model figure as the starting point, the Expert Panel went on to consider a different question: how much of the increase to real estate values in the province could be attributed to money laundering? As will be seen, the Expert Panel determined (somewhat tentatively) that housing prices were 3.7 to 7.5 percent higher than they would be in the absence of money laundering. Put differently, money laundering was responsible for an increase to housing of between 3.7 and 7.5 percent.<sup>6</sup>

The route taken to move from the gravity model estimate of how much money laundering occurs in British Columbia to its impact on housing prices was a complicated one. I have, at the end of this chapter in an appendix, sought to explain the line of analysis employed by the Expert Panel. For present purposes, setting aside the circuitous path followed to generate the estimated impact on housing costs from money laundering, I turn to where that attempt at measuring impacts leaves us.

This estimate – an impact to housing prices of between 3.7 and 7.5 percent due to money laundering – was accompanied by many caveats from the Expert Panel. The authors emphasized that there were considerable uncertainties surrounding these estimates.<sup>7</sup> To similar effect, in his testimony before the Commission, Professor Somerville repeated this caution.<sup>8</sup>

I have expressed doubt as to the accuracy of the gravity model estimate of money laundering activity. I appreciate that, on top of the gravity model analysis, there is a further extension of reasoning and numerous assumptions are needed to generate an estimate of the increase in housing prices. I cannot confirm the estimate made by the Expert Panel. As a matter of logic, I understand the reasoning that if money laundering

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4 Ibid, pp 46–47.

5 Ibid, pp 47–48.

6 Ibid, p 57.

7 Ibid.

8 Evidence of T. Somerville, Transcript, February 18, 2021, pp 90–91, 130–31.

and criminal activity result in a demand for property purchased with illicit funds, then this additional demand would push up prices. (Though I pause to note that the Expert Panel itself cautioned that this assumption is not necessarily correct.<sup>9</sup>) But in the circumstances, ascribing a percentage value of price increases to money laundering by extrapolating from the gravity model estimate is, to my mind, an exercise in speculation and, ultimately, guesswork.

It is laudable that the Expert Panel sought to give this estimate, and the public debate is informed by such efforts, even if the result is tenuous. But I find myself unable to accept their estimate. Even on their analysis, money laundering activity is not a significant contributing factor to housing unaffordability. It seems that fundamental factors such as supply and demand, population, and interest rates are far more important drivers of prices.

Aside from the estimate provided by the Expert Panel, there is little evidence about the connection between money laundering and housing prices in Canada. In my view, this points to a gap in research that should be addressed. The political discourse – including that of the federal and provincial governments – draws a connection between money laundering and housing affordability. Given this, it is all the more important that this issue be studied and monitored. The AML Commissioner (recommended in Chapter 8) will be well placed to study whether and to what extent money laundering has impacts on housing affordability, which will inform policy decisions.

One means of testing the estimate provided by the Expert Panel is to measure the impact of anti-money laundering measures on real estate prices. If money laundering is pushing up housing prices, then measures taken to stop money laundering should, logically, result in lower housing prices. As described in Chapter 18, in the United States, two researchers were able to measure a 4.2 percent decline in housing prices for American properties affected by a Financial Crimes Enforcement Network (FinCEN) geographic targeting order designed to address money laundering through the purchase of real estate by shell companies.<sup>10</sup> This suggests that the American policy measure – the geographic targeting order – *did* have a measurable impact on housing, or at least that it was associated to that decline, if not causally linked.

A study undertaken for the Commission, which was modelled on this American research, was conducted by Professor Somerville, Adam Ross and Dr. Jake Wetzel. The authors examined the impact of British Columbia's new beneficial ownership disclosure requirements. They looked at how these new requirements had an impact on the ways that people own real estate, and specifically on the ownership of real estate by legal entities (that is, not by individual people but by companies and trusts and other "legal persons"). The study's authors did not examine the impact of the disclosure

<sup>9</sup> See, e.g., Evidence of T. Somerville, Transcript, February 18, 2021, pp 92–93.

<sup>10</sup> Sean Hundtofte and Ville Rantala, "Anonymous Capital Flows and U.S. Housing Markets" (University of Miami Business School Research Paper No. 18-3, 2018).

requirements on prices.<sup>11</sup> I discuss this study in greater detail in Chapter 18, but for present purposes, I point to this as an example of a line of examination that will provide important insights as to the relationship between money laundering and housing prices.

It is possible that anti–money laundering measures will have an impact on housing prices. It is also possible that they will have no discernible impact. To be clear, implementing anti–money laundering measures in the real estate sector should happen *because money laundering is a problem* (as I address in Chapter 5). The Province should take action, even if there is no proof it will improve housing affordability in the province. Impeding the laundering of illicit funds through real estate is good in its own right. But the Province should understand whether, and to what extent, those actions have an impact on real estate prices.

I would add what may be an obvious comment, that anti–money laundering measures should not be considered a “silver bullet” that will somehow fix housing unaffordability in the province.

Returning for a moment to the Expert Panel’s attempted and tentative estimate of a 3.7 to 7.5 percent impact on housing prices in British Columbia, I note that according to the BC Real Estate Association (BCREA), the average residential price in BC in December 2021 was \$1,033,179.<sup>12</sup> I am informed by the BCREA’s chief economist that between 2010 and 2020, home prices in the Lower Mainland rose approximately 80 percent.<sup>13</sup>

Without seeking to diminish the importance of a 3.7 to 7.5 percent inflationary effect on the average British Columbian, it seems to me that the real obstacle to affordability is not in the increase in purchase price that may be caused by money laundering. A price decrease of between \$38,000 and \$77,000 (3.7 to 7.5 percent of the average December 2021 price) on an average property price of over \$1 million will not really bring home ownership within the reach of many more people.<sup>14</sup>

Understanding how and if anti–money laundering measures that are implemented in the real estate sector have an impact on property prices will allow the provincial government to assess the extent to which its anti–money laundering actions, in fact, further its goals regarding housing affordability. It will ensure that action in the one area of concern (money laundering) is not incorrectly conflated with action in another area (housing affordability). If anti–money laundering measures are to be promoted as actions on housing affordability, their actual efficacy as such should be understood. I recommend that, as the Province implements new policies and measures against money laundering in real estate, it analyze the impact of those reforms on housing prices.

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11 Exhibit 1041, Affidavit #3 of Adam Ross affirmed May 19, 2021, exhibit B, White Label Insights Ltd., *Assessing the Impacts of Beneficial Ownership Disclosure on Residential Property Holdings in BC* (May 13, 2021).

12 BC Real Estate Association, Brendon Ogmundson, “A Record Year for the BC Housing Market” (January 12, 2022), online: <https://www.bcrea.bc.ca/economics/a-record-year-for-the-bc-housing-market/>.

13 Evidence of B. Ogmundson, Transcript, February 17, 2021, p 172.

14 See also Evidence of T. Somerville, Transcript, February 18, 2021, pp 154–55.

**Recommendation 44:** I recommend that, as the Province implements new policies and measures against money laundering in real estate, it analyze the impact of those reforms on housing prices.

## Causes of Real Estate Price Increases and the Role of Foreign Investment

Given the connection in the political discourse between money laundering and housing affordability, I heard evidence addressing the general issue of real estate prices and housing affordability in the province. Five witnesses testified about the causes of real estate price increases in British Columbia. One further witness addressed the harmful impact arising from public discourse focused on foreign investment, specifically Chinese wealth, being a cause of high real estate prices.

Dr. Aled ab Iorwerth, deputy chief economist for the Canadian Mortgage and Housing Corporation (CMHC), appeared before the Commission to speak to the CMHC's 2018 report on the causes of housing price increases in Canadian cities.<sup>15</sup> As with many of the reports and materials relied upon in this Inquiry, I have not attempted to capture the entirety of the CMHC report, but merely to set out the essential findings. The report is an exhibit in the Inquiry, and available as such to the public.<sup>16</sup>

Dr. ab Iorwerth explained that, in 2016, CMHC was asked by the federal minister of families, children and social development to examine the causes of escalating housing prices in Canada's large urban areas from 2010 onward, to a thorough academic standard. The report was requested in the context of sharply escalating housing prices over the prior three years.<sup>17</sup>

The study looked at housing prices in census metropolitan areas (CMAs). In British Columbia this meant the Vancouver CMA, which includes surrounding cities such as Surrey and Coquitlam. In both the Toronto and Vancouver CMAs, the price of single detached homes experienced the most significant price growth. Between 2010 and 2016, the average price of a single detached home in the Vancouver CMA grew approximately 85 percent.<sup>18</sup>

Drawing on data from the previous decades, CMHC developed a model to predict housing prices between 2010 and 2016. Price forecasts were informed principally by average disposable income, population, and interest rates. The model's projections closely matched actual prices in the Vancouver CMA, accounting for 75 percent of the area's price increases. The model predicted the price increases in Vancouver better than in Toronto.

<sup>15</sup> Exhibit 602, Overview Report: Lower Mainland Housing Prices [OR: Housing Prices], Appendix E, CMHC, *Examining Escalating House Prices in Large Canadian Metropolitan Centres* (May 24, 2018).

<sup>16</sup> Ibid.

<sup>17</sup> Evidence of A. ab Iorwerth, Transcript, February 18, 2021, pp 5–6.

<sup>18</sup> Ibid, pp 10–11.

Dr. ab Iorwerth explained that, while the price increase itself was not unusual, the persistent upward trend in price increase was. When house prices increase, the market is expected to respond with more supply.<sup>19</sup> The study concluded that supply responses to price increases in both Vancouver and Toronto were weaker than in other cities.<sup>20</sup> The responsiveness of the supply side of housing, CMHC found, was limited when compared to other cities that did not see such large and persistent price increases, such as Calgary, Edmonton, and Montreal.<sup>21</sup>

In a later CMHC publication, published in March 2021, CMHC concluded that between 2016 and 2019 (largely after the period studied in the 2018 report discussed by Dr. ab Iorwerth), rapid price growth was caused by “unresponsive” housing supply.<sup>22</sup>

CMHC did *not* conclude that foreign investment was a significant driver of prices in the Vancouver CMA, given the low rate of foreign ownership that Statistics Canada data indicated.<sup>23</sup> It was difficult, Dr. ab Iorwerth testified, to conclude that a reported 3 percent foreign ownership of housing stock could be driving the large price increases that were seen between 2010 and 2016.<sup>24</sup>

Asked if he considered it possible that money laundering has played a significant role in the increase in housing prices in the Vancouver area, Dr. ab Iorwerth was skeptical that money laundering would have had a significant role in the price increases seen between 2010 and 2016. But he said it was entirely possible that a hot real estate market could encourage speculation by a number of players, including those looking to invest illicit funds.<sup>25</sup>

Brendon Ogmundson, chief economist for the BCREA, testified before the Commission about the impact of foreign investment on real estate prices. Addressing in particular the period from 2016 through 2020 and the beginning of the pandemic (the period immediately following the CMHC study), Mr. Ogmundson pointed to a number of factors that first created a rapid increase in housing prices, and then somewhat of a cooling afterward.

In 2016, he testified, there was a “perfect storm” in British Columbia real estate. It was created by record low five-year fixed-rate mortgages, a record low number of new listings, a rapidly growing economy, and “runaway price expectations.” Some of the rising prices were fuelled by particularly notable cost increases in the single detached home and luxury markets.<sup>26</sup> To the extent that foreign investment still is a factor in

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19 Ibid, pp 11–12.

20 Exhibit 602, OR: Housing Prices, Appendix E, CMHC, *Examining Escalating House Prices in Large Canadian Metropolitan Centres* (May 24, 2018), pp 6–7.

21 Evidence of A. ab Iorwerth, Transcript, February 18, 2021, pp 32–33.

22 CMHC, *Housing Market Insight – The Relationship Between Migration and House Prices* (March 2021), online: <https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/market-reports/housing-market/housing-market-insight>.

23 Evidence of A. ab Iorwerth, Transcript, February 18, 2021, pp 30–31.

24 Ibid, pp 44–46.

25 Ibid, pp 37–39.

26 Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 162–63.

the luxury market (with price points at \$3 million and up), his view was that, given the segmented nature of the housing market, such investment would not have much impact on the rest of the housing market.<sup>27</sup>

The provincial government addressed the situation in part by introducing a foreign buyers' tax in the summer of 2016. This resulted in a dip in prices in the six to eight months following. But the market had already started to decelerate before the tax was implemented.<sup>28</sup> Nor was the effect long lasting: by January 2017, home prices had started to rise again.

As for foreign investment, Mr. Ogmundson testified that BCREA was seeing a decline in the level of foreign investment as a share of transactions after 2017. This was particularly so in respect of investment from China, which had put severe restrictions on the outflow of capital.<sup>29</sup> By the end of 2020, following the closure of borders due to the pandemic, the share of foreign investment in residential real estate was down – from 3.3 percent in 2018 to half a percent in 2020.<sup>30</sup>

A number of cooling measures introduced by both levels of government resulted in a chilling of the market in 2018 and 2019. In 2018, the federal government's Guideline B-20 "stress test" was implemented for uninsured mortgages issued by federally regulated financial institutions. In simple terms, the stress test requires lenders to confirm that borrowers can continue to repay their loans if faced with a sudden change in financial circumstances. To test resilience, borrowers are qualified for a mortgage at the contract rate of the loan, plus two percentage points.<sup>31</sup> According to Mr. Ogmundson, the practical impact of the stress test was to reduce an average borrower's purchasing power by 25 percent.<sup>32</sup> A decline in home sales followed, which was likely partially caused by the stress tests, but more significantly by factors such as rising interest rates, and a slowing economy.<sup>33</sup> In Metro Vancouver, the speculation and vacancy tax also slowed the price growth of residential real estate.<sup>34</sup>

Asked for his views on the causes of rising real estate prices in Vancouver, Mr. Ogmundson pointed to the strong price increases in residential real estate during the pandemic, *despite* the lack of foreign investment and very little immigration. The

<sup>27</sup> Ibid, p 163.

<sup>28</sup> Ibid, pp 159–60.

<sup>29</sup> Ibid, pp 160–61.

<sup>30</sup> Exhibit 602, OR: Housing Prices, Appendix N, BCREA, Foreign Buyer Tax Presentation Slides (Vancouver: BCREA, undated); Evidence of B. Ogmundson, Transcript, February 17, 2021, p 161.

<sup>31</sup> Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 151–52. See also Office of the Superintendent of Financial Institutions, "Residential Mortgage Underwriting Practices and Procedures Guideline (B-20)" (Modified February 18, 2021), online: <https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b20-nfo.aspx>.

<sup>32</sup> Evidence of B. Ogmundson, Transcript, February 17, 2021, p 152.

<sup>33</sup> Ibid, p 155; Exhibit 602, OR: Housing Prices, Appendix L, BCREA, *Market Intelligence Report – July 2019: The Impact of the B20 Stress Test on BC Home Sales in 2018*.

<sup>34</sup> Exhibit 602, OR: Housing Prices, Appendix M, BCREA, *Market Intelligence Report – March 2020: Estimating the Impacts of the Speculation and Vacancy Tax*.

cause of price increases was, in his view, more likely rooted in a lack of supply (which, he explained, means homes listed for sale) and record low mortgage rates.<sup>35</sup>

Witnesses disagreed about whether foreign investment plays a significant role in Vancouver's housing prices. The Commission heard from a panel of academics who have studied the issue extensively. They had different takes on the causes of residential property price increases in the British Columbia, particularly the Lower Mainland area. The panel was comprised of Professor David Ley, professor emeritus at the Department of Geography at UBC, Professor Joshua Gordon of the School of Public Policy at SFU, and Professor Tsur Somerville of the UBC Sauder School of Business. Professor Somerville was also a member of the Expert Panel that authored the Maloney Report.

Professor Gordon has written about a phenomenon of households that declare low domestic (Canadian) income for tax purposes, and yet have substantial global income and own real estate in very expensive neighbourhoods. According to Professor Gordon, this is an indicator that there is a substantial amount of foreign capital flowing into Vancouver's housing market, exacerbating affordability challenges.<sup>36</sup> This would also help to explain how it is that Vancouver can sustain such high housing prices without corresponding high median incomes.

Professor Ley has written on the escalation of housing prices disproportionate to local incomes in Vancouver as well as in other “gateway cities,” including London, New York, Miami, Sydney, Los Angeles, Hong Kong, and San Francisco. These are cities he described as being “closely tied into global flows of migrants, capital, trade and information.”<sup>37</sup>

Economic fundamentals (average disposable income, population, and interest rates), Professor Ley opined, could not explain surges in prices in the Vancouver region. Such price surges in the Vancouver market, he said, can only be explained by the role of investors, many from outside Canada, rather than “local users” earning income in the Vancouver area. He gave as an example the surge in prices between 2015 and 2017, when “an extraordinary amount” of money left China.<sup>38</sup>

Some of the literature, Professor Gordon testified, links the influx of foreign capital to money laundering, suggesting that the pathways used to ensure anonymity and/or evade capital export restrictions are relevant to both the movement of offshore capital and to money laundering.<sup>39</sup>

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35 Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 166–167; Exhibit 631, BCREA, Market Intelligence Report, *The Unusual World of Pandemic Economics: Why BC's Housing Market Remains Strong Despite COVID-19* (September 9, 2020); Exhibit 632, BCREA First Quarter Forecast Update (January 25, 2021).

36 Evidence of J. Gordon, Transcript, February 18, 2021, pp 62–64.

37 Evidence of D. Ley, Transcript, February 18, 2021, pp 75–76; David Ley, “A Regional Growth Ecology, A Great Wall of Capital and a Metropolitan Housing Market” (February 2021) 58(2) *Urban Studies*, online: <https://journals.sagepub.com/doi/epub/10.1177/0042098019895226>.

38 Evidence of D. Ley, Transcript, February 18, 2021, pp 95–97.

39 Evidence of J. Gordon, Transcript, February 18, 2021, pp 136–37.

Professor Somerville agreed that capital from outside Canada could have an impact on housing values but pointed to supply as being a critical factor to understanding housing prices. Foreign investment in real estate also does not necessarily have a negative impact on housing affordability – it depends on the type of investment. If foreign capital is used to purchase land and develop rental housing, then that would be a positive in terms of housing availability.

It became clear as the evidence developed before me that there is disagreement in the academic community about what should be considered “foreign ownership.” Is it limited to beneficial ownership by persons or entities based or resident outside of Canada? Or does it extend to purchases made largely with funds earned outside of Canada?

There was also debate over how to address the problem: by taking further steps to limit demand (the foreign buyers’ tax being one example) or by aggressively addressing supply by building social housing or addressing regulations that slow the building of new supply.<sup>40</sup> Professor Somerville emphasized the issue of supply, while Professor Gordon was of the view that an emphasis on supply was exaggerated. Professor Ley agreed that supply needs to be addressed, but that supply must be targeted at affordable housing, not high-priced condos.

Resolving these complex issues is somewhat outside the ambit of my mandate, except insofar as the investment of foreign-originated capital has been connected to and, in fact, conflated with money laundering in the province. As Professor Gordon pointed out, it is difficult to know the source of wealth originating in a foreign jurisdiction and whether it is the product of criminal activity or corruption.<sup>41</sup> The case study at the conclusion of this chapter illustrates this point. And while the focus in the public discourse around foreign capital flowing into real estate in British Columbia has been on East Asia, particularly China, as this Report was being written, global attention has turned to the vast wealth of the Russian oligarchs, invested in luxury properties in London and the Riviera as well as other assets like super-yachts and professional soccer clubs. Global events can change the definition of what is considered tainted or criminal. What may not have seemed especially suspicious at one time may come to be seen as deeply problematic later. It is not always (in fact, not often) possible to know whether funds originating in a foreign jurisdiction are tainted.

All of this, in my view, reinforces the importance of a robust beneficial ownership registry for real property. To know if capital coming into Canada is tainted by crime or corruption, Canadian authorities (and professionals with anti-money laundering obligations) need to know the ultimate beneficial owner(s) of property, in order to be properly guided by tools such as lists of politically exposed persons.

40 Evidence of T. Somerville, D. Ley, and J. Gordon, Transcript, February 18, 2021, pp 122–29.

41 Evidence of J. Gordon, Transcript, February 18, 2021, pp 134–35; Evidence of D. Ley, Transcript, February 18, 2021, pp 145–46.

A discussion of foreign capital investment into British Columbia real estate is not complete without consideration of how the discourse relating to foreign investment, immigration, and housing prices can veer into patterns of stereotypical or racist thinking.

Dr. Henry Yu appeared before me to put this issue into its historical context. He described a long history of racist sentiment toward Chinese immigrants from the late 1800s onward – not just in Canada, but also in the United States, Australia, and New Zealand. These countries had overt policies of white supremacy that deliberately limited and excluded immigrants from Asia.<sup>42</sup>

After immigration reform in the 1960s, immigrants to Canada came increasingly from Asia, in particular India, China, and the Philippines. After 1986, and up to the transition of power from Britain to China in Hong Kong in 1997, there was a large influx of immigrants from Hong Kong. Dr. Yu reminded the Commission of the anxiety that was felt in some quarters when this wave of immigration occurred, and compared it to the reaction to recent anxiety about immigration from mainland China.<sup>43</sup>

Dr. Yu also pointed to public resentment or suspicion about the accumulation of wealth by people in or from China, and a heightened sense that such accumulation is illegitimate or corrupt. In British Columbia, this has resulted in focusing on and singling out Chinese buyers as the cause of an unaffordable and speculative real estate market.<sup>44</sup> The manner in which “Chinese money” is discussed in various fora is resonant, he says, with a long history of discrimination.<sup>45</sup>

Asked about the impact of a focus on Chinese people in the public discourse on money laundering, Professor Yu placed the issue in the context of a number of ongoing discussions, like housing affordability and the pandemic, in which people from China, or of Chinese descent, are characterized as “a problem.”<sup>46</sup> When this type of discussion becomes normalized, then it becomes easier to treat a subset of people differently from a legal and policy perspective.

I share Professor Yu’s concerns about our public dialogue becoming infused with racist stereotyping. There are legitimate policy questions relating to foreign ownership of real estate in the province. Those questions should be addressed on their merits. They should be decided on the basis of sound policy and evidence. They should not engage “us vs. them” dynamics and must take care not to stray into treating any ethnic community as presumptively dishonest or unlawful. It is important to be aware of and avoid racism, whether it is glaring and obvious, or inadvertent and subconscious.

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42 Evidence of H. Yu, Transcript, February 19, 2021, pp 6–12; Exhibit 641, Henry Yu, “Then and Now: Trans-Pacific Ethnic Chinese Migrants in Historical Context” (January 2006).

43 Evidence of H. Yu, Transcript, February 19, 2021, pp 55–56.

44 Ibid, pp 68–74.

45 Ibid, pp 80–81.

46 Ibid, pp 122–26.

## **Conclusion on Causes of Real Estate Price Increases**

I am unable to conclude that either money laundering or foreign investment (however that is defined) is a primary cause of price increases in British Columbia residential real estate. There are strong reasons to believe that other factors, discussed above, are the drivers of housing unaffordability in this province. I certainly would not urge the provincial government to take up the recommendations in this Report on the basis that addressing money laundering will resolve British Columbia's housing affordability issues. As my recommendations above suggest, this is an area that would benefit from study and attention. Money laundering should be addressed, to be sure, but steps taken to counteract money laundering should not be viewed as a panacea for housing unaffordability.

## Appendix 19A: How the Expert Panel Put a Number on Real Estate Price Increases from Money Laundering

As noted in my discussion of the gravity model of estimating money laundering in BC, the Expert Panel sought to estimate what cost increases for real estate could be attributed to money laundering. In the discussion below, I have summarized the route taken to travel from the gravity model estimate of money laundering per year to the price increases said to be attributable to money laundering.

The Expert Panel had concluded that some \$7.4 billion per year was being laundered in the province.<sup>47</sup> The authors went on to estimate what portion of that money was invested into real estate in the province. They came up with a wide range: between \$800 million and \$5.3 billion. It is important to understand why there is such a wide range in this estimate, because in the media and in the public discourse, it is often the case that only the upper range is cited.

First the Expert Panel had to determine how much of the \$7.4 billion would be available for investing at all – let alone in real estate. As noted by the Expert Panel, illicit funds are not necessarily funds that are available for investment in the hands of a criminal. A person who generates illicit funds in the course of criminal activity will spend a good portion of those funds (as everyone does) on purchasing the necessities of life (food, shelter, transport, clothes). If a person with an illicit income behaves like the average Canadian, he or she will save some, but far from most, of their income. Statistics show that Canadian households save somewhere between 3.6 percent (for the average Canadian household) and 28 percent (for the highest income quintile) of their net disposable income. That saved income is then available for investment. It may be invested in many ways, real estate being just one option. On the other hand, some of the \$7.4 billion estimated to be laundered in British Columbia can be expected to be money that was *sent* to British Columbia specifically for the purpose of investing.

The Expert Panel concluded that “the proportion of monies available for laundering that is invested is very unlikely to be lower than the proportion of income invested by the highest income quintile of the Canadian population.”<sup>48</sup> This was so, the authors reasoned, because “invested proceeds of crime will generate laundered returns that, in turn, provide income more suitable for consumption than dirty proceeds of crime.”<sup>49</sup> (On this line of reasoning, in determining how much illicit money is available to invest, it is safe to expect that criminals will be more keen to invest because that will help to legitimize their dirty cash so that, in turn, it is easier to spend.) If all of the \$7.4 billion in laundered funds was treated as income (the most conservative approach), and 28 percent of that was assumed to be available for investment, that would leave \$2.1 billion available for investment in various areas, including real estate.

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47 Exhibit 330, Maloney Report, p 1.

48 Ibid, pp 51–52.

49 Ibid, p 51.

At the upper end of its estimate, the Expert Panel assumed 100 percent of the \$7.4 billion laundered in British Columbia was available for investing.

In sum, the Expert Panel concluded that the amount of illicit money available for investment ranged from \$2.1 to \$7.4 billion per year.

Second, the Expert Panel had to estimate how much of those funds available for investment (\$2.1 to \$7.4 billion) was invested into real estate. Statistics Canada data indicated that 37 to 72 percent of the wealth of property-owning Canadian households with no pension is invested in real estate (including primary residences).<sup>50</sup>

At the lower end of the range of illicit fund available for investment (\$2.1 billion), applying the 37 to 72 percent range, the investment of laundered funds into real estate would be \$800 million to \$1.5 billion per year.

At the upper end of the spectrum, if *all* of the \$7.4 billion estimated to have been laundered in BC in 2018 was available for investment, applying the 37 to 72 percent range, then \$2.7 to 5.3 billion of that would be invested into real estate. In the view of the Expert Panel, the upper boundary of \$5.3 billion was felt to be more accurate, because that amount offset what they described as the likely underestimation of overall money laundering, because of under-reporting of crime.<sup>51</sup>

Third, having come up with a range of investment of laundered funds into real estate (\$800 million to \$5.3 billion) in 2018, the Expert Panel then turned to estimating the *impact* of that investment on real estate prices. Flows of such large amounts of money into a market could reasonably be expected to affect the market, pushing prices up. As noted by the panel, estimating the impact of investing from \$800 million to \$5.3 billion in real estate required making “a large number of assumptions.”<sup>52</sup> After making these assumptions, the Expert Panel estimated that the \$5.3 billion upper range of illicit funds invested into real estate would result in housing prices that were *3.7 to 7.5 percent higher* than they would be in the absence of money laundering.

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50 Ibid, p 52.

51 Ibid, p 52.

52 Ibid, p 57.

# Part V

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## Financial Institutions

Financial institutions may be the first entities that come to mind when considering money laundering risks. Most people and companies rely on banks and other financial institutions to handle many of their financial transactions. Financial institutions offer a broad range of financial services, from savings and loans to investments and financing complex corporate transactions. It is not hard to conclude that most money launderers seek to pass their illicit funds through a financial institution at some point, and this results in significant money laundering vulnerabilities.

This Part addresses three kinds of financial institutions. Chapter 20 discusses banks and credit unions – key institutions of interest to money launderers. Chapter 21 addresses money services businesses, which are essentially an alternative to traditional banking and face well-known money laundering vulnerabilities. Finally, in Chapter 22, I examine white-label automated teller machines.

## Chapter 20

# Banks and Credit Unions

It has long been recognized that banks, credit unions, and other financial institutions face significant money laundering vulnerabilities. As gatekeepers to the financial system, these institutions face inherent risks of being abused by money launderers seeking to introduce illicit funds into their bank accounts and thereby cloak their ill-gotten gains with a façade of legitimacy. Bad actors may also seek to use financial institutions to transfer funds, including abroad and to legal entities such as corporations or trusts.

When the Financial Action Task Force first introduced its 40 recommendations in 1990, the recommendations focused largely on financial institutions (see Chapter 6). Although the recommendations have since expanded to include certain non-financial businesses and professions (including accountants, casinos, real estate professionals, and lawyers), they still have a particular focus on financial institutions. This is understandable given the significant risks arising in this sector and the opportunities that financial institutions have to observe suspicious behaviour. Indeed, in the 2019–20 fiscal year, the five major Canadian banks — the Royal Bank of Canada (RBC), Bank of Montreal (BMO), Canadian Imperial Bank of Commerce (CIBC), Bank of Nova Scotia (Scotiabank) and TD Canada Trust (TD) – were responsible for over 90 percent of all reports received by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).<sup>1</sup>

In this chapter, I begin by setting out some jurisdictional and other limitations applicable to my discussion of this sector. Under the *Constitution Act, 1867*, banks are federally regulated entities. As a provincial commissioner, I cannot make recommendations to the federal government or federal institutions. As I explain below, this limitation means

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<sup>1</sup> Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 30, 2020), p 10.

that my discussion of banks is somewhat general. I then discuss the legal and regulatory framework applicable to banks and credit unions, including their obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*), and regulation undertaken by the British Columbia Financial Services Authority (BCFSA) and the Office of the Superintendent of Financial Institutions (OSFI). I then turn to money laundering risks affecting financial institutions and anti-money laundering measures currently in place at those institutions. I end this chapter with a discussion of the importance of information-sharing initiatives involving financial institutions.

## Constitutional and Other Limitations

Under the Canadian Constitution, the federal Parliament has jurisdiction over banks.<sup>2</sup> As the Supreme Court of Canada has explained, the purpose of putting banks under federal jurisdiction was

to create an orderly and uniform financial system, subject to exclusive federal jurisdiction and control in contrast to a regionalized banking system which in “[t]he years preceding the Canadian Confederation [was] characterized in the United States by ‘a chaotic era of wild-cat state banking.’” [References omitted.]<sup>3</sup>

Although banks are subject to federal jurisdiction, the provinces regulate non-bank provincially incorporated financial institutions.<sup>4</sup> These include credit unions (and the roughly equivalent *caisses populaires* operating predominantly in Quebec), trust and loan companies, co-operatives, insurance companies, pension plans, and treasury branches.<sup>5</sup>

The evidence before me focused on banks and credit unions, the primary financial institutions that accept deposits, facilitate transfers, and conduct other activities attractive to money launderers. Credit unions are co-operative organizations: they are owned by their members, and the members are depositors. Their activities essentially consist of taking deposits from their members and lending money out in retail or residential-type lending, primarily mortgages. Some credit unions have subsidiaries offering services such as wealth management and insurance.<sup>6</sup>

As banks are federally regulated institutions, jurisdictional issues prevented the Commission from exploring the effectiveness of the major banks’ anti-money

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2 *Constitution Act, 1867*, ss 91(15) (“Banking, Incorporation of Banks, and the Issue of Paper Money”) and 91(16) (“Savings Banks”).

3 *Canadian Western Bank v Alberta*, 2007 SCC 22 at para 83.

4 MH Ogilvie, *Bank and Customer Law in Canada*, 2nd ed (Toronto: Irwin Law, 2013), pp 1–2, 9, 12–14.

5 There is no specific provision in the *Constitution Act, 1867*, referring to provincial financial institutions. However, the courts have interpreted section 91(15) as referring strictly to “banks” – a name that only federally chartered banks can use – and Parliament has never asserted jurisdiction over *all* financial institutions. As a result, other financial institutions have been permitted to offer “banking” services so long as they do not call themselves “banks”: MH Ogilvie, *Bank and Customer Law in Canada*, pp 32–33.

6 Evidence of C. Elgar, Transcript, January 15, 2021, pp 17–18.

laundering efforts in great detail. I was pleased to hear evidence from the chief anti-money laundering officers at RBC, Scotiabank, and HSBC, who testified on their own behalf as well as on behalf of the “big five” national banks (RBC, TD, CIBC, BMO, and Scotiabank). Their testimony was heard in a rare *in camera* (non-public) hearing as a result of Ruling 24. In that ruling, I explained:

[7] In essence the evidence sought to be heard *in camera* consists of a panel of witnesses from each of the Bank of Nova Scotia, the Royal Bank of Canada and HSBC. As I understand it, these witnesses will be testifying about money laundering typologies as well as countermeasures utilized by “the most sophisticated and largest financial institutions in the country.” Commission counsel submits the evidence will be highly sensitive and will describe typologies and methods of money laundering in detail “including new and cutting-edge techniques.” The evidence will also detail what the banks are doing in response and the measures they are taking to identify, prevent and address money laundering risks and activity.

...

[22] The prospect of proceeding *in camera* in a public inquiry is, in general, undesirable. In the present circumstances the issues being addressed by the evidence – the methods being used by criminals to launder money through Canada’s major financial institutions and the measures taken to detect and prevent them – are important ones.

...

[24] In my view it would imperil the administration of justice if the evidence were to be made publicly available ... Evidence illustrating well-developed methods of laundering money may provide information useful for criminals seeking to launder proceeds of crime through financial institutions that are not as well-equipped to detect or resist them as are Canada’s major banks. Even more importantly, publicizing advanced strategies and methods used by the banks to detect and deter money launderers are likely to undermine the success of those strategies by providing notice to those who are being, or are otherwise likely to be targeted.

I also noted that there was no practical way of ameliorating the risks short of an *in camera* hearing. The evidence would be of significant benefit to the Commission, and it may not have been heard in the absence of an *in camera* hearing.<sup>7</sup> I did not take the decision lightly, however. The public has an interest in hearing how money laundering affects important economic institutions such as banks and knowing how they respond to money laundering risks. Further, the effect of an *in camera* hearing is that the evidence can be referred to in only a very general way in this Report.<sup>8</sup>

<sup>7</sup> Ruling 24, Application for *In Camera* Hearing, issued January 15, 2021, para 25.

<sup>8</sup> *Ibid*, para 26.

On balance, I determined that it was appropriate to hear the evidence *in camera*, with all participants but one permitted to be present.<sup>9</sup> My discussion of the *in camera* hearing is therefore high level and does not reveal any specific information obtained from the panel.

All of this being said, given the similarities between services offered by banks and credit unions, many of the money laundering risks and vulnerabilities are very similar, if not the same. Further, both federal and provincial financial institutions are subject to the *PCMLTFA*. Therefore, while there are limitations on what I can recommend with respect to banks, this chapter will examine the risks inherent to both banks and credit unions, but my recommendations will be confined to provincial institutions.

## Legal and Regulatory Framework

Banks and credit unions are highly regulated entities, subject to both the *PCMLTFA* and regulation by provincial and federal regulatory bodies. I review these schemes in turn.

### The *PCMLTFA*

The *PCMLTFA* applies to various financial institutions, which are listed in sections 5(a) to (h.1) of that statute. These include, but are not limited to, banks (including some foreign banks), credit unions and *caisses populaires*, life insurance companies, trust and loan companies, securities dealers, and domestic and foreign money services businesses. I discuss money services businesses, whose obligations differ slightly from the other institutions I have just listed, in Chapter 21.

Financial institutions have a variety of obligations under the *PCMLTFA*. First, they must implement a compliance program, which has six aspects. Institutions must:

- appoint a compliance officer responsible for implementing the program;
- develop and apply written compliance policies and procedures that are kept up to date and, in the case of an entity, are approved by a senior officer;
- conduct a risk assessment of the business to assess and document the risk of a money laundering offence or a terrorist activity financing offence occurring in the course of the business's activities;
- develop and maintain a written, ongoing compliance training program for employees, agents, mandataries, or other authorized persons;
- institute and document a plan for the ongoing compliance training program and deliver the training; and

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<sup>9</sup> Ibid, para 28.

- institute and document a plan for a review (at least every two years) of the compliance program for the purpose of testing its effectiveness.<sup>10</sup>

In line with the first requirement, banks and credit unions appoint a “chief anti-money laundering officer” (often referred to as a “CAMLO”).

Financial institutions have a variety of client identification and verification requirements. They must verify a client’s identity in various situations, including when they:

- receive \$10,000 or more in cash;<sup>11</sup>
- receive virtual currency in an amount equivalent to \$10,000 or more;<sup>12</sup>
- issue or redeem money orders, traveller’s cheques, or other similar negotiable instruments of \$3,000 or more;<sup>13</sup>
- initiate and remit electronic funds transfers of \$1,000 or more;<sup>14</sup>
- transfer and remit virtual currency in an amount equivalent to \$1,000 or more;<sup>15</sup>
- conduct foreign currency exchanges of \$3,000 or more;<sup>16</sup>
- conduct exchanges of virtual currency for funds, funds for virtual currency, or one virtual currency for another in an amount equivalent to \$1,000 or more;<sup>17</sup> and
- open bank accounts or credit card accounts for clients.<sup>18</sup>

Financial institutions must keep records with respect to the above situations.<sup>19</sup> In line with how the *PCMLTFA* applies to all reporting entities, these verification measures need not be done when the client is a public body, financial institution, or a very large corporation or trust.<sup>20</sup> Financial institutions must also take reasonable measures to verify the identity of every person or entity that conducts or attempts to conduct a suspicious transaction before filing a suspicious transaction report.<sup>21</sup> They are also required to obtain beneficial ownership information when verifying the identity of an entity and to

10 *PCMLTFA*, s 9.6(1); *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 156(1).

11 *PCMLTF Regulations*, ss 84(a), 105(7)(a), 109(4)(a), 112(3)(a), 126.

12 *Ibid*, ss 84(b), 105(7)(a), 109(4)(a), 112(3)(a), 129.

13 *Ibid*, ss 86(a)(iii)(A) and 105(7)(a).

14 *Ibid*, ss 86(a)(iii)(B) and (F) and 105(7)(a).

15 *Ibid*, ss 86(a)(iii)(D) and (F) and 105(7)(a).

16 *Ibid*, ss 86(a)(iii)(C) and 105(7)(a).

17 *Ibid*, ss 86(a)(iii)(E) and 105(7)(a).

18 *Ibid*, ss 86(a), (b), and (c); 87; 105(7)(b) and (d); 109(4)(c) and (d); 112(3)(c) and (d).

19 *Ibid*, ss 10–14.

20 *Ibid*, ss 10, 11, 84(a), 84(b), 154(2)(m), (n), (o).

21 *PCMLTFA*, s 7; *PCMLTF Regulations*, ss 85(1), 105(7)(c), 109(4)(b) and 112(3)(b).

take reasonable measures to confirm the accuracy of that information,<sup>22</sup> as well as take reasonable measures to determine if a third party is involved in a transaction.<sup>23</sup> They also have a number of obligations with respect to politically exposed persons.<sup>24</sup>

The *PCMLTFA* imposes a number of reporting obligations on financial institutions. They must report, to FINTRAC:

- the receipt of \$10,000 or more in cash in a single transaction<sup>25</sup> from a person or entity;<sup>26</sup>
- the initiation, at the request of a person or entity, of an international electronic funds transfer of \$10,000 or more in a single transaction;<sup>27</sup>
- the receipt of an international electronic funds transfer of \$10,000 or more in a single transaction;<sup>28</sup>
- the receipt of an amount of \$10,000 or more in virtual currency in a single transaction;<sup>29</sup> and
- every financial transaction for which there are reasonable grounds to suspect that the transaction is related to the commission or suspected commission of a money laundering or terrorist financing offence.<sup>30</sup>

Financial institutions also have obligations to monitor their business relationships<sup>31</sup> with their clients. They must implement a process to review all the information obtained about a client in order to detect suspicious transactions, keep information up to date, re-assess the level of risk associated with the client's transactions and activities, and determine whether the client's transactions and activities are consistent with the information obtained about them and their risk assessment.<sup>32</sup> This monitoring must be done periodically based on the institution's risk assessment of the client, and enhanced monitoring is necessary for high-risk clients.<sup>33</sup> The institution must keep a number of records relating to this ongoing monitoring.<sup>34</sup>

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22 *PCMLTF Regulations*, s 138.

23 *Ibid*, ss 134(1) and 135(1).

24 *Ibid*, s 116.

25 A "single transaction" includes two or more transactions conducted in a 24-hour period if they are conducted by or on behalf of the same person or entity or for the same beneficiary: *ibid*, ss 126–129.

26 *Ibid*, s 7(1)(a).

27 *Ibid*, s 7(1)(b).

28 *Ibid*, s 7(1)(c).

29 *Ibid*, s 7(1)(d).

30 *PCMLTFA*, s 7.

31 Financial institutions enter a business relationship with a client when they open an account for the client or, if the client does not have an account, the second time within a five-year period that the client engages in a financial transaction for which the institution is required to verify their identity (with some exceptions): *PCMLTF Regulations*, ss 4.1(a), (b); 154(1)(a) to (d); 154(2)(a) to (l) and (p).

32 *PCMLTF Regulations*, s 123.1.

33 *Ibid*, ss 123.1, 157(b)(ii).

34 *Ibid*, s 146(1).

Finally, the *PCMLTFA* creates a “travel rule.” When engaged in electronic funds or virtual currency transfers, financial institutions must include specified information relating to the originator (the person or entity who requested a transfer) and beneficiary (the person or entity that received it).<sup>35</sup> They must also take reasonable measures to ensure that any transfers received include this information.<sup>36</sup> They are also required to develop and apply written risk-based policies and procedures for determining whether to suspend or reject transfers in the event that the transfer does not include the required information and for any follow-up measures they should take.<sup>37</sup>

## FATF Recommendations

A number of the Financial Action Task Force’s recommendations relate to financial institutions. Recommendation 10 sets out client due diligence measures, which include: verifying the identity of clients; identifying beneficial owners and taking reasonable steps to verify their identity; understanding and obtaining information about the purpose and intended nature of the business relationship; and conducting ongoing due diligence of the business relationship and scrutiny of transactions.<sup>38</sup> Recommendation 11 sets out record-keeping requirements. Recommendation 12 relates to politically exposed persons.<sup>39</sup> Additional requirements for banks engaged in cross-border correspondent banking are set out in Recommendation 13, and the travel rule referred to above is discussed in Recommendation 16.<sup>40</sup> The obligations to implement programs for anti-money laundering and counterterrorist financing, to report suspicious transactions to the financial intelligence unit, and to ensure adequate regulation and supervision of financial institutions are set out in Recommendations 18, 20, and 26, respectively.<sup>41</sup>

The Financial Action Task Force also published its *Guidance for a Risk-Based Approach: The Banking Sector* in 2014.<sup>42</sup> The report provides detailed guidance on how the recommendations relating to financial institutions should be implemented, including how they should implement a risk-based approach, how to conduct risk assessments, how to mitigate risks effectively, and the internal mechanisms that should be in place. It also provides guidance for supervisors and regulators.

35 *PCMLTFA*, s 9.5(a); *PCMLTF Regulations*, ss 124(3) and 124.1(1)(a).

36 *PCMLTFA*, s 9.5(b); *PCMLTF Regulations*, 124.1(b).

37 *PCMLTF Regulations*, ss 124(4) and 124.1(2).

38 Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019), pp 12–13.

39 *Ibid*, pp 13–14.

40 *Ibid*, pp 14–15. Recommendation 16 states that financial institutions should obtain accurate originator and beneficiary information on wire transfers and ensure that the information remains with the wire transfer throughout the payment chain. Financial institutions should also monitor wire transfers for the purpose of detecting transfers that lack the required originator and/or beneficiary information and take appropriate measures: *Ibid*, p 15.

41 *Ibid*, pp 16–17, 20.

42 Exhibit 4, Overview Report: Financial Action Task Force, Appendix JJ, FATF, *Guidance for a Risk-Based Approach: The Banking Sector* (Paris: FATF, 2014).

## Regulation by BCFSA

Provincial financial institutions are regulated by the British Columbia Financial Services Authority.<sup>43</sup> BCFSA is empowered by the *Financial Services Authority Act*, SBC 2019, c 14, and administers several statutes.<sup>44</sup> The core business areas for which it has responsibility are: mortgage brokers; credit unions; insurance and trust companies; pensions; and Credit Union Deposit Insurance (the statutory corporation that guarantees deposits and non-equity shares of credit unions).<sup>45</sup>

BCFSA is the successor to the Financial Institutions Commission, which was more commonly known as FICOM. BCFSA became a Crown corporation on November 1, 2019. Its role and mandate are basically the same as FICOM: to ensure safety and soundness in the financial system. However, FICOM was not a Crown corporation. Christopher Elgar, vice-president and deputy superintendent of financial institutions, prudential supervision, at BCFSA, testified that the shift from FICOM being part of “core government” to BCFSA being a Crown corporation means that BCFSA has more transparency and latitude. For example, it now controls its own operating budget.<sup>46</sup> He expects that BCFSA’s status as a Crown corporation will help address staffing challenges that FICOM experienced in the past. Indeed, in the 18 months prior to his testimony, BCFSA had stabilized its vacancy rate from around 30 percent to 7 or 8 percent.<sup>47</sup>

There are 40 credit unions in BC and two “central credit unions”: Stabilization Central and Central 1. Central unions are co-operatives *for* the co-operatives; they are owned by credit unions and provide support and services to credit unions, such as treasury services, education, and payment and settlement services.<sup>48</sup> An advantage of this approach is that centrals can assist smaller credit unions that do not have the scale or scope to manage all services themselves. Indeed, centrals provide some anti-money laundering services, including program development, education, and screening for wire transfers. Mr. Elgar estimated that 26 of the 40 credit unions in BC use Central 1’s anti-money laundering services program.<sup>49</sup>

BCFSA has five priorities set out in its provincial government mandate letter: risk-based supervision and consumer protection; engaging with industry; regulatory governance and legislation; deposit insurance; and anti-money laundering. This last priority involves working collaboratively with government to improve the effectiveness of the anti-money laundering regime. It was added to the mandate letter for the 2021 fiscal year.<sup>50</sup> I elaborate on BCFSA’s anti-money laundering activities below.

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43 Evidence of C. Elgar, Transcript, January 15, 2021, p 49.

44 Ibid, pp 8–9.

45 Ibid, p 6; BCFSA, “Credit Union Deposit Insurance,” online: <https://www.bcfesa.ca/public-resources/credit-union-deposit-insurance>.

46 Ibid, pp 5, 9–10.

47 Ibid, pp 84–85; Exhibit 423, BCFSA 2020/21 – 2022/23 Service Plan (February 2020), p 6.

48 Evidence of C. Elgar, Transcript, January 15, 2021, pp 18–19.

49 Ibid, pp 19–20.

50 Ibid, pp 6–8.

## **Prudential Risk Regulation**

BCFSA is a prudential risk regulator. Prudential risks are “those that can reduce the adequacy of [an entity’s] financial resources, and as a result may adversely affect confidence in the financial system or prejudice customers.” Some of the main types of prudential risks are credit, market, liquidity, operational, insurance, and group risk.<sup>51</sup> BCFSA accordingly supervises and regulates provincial financial institutions to ensure they are in sound financial condition and are complying with their governing laws and supervisory standards.<sup>52</sup> It uses a “risk-based supervisory framework to identify imprudent or unsafe business practices” and aims to identify issues or problems early on and to take corrective actions when necessary.<sup>53</sup>

A guiding principle for BCFSA’s regulation is proportionality. This means that it considers the size of different financial institutions and adjusts its expectations accordingly. Some credit unions in BC have thousands of employees and many branches; others have a single branch and just a few employees. As a result, although BCFSA’s expectations around certain core functions of governance and risk management will be the same for all institutions, the application will vary depending on the scope and scale of the institution.<sup>54</sup>

BCFSA and OSFI (the regulator of federal financial institutions, discussed below) take very similar approaches to their regulation. Both are prudential risk regulators and have virtually identical supervisory frameworks. They both apply a risk-based approach and consider proportionality.<sup>55</sup>

## **Anti–Money Laundering Regulation**

BCFSA continues to develop its anti–money laundering regulation. Its 2020/21 to 2022/23 service plan indicates that one of its objectives is to work collaboratively with the Government of British Columbia to improve the provincial anti–money laundering regime.<sup>56</sup> To strengthen its role within the current regime, BCFSA will:

- amplify its focus on anti–money laundering controls in its supervisory assessment of financial institutions;
- increase scrutiny of mortgage broker applications and activities for potential money laundering risks;
- continue to report suspected money laundering activities to relevant federal partners; and

51 UK Financial Conduct Authority, FCA Handbook, section PRU 1.4, “Prudential Risk Management and Associated Systems And Controls,” online: <https://www.handbook.fca.org.uk/handbook/PRU/1/4.html?date=2006-08-30>.

52 BCFSA, “Mandate and Values,” online: <https://www.bcfsa.ca/about-us/what-we-do/mandate-and-values>.

53 Ibid.

54 Evidence of C. Elgar, Transcript, January 15, 2021, p 16.

55 Ibid, p 21.

56 Exhibit 423, BCFSA 2020/21 – 2022/23 Service Plan (February 2020), objective 5.1.

- increase interactions with anti–money laundering partners on a bilateral and multilateral basis.<sup>57</sup>

No single body or group at BCFSA deals with anti–money laundering.<sup>58</sup> Rather, it is part of BCFSA’s assessment of regulatory compliance and operational risk, which is the same approach that was taken by FICOM.<sup>59</sup> Anti–money laundering and counterterrorist financing are considered in the context of whether an institution has an effective risk management program that is commensurate with its profile. BCFSA considers whether the institution: has anti–money laundering policies in place; provides reports to the board; ensures the independence of its chief anti–money laundering officer; and has policies and processes in place (for example, know-your-client checklists and suspicious transaction reporting mechanisms) to ensure that obligations under the *PCMLTFA* are being met.<sup>60</sup>

BCFSA’s “risk matrix,” which represents the approaches and methodology it uses to examine provincial financial institutions, now has an explicit line relating to anti–money laundering. This was added at the beginning of 2020, and BCFSA plans to update its supervisory framework on its website to reflect a focus on anti–money laundering as well.<sup>61</sup> The matrix results in a “composite risk rating,” which in turn determines what kinds of intervention by BCFSA are necessary and the level of intensity of its ongoing monitoring.<sup>62</sup> This rating may lead to an increase in Credit Union Deposit Insurance premiums as well as increased oversight and review by BCFSA; credit unions are therefore incentivized to maintain a good composite credit risk rating.<sup>63</sup>

BCFSA refers to and uses a guideline produced by OSFI called “Guideline B-8: Deterring and Detecting Money Laundering and Terrorist Financing.”<sup>64</sup> As I note below, this guideline was rescinded in July 2021 following changes to the anti–money laundering regulation undertaken by OSFI and FINTRAC. BCFSA has not issued its own anti–money laundering guidance. Mr. Elgar testified that if BCFSA receives clear direction on its anti–money laundering mandate, it may develop its own guidance; in the interim, however, it will continue to rely on Guideline B-8.<sup>65</sup>

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57 Ibid, objective 5.1(b). The “AML partners” in the last bullet essentially refers to FINTRAC, as BCFSA has not worked with law enforcement: Evidence of C. Elgar, Transcript, January 15, 2021, p 90.

58 Evidence of C. Elgar, Transcript, January 15, 2021, pp 12–13.

59 Ibid, pp 29–30; Exhibit 417, FICOM Letter from Frank Chong to All Provincially Regulated Financial Institutions (May 5, 2016).

60 Evidence of C. Elgar, Transcript, January 15, 2021, pp 35–36, 38–39.

61 Ibid, pp 42–43.

62 Ibid, pp 40–41, 45–46.

63 Ibid, pp 105–106.

64 Exhibit 416, OSFI Guideline B-8, “Deterring and Detecting Money Laundering and Terrorist Financing” (December 2008). An archived version of the guideline can be found online at <https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b8.aspx>.

65 Evidence of C. Elgar, Transcript, January 15, 2021, pp 26–27.

Some key factors identified in Guideline B-8 for a financial institution’s compliance program are as follows:

- Is there senior manager oversight of an anti–money laundering program and institution? When has an anti–money laundering report last been provided to senior management?
- Have they identified a chief anti–money laundering officer (CAMLO) responsible for implementation of the anti–money laundering / counterterrorist financing program? Is the CAMLO independent?
- Does the institution do a risk assessment of inherent money laundering / terrorist financing risks? Consider clients, products, geographic location of activities, and other relevant factors (including account transaction risk factors).
- Does the institution keep up-to-date anti–money laundering / counterterrorist financing policies? Are there know-your-client checklists and programs to verify source of funds, client identity, etc.?
- Does the institution have a written ongoing training program?
- Is there adequate self-assessment of controls?
- Is there adequate effectiveness testing?<sup>66</sup>

Although not everything in Guideline B-8 is applicable to credit unions, significant parts are.<sup>67</sup> BCFSA (and previously FICOM) also encourages all provincial financial institutions to refer to FINTRAC’s risk-based guide in addition to Guideline B-8.<sup>68</sup>

While I appreciate that much of the content of Guideline B-8 is applicable to credit unions, I am of the view that BCFSA should develop its own guidance focused specifically on credit unions. This would ensure that credit unions are aware of BCFSA’s specific expectations of them. Further, as Guideline B-8 has technically been repealed by OSFI, it strikes me that it would be useful for BCFSA to develop its own version that it can continue to update as necessary.

**Recommendation 45:** I recommend that the British Columbia Financial Services Authority develop anti–money laundering guidance for credit unions.

<sup>66</sup> Exhibit 416, OSFI Guideline B-8, “Deterring and Detecting Money Laundering and Terrorist Financing” (December 2008), pp 7–8; Evidence of C. Elgar, January 15, 2021, pp 35–36.

<sup>67</sup> Evidence of C. Elgar, Transcript, January 15, 2021, pp 25–26.

<sup>68</sup> Ibid, p 30.

Mr. Elgar emphasized that BCFSA is making efforts to modernize and become more efficient and effective. He cited the increased focus on anti-money laundering as demonstrated by its inclusion in the risk matrix, the ongoing efforts to update the supervisory framework, and the discussion of anti-money laundering objectives in the service plan. He further noted that BCFSA is working to increase engagement and awareness of the industry about its anti-money laundering activities and expectations.<sup>69</sup> Members of BCFSA are in the process of obtaining the certified anti-money laundering specialist designation, and BCFSA is seeking out candidates with anti-money laundering experience when it hires.<sup>70</sup> When asked how the explicit focus on anti-money laundering will change BCFSA's approach, Mr. Elgar explained:

I think it's going to have a couple of important changes. One, it's going to reinforce BCFSA's view for credit unions or insurance companies, [and] trust companies, that [anti-money laundering] is important. It is part now that we're signalling it as a line item of centralized activities. Our expectations are becoming elevated with the institutions, and it's part of our overall mandate where we're looking to engage with industry and our external stakeholders so there are no surprises. We are communicating through a number of different tools, advisories and in particular on guidelines what are our expectations as BCFSA continues to evolve, become much more modern and effective in its supervision of the financial services industry in British Columbia, [and] largely to ensure the safety and soundness. And again it comes back to the consistency to what the government's overall objectives are ... a sustainable financial services economy in British Columbia. [Anti-money laundering] is one component and we just elevated that to a point where it's not getting buried anywhere in the inherent risks of operational risk.<sup>71</sup>

BCFSA also has a new rule-making power under the *Financial Institutions Act*, RSBC 1996, c 141. This power enables it to make rules that have the same legal force as an act or regulation. When asked whether BCFSA intends to introduce rules focused on anti-money laundering, Mr. Elgar testified that that would depend on whether BCFSA has a clear anti-money laundering mandate.<sup>72</sup>

Although BCFSA has taken steps toward making anti-money laundering a priority in its regulation, it appears that the organization is waiting for an explicit mandate from the Province before taking further steps, such as developing guidance and rules. Given the clear importance of BCFSA engaging in anti-money laundering regulation, I am of the view that an explicit mandate in this regard would be useful. I therefore recommend that BCFSA be given a clear anti-money laundering mandate.

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69 Ibid, pp 42–44, 47–48, 80–81.

70 Ibid, pp 85–86, 88–89.

71 Ibid, pp 44–45.

72 Ibid, pp 81–82.

**Recommendation 46:** I recommend that the Province provide the British Columbia Financial Services Authority with a clear, enduring anti-money laundering mandate.

In Chapter 21, I recommend that money services businesses in British Columbia be regulated by BCFSa. Given the size of that industry and the significant workload that this expanded mandate will entail, BCFSa will require sufficient resources and support to take on this added responsibility. This is particularly important given that BCFSa has, in the last few years, already undergone significant organizational changes. The Province should therefore provide BCFSa with sufficient resources to create or staff a group focused on anti-money laundering. The group should also be responsible for liaising with law enforcement, public-private partnerships, and other government stakeholders.

**Recommendation 47:** I recommend that the Province provide sufficient resources to the British Columbia Financial Services Authority (BCFSa) to create or staff an anti-money laundering group. This group should serve as a contact point for BCFSa with law enforcement, public-private partnerships, and other government stakeholders.

### ***Collaboration with FINTRAC***

BCFSa collaborates with FINTRAC through a memorandum of understanding.<sup>73</sup> That agreement states that BCFSa will share the following with FINTRAC:

- the name of each institution that it plans to review for compliance with Part I of the *PCMLTFA*;
- a copy of the notes it uses to assess that compliance;
- the results of its review;
- a copy of correspondence between it and the institution regarding any compliance deficiencies;
- a description of any actions (plus the results of those steps) that BCFSa asks the institution to take to rectify deficiencies; and
- a description of progress by the institution in taking those corrective actions.<sup>74</sup>

<sup>73</sup> Exhibit 419, Memorandum of Understanding between the Financial Transactions and Reports Analysis Centre of Canada and the Financial Institutions Commission (January 9, 2005). This memorandum of understanding was entered into by FICOM but has been taken over by BCFSa and is still in full effect: *ibid*, p 5; Evidence of C. Elgar, Transcript, January 15, 2021, p 51.

<sup>74</sup> Exhibit 419, Memorandum of Understanding between the Financial Transactions and Reports Analysis Centre of Canada and the Financial Institutions Commission (January 9, 2005), p 2.

Mr. Elgar added that BCFSA sometimes shares statistical information as well.<sup>75</sup> It also provides FINTRAC with its observations relating to the institution's policies and education programs and whether these are updated and working effectively.<sup>76</sup> Meanwhile, FINTRAC agrees to share the following information with BCFSA:

- compliance-related information, including risk assessment information that BCFSA may use in determining which institution to review for compliance with Part I of the *PCMLTFA*;
- the result of FINTRAC's compliance actions with respect to an institution; and
- a copy of correspondence between FINTRAC and the institution regarding compliance deficiencies.<sup>77</sup>

Mr. Elgar explained that BCFSA uses that information when considering whether an institution has addressed a deficiency and has a mitigation plan to meet it.<sup>78</sup> He described the relationship between BCFSA and FINTRAC as collaborative and noted that the industry is aware that they work together.<sup>79</sup>

FINTRAC provides reports to BCFSA on matters such as the number of compliance examinations of credit unions it conducts, the deficiencies it observes, and the numbers of suspicious transaction reports filed.<sup>80</sup> Mr. Elgar explained that although it is useful for BCFSA to know the number of suspicious transaction reports filed, from a prudential point of view, BCFSA's focus is not so much on the number of reports filed but, rather, ensuring that the financial institution has the tools in place to report large and suspicious transactions.<sup>81</sup>

FINTRAC conducted 14 examinations of BC-based credit unions in 2017–18 and nine examinations in 2019–20.<sup>82</sup> In 2015–16, nearly 89 percent of credit unions examined in BC were partially deficient in terms of their policies and procedures. This fell to 67 percent in 2016–17 and 14 percent in 2017–18.<sup>83</sup> BCFSA conducted 22 prudential reviews in 2019–20 and has seen an improvement and greater awareness among credit unions of the importance of maintaining rigorous governance and risk management in all areas of risk.<sup>84</sup>

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75 Evidence of C. Elgar, Transcript, January 15, 2021, p 52.

76 Ibid, p 50.

77 Exhibit 419, Memorandum of Understanding between the Financial Transactions and Reports Analysis Centre of Canada and the Financial Institutions Commission (January 9, 2005), p 2.

78 Evidence of C. Elgar, Transcript, January 15, 2021, pp 49–50, 52–53, 57, 77–78.

79 Ibid, p 50.

80 For an example of a report presented by FINTRAC to FICOM for the 2017–18 year, see Exhibit 420, FINTRAC, Reporting Statistics Updates: Fiscal Year 2017–2018, Presented to FICOM.

81 Evidence of C. Elgar, Transcript, January 15, 2021, p 61.

82 Exhibit 420, FINTRAC, Reporting Statistics Updates: Fiscal Year 2017–2018, Presented to FICOM, slide 3; Exhibit 421, FINTRAC Report on Compliance Examinations of Credit Unions in 2019/2020, p 1; Evidence of C. Elgar, Transcript, January 15, 2021, pp 74–76.

83 Exhibit 420, FINTRAC, Reporting Statistics Updates: Fiscal Year 2017–2018, Presented to FICOM, slide 12.

84 Evidence of C. Elgar, Transcript, January 15, 2021, pp 63–64.

## Regulation by OSFI

The Office of the Superintendent of Financial Institutions regulates and supervises over 400 federally regulated institutions and 1,200 pension plans. In a similar way to BCFSA, it seeks to ensure that these institutions are in sound financial condition and are complying with relevant laws. The federal institutions it regulates include all banks, as well as federally incorporated or registered trusts and loan companies, insurance companies, co-operative credit associations, fraternal benefit societies, and private pension plans. It considers matters such as the institution's financial condition, material risk, and quality of its governance, risk management, and compliance.<sup>85</sup>

Following a consultation with industry and discussions with FINTRAC around eliminating duplication and redundancy, OSFI rescinded Guideline B-8 on July 26, 2021.<sup>86</sup> This change appears to be in response to findings by the Financial Action Task Force's 2016 mutual evaluation of Canada, which noted duplication in efforts between FINTRAC and OSFI and a need to coordinate resources and expertise more effectively.<sup>87</sup>

## Money Laundering Risks Facing Financial Institutions

As I noted at the beginning of this chapter, the money laundering risks facing financial institutions are in many ways common sense. Financial institutions are gatekeepers to the financial system, and money whose source is or appears to be a financial institution receives a veneer of legitimacy. It can easily be assumed that the goal of many money launderers is to have their funds pass through a financial institution at some stage.

Canada's 2015 national risk assessment noted that banks hold over 60 percent of the financial sector's assets, and the six largest domestic banks (BMO, Scotiabank, CIBC, RBC, TD, and National Bank) hold 93 percent of those assets.<sup>88</sup> As of November 2014, credit unions and *caisses populaires* held over \$320 billion in assets.<sup>89</sup> The assessment rated domestic banks as having a "very high" vulnerability rating, while credit unions, *caisses populaires*, and foreign bank branches and subsidiaries were rated "high."<sup>90</sup> FINTRAC has similarly identified banks, credit unions, *caisses populaires*, and money services businesses as high risk.<sup>91</sup>

85 Office of the Superintendent of Financial Institutions, "About Us," online: <https://www.osfi-bsif.gc.ca/Eng/osfi-bsif/Pages/default.aspx>.

86 Office of the Superintendent of Financial Institutions, "OSFI's Activities on Anti-Money Laundering/ Anti-Terrorist Financing (AML/ATF) Supervision" (May 17, 2021), online: <https://www.osfi-bsif.gc.ca/Eng/ai-if/in-ai/Pages/aml-let.aspx>.

87 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), pp 4, 7, 90, 94.

88 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada 2015* (Ottawa: 2015), p 34.

89 *Ibid*, p 35.

90 *Ibid*, p 32.

91 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), p 90.

Domestic banks were rated the most vulnerable, primarily due to the size of the six largest ones. The national risk assessment explained that those banks have very significant transaction volumes, asset holdings, and scope of operations (both domestic and international). They offer a large number of vulnerable products and services to a large client base, including a significant number of high-risk clients and businesses. Services can be provided both face-to-face and remotely, thereby varying the degree of anonymity and complexity. Further, there were opportunities to use third parties and gatekeepers, including accountants and lawyers, to undertake transactions.<sup>92</sup>

Similar concerns were raised for credit unions, *caisses populaires*, foreign bank branches and subsidiaries, and trust and loan companies. The assessment also noted that some credit unions and *caisses populaires* operate in more remote Canadian locations that may attract high crime and corruption activities, as well as transient workers sending remittances to countries that may have high money laundering or terrorist financing risks.<sup>93</sup>

The national risk assessment identified a number of activities undertaken by deposit-taking financial institutions that are vulnerable to the placement and layering stages of money laundering, including the use of personal and business domestic accounts; domestic and international wire transfers; currency exchanges; and monetary instruments such as bank drafts, money orders, and cheques. The main money laundering techniques used to exploit these products and services were said to include the following:

- Structuring of cash deposits or withdrawals and smurfing (multiple deposits of cash by various individuals and low-value monetary instruments purchased from various banks and [money services businesses]);
- Rapid movement of funds between personal and/or business deposit accounts within the same financial institution or across multiple financial institutions;
- Use of nominees (individuals and businesses);
- Large deposits of cash and monetary instruments followed by the purchase of bank drafts or [electronic funds transfers] to foreign individuals;
- Exchanges of foreign currencies for Canadian currency and vice versa;
- Refining (i.e., converting large cash amounts from smaller to larger bills); and
- Non-face-to-face deposits (i.e., night deposits, armoured cars).<sup>94</sup>

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92 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada 2015* (Ottawa: 2015), p 37.

93 Ibid, pp 37–38.

94 Ibid, p 44.

The Financial Action Task Force’s *Guidance for a Risk-Based Approach: The Banking Sector* similarly identifies a number of financial products and services associated with money laundering and terrorist financing risks. First, certain retail banking activities – providing accounts, loans, and savings products – pose risks insofar as they involve the provision of services to cash-intensive businesses, a large volume of transactions, high-value transactions, and diverse services.<sup>95</sup> Second, providing wealth management services may entail risks due to a culture of confidentiality, difficulty in identifying beneficial owners, concealment through the use of offshore trusts, banking secrecy, complexity of financial services and products, politically exposed persons, high-value transactions, and involvement of multiple jurisdictions.<sup>96</sup> Third, investment banking services may be misused for layering and integration and can raise risks due to the transfer of assets between parties in exchange for cash or other assets and because of the global nature of markets.<sup>97</sup> Finally, correspondent banking services may involve high-value transactions, limited information about the remitter or source of funds, and possible involvement of politically exposed persons.<sup>98</sup>

The Financial Action Task Force’s 2016 mutual evaluation of Canada concluded that financial institutions have a “good understanding of their risks and obligations, and generally apply adequate mitigating measures.”<sup>99</sup> While noting a number of positive aspects of financial institutions’ anti-money laundering programs, the evaluation noted some deficiencies relating to the identification of politically exposed persons and beneficial owners.<sup>100</sup> Some smaller financial institutions also displayed a weaker understanding of money laundering and terrorist financing measures, had weaker record-keeping measures, and regarded anti-money laundering and counterterrorist financing measures as a burden.<sup>101</sup> A “priority action” was to ensure that financial institutions comply with beneficial ownership requirements.<sup>102</sup>

In the 2018–19 and 2019–20 fiscal years, FINTRAC conducted 92 compliance examinations of financial entities across Canada.<sup>103</sup> FINTRAC’s report to the Minister of Finance on the 2019–20 fiscal year notes that examinations of banks require significantly more resources in terms of hours dedicated by regional compliance officers than other sectors.<sup>104</sup> Further, FINTRAC and OSFI were in the process of streamlining the

95 Ibid, pp 17–18.

96 Ibid.

97 Ibid.

98 Ibid.

99 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), pp 4, 7, 78.

100 Ibid, pp 7, 78–79, 83.

101 Ibid, pp 79, 83.

102 Ibid, p 9.

103 Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 30, 2019), p 17; Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 30, 2020), p 16.

104 Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 30, 2020), p 15.

supervision of the banking sector’s anti–money laundering and counterterrorist financing compliance, with FINTRAC set to become the sole federal regulator in this regard on April 1, 2021.<sup>105</sup> FINTRAC’s examinations often identify a lack of awareness or consistent application of anti–money laundering and counterterrorist financing policies, procedures, and training within bank operations.<sup>106</sup> However, the 2019–20 examinations found that financial institutions are investing significant resources into their anti–money laundering and counterterrorist financing programs.<sup>107</sup>

## **Anti–Money Laundering Measures in Banks and Credit Unions**

Banks and credit unions recognize the risks inherent in their work and dedicate significant resources to their anti–money laundering programs. In what follows, I discuss those programs and key challenges faced by financial institutions.

### **Compliance Programs at Credit Unions**

I heard evidence from the chief anti–money laundering officers at three BC credit unions: Erin Tolfo of Coast Capital Savings, Ezekiel Chhoa of BlueShore Financial, and Lindzee Herring of First West Credit Union. Chief anti–money laundering officers are responsible for overseeing the anti–money laundering programs at financial institutions. They report to the board of directors and other senior management. As Ms. Tolfo put it, they act as “a checkpoint and a challenge point in order to ensure that the right steps are taken to test the controls that we have in place, and to make sure that training and information is cascaded throughout the organization.”<sup>108</sup>

The anti–money laundering teams at the three institutions are set up differently. However, they all essentially involve an independent team looking for specific alerts and escalating issues as necessary.<sup>109</sup> According to the BC credit union witnesses, credit unions recognize their role in helping to support the national and international fight against money laundering and devote considerable efforts to fulfilling their obligations under the *PCMLTFA*. They indicate that credit unions take care to identify transactions meeting the reporting thresholds and report to FINTRAC, as well as law enforcement, where appropriate.<sup>110</sup> This is described as an “enterprise-wide effort” to ensure that staff at different levels are able to identify suspicious behaviour and ensure that the institution’s obligations are fulfilled,<sup>111</sup> although much of the reporting

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105 Ibid, p 18.

106 Ibid.

107 Ibid, p 19.

108 Evidence of E. Tolfo, Transcript, January 19, 2021, pp 11–12.

109 Ibid, p 13; Evidence of E. Chhoa, Transcript, January 19, 2021, pp 13–14; Evidence of L. Herring, Transcript, January 19, 2021, p 15.

110 Evidence of E. Tolfo, Transcript, January 19, 2021, pp 7–9.

111 Ibid, pp 8–9.

required under the *PCMLTFA* is done through automated systems.<sup>112</sup> Credit unions also leverage FINTRAC guidance as well as information from industry associations and other financial institutions in order to stay current on key changes and information.<sup>113</sup>

Due to the relative size of some credit unions and other financial institutions, a number of credit unions face challenges in implementing anti-money laundering programs. Certain fixed costs must be borne by a financial institution regardless of its size, such as the cost of anti-money laundering software.<sup>114</sup> Further, smaller credit unions may be unable to have staff dedicated solely to anti-money laundering activities; rather, staff tend to “wear a number of different hats,” unlike larger institutions that can afford to have potentially hundreds of staff members dedicated to anti-money laundering alone.<sup>115</sup> Indeed, at some credit unions, the chief anti-money laundering officer is also the privacy officer, which can pose challenges. As Mr. Chhoa explained:

[W]hen I wear a privacy hat, there are times when ... I simply cannot share a piece of information even though from a money laundering perspective I may say “hey, I want to share that,” but from a privacy perspective, you just cannot. And so it is a delicate balance and it’s something [for which] I think increased clarity in legislation would be very helpful for the credit union system.<sup>116</sup>

Credit unions may also have difficulty training junior staff to focus on anti-money laundering because they need to seek out individuals who have the breadth of knowledge and experience allowing them to handle not only anti-money laundering but other responsibilities.<sup>117</sup>

Other difficulties arise in terms of access to anti-money laundering services. For example, larger financial institutions can avail themselves of offshore services, while smaller ones may be unable to do so.<sup>118</sup> In this regard, the services provided by Central 1 are very helpful for smaller credit unions. However, “even though the smaller credit unions have outsourced the activity, they cannot outsource the responsibility ... the responsibility still rests on a very small credit union to ensure compliance regardless of who performs the activity.”<sup>119</sup> Conversely, one potential advantage for credit unions is that they tend to be more “deeply rooted in [their] communities” than bigger banks, allowing for the kind of “personal connection with their frontline” staff that a bigger bank may not have.<sup>120</sup>

112 Evidence of E. Chhoa, Transcript, January 19, 2021, p 31.

113 Ibid, p 10.

114 Ibid, p 37.

115 Ibid.

116 Ibid, p 30. Sometimes there may be a simple solution, such as asking a client for consent, but not always: *ibid*, pp 46–47.

117 Ibid, p 38.

118 Ibid, pp 37–38.

119 Ibid, pp 38–39.

120 Evidence of L. Herring, Transcript, January 19, 2021, p 40.

Collaboration between credit unions and FINTRAC is largely one way, in the sense that credit unions report to FINTRAC but do not receive follow-up on those reports. However, FINTRAC does provide feedback through compliance exams and dialogue with industry.<sup>121</sup> Credit unions may also find out about reports they have filed if an investigation is started and a production order is sought.<sup>122</sup> Credit unions have a designated western Canada contact at FINTRAC for general questions.<sup>123</sup> They also have a dedicated RCMP email address where they can forward suspicious transaction reports directly; however, there is no dedicated person at the RCMP to whom they can provide concerns, which, it should be noted, is unlike the situation with respect to fraud.<sup>124</sup> Indeed, most of the interactions between credit unions and law enforcement relate to fraud rather than money laundering. Mr. Chhoa explained:

[M]oney laundering ... is a very difficult crime to prove ... [W]e are not law enforcement ... our job is primarily reporting the data and ensuring that the data gets into the hands of the people who are in a position to investigate. So ... we don't communicate with law enforcement saying "hey, look, we believe there's money laundering," because ... quite frankly, most of the time it's "suspicion" versus "we truly believe there is a crime here."<sup>125</sup>

Ms. Herring testified that credit unions are "passionate about information sharing." They share information with law enforcement, the International Association of Financial Crime Investigators, the Bank Crime Prevention and Investigation Framework, and the Credit Union Office of Crime Prevention and Investigation.<sup>126</sup> She explained:

[T]hese are actually mechanisms for us to communicate between investigators, between credit union to credit union, and it's in a formal way to actually provide disclosures ... [Y]ou have to have evidence, you have to have reasonableness to disclose information, but it is a process and it is something that between banks and credit unions can be a challenge as well. But definitely the avenues are there to be used. I think they're under-utilized. They do not specifically state "just for fraud"; they do say "financial crime." However, they have been primarily used for fraud. So there are some channels and mechanisms in place for financial institutions to do better.<sup>127</sup>

Ms. Herring continued that it would be useful from her perspective for credit unions to be able to avail themselves of a "safe harbour" provision.<sup>128</sup> As I elaborate later in this chapter, such a provision would essentially create an exception under relevant privacy

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121 Evidence of E. Chhoa, Transcript, January 19, 2021, pp 33–35; Evidence of L. Herring, Transcript, January 19, 2021, p 36.

122 Evidence of E. Chhoa, Transcript, January 19, 2021, p 19.

123 Evidence of L. Herring, Transcript, January 19, 2021, p 36.

124 Evidence of E. Tolfo and E. Chhoa, Transcript, January 29, 2021, p 19; Evidence of L. Herring, Transcript, January 19, 2021, pp 20–21.

125 Evidence of E. Chhoa, Transcript, January 19, 2021, pp 21–22.

126 Evidence of L. Herring, Transcript, January 19, 2021, pp 24–25.

127 Ibid, p 25.

128 Ibid, pp 25–26.

legislation, enabling institutions to share information relating to money laundering with one another without fear of civil liability arising from the potential for intrusions on personal privacy.

The panellists identified some areas that are seen as higher risk for credit unions to engage in. Each credit union and financial institution conducts its own assessment of risk against its capabilities to meet its regulatory requirements. Some evolving business areas and risks can therefore be seen as challenging to have as clients. For example, money services businesses have minimal regulation and are complex because they essentially embed one financial institution with another – conducting their own transactions, but relying on credit unions to process them – which raises the question of which institution is responsible for what obligation.<sup>129</sup> Similarly, cash-based businesses are inherently high risk. This does not mean that financial institutions will not do business with them; rather, they will apply increased scrutiny, which in turn requires more resources and increases the regulatory burden.<sup>130</sup> The risk profile of certain businesses may also change: for example, the cannabis industry has gone from being illicit to regulated, which allows financial institutions to place some reliance on government infrastructure and regulation when determining their risk tolerance.<sup>131</sup>

## Compliance Programs at Banks

As I explained above, I heard from the chief anti-money laundering officers at HSBC, Scotiabank, and RBC in an *in camera* hearing. Broadly speaking, they discussed the anti-money laundering programs at their banks, risks they have observed, and other topics. In this section I set out some general observations from that panel, without revealing any of the details that were protected by the *in camera* nature of the testimony. I have relied on the witnesses' testimony from the *in camera* panel, along with one sealed exhibit, Exhibit 457, a detailed submission made by the banks to outline a typical Canadian bank's anti-money laundering and counterterrorist financing program.

Large banks in this country invest a great deal into their anti-money laundering programs. The witnesses on the banks' CAMLO panel described having robust anti-money laundering programs and practices; ensuring their teams are educated about the risks; and being committed to revisiting their anti-money laundering programs to address new risks and typologies. Their programs involve various client identification mechanisms and methods for the ongoing monitoring of business relationships. They also have good systems in place for investigating suspicious activity and an awareness of the guidance they obtain from FINTRAC, the Financial Action Task Force, and others. They are involved in public-private partnerships (discussed further below) and find them useful.

<sup>129</sup> Evidence of E. Chhoa, Transcript, January 19, 2021, p 44.

<sup>130</sup> Evidence of E. Tolfo, Transcript, January 19, 2021, pp 42–43.

<sup>131</sup> *Ibid*, pp 41–42.

There are critics who are sharply critical of how banks address money laundering activity, both abroad and in Canada. Given the constraints on this Inquiry process, as well as the federal nature of much of the banking domain, I do not purport to settle those controversies. I can say, based on the evidence I have received, of a general character as noted above, that I have no strong reason to doubt that the large national banks understand their role and responsibility in the anti-money laundering regime.

## Information Sharing

The need for strong information-sharing pathways was a theme that permeated the Commission’s hearings. I address this subject in detail in Chapter 7, including the differences between the sharing of *tactical* information (which relates to specific individuals or entities) and of *strategic* information (which focuses on typologies and general indicators of suspicion).<sup>132</sup> In that chapter, I also discuss concerns that have been raised by participants, witnesses, and others about the propriety and constitutionality of sharing specific tactical information, as well as the need for clear frameworks governing information-sharing arrangements. My focus in this section is on information sharing as it affects financial institutions – their ability to share information with government bodies and with each other.

## Public-Private Partnerships

Public-private information-sharing partnerships are arrangements that allow public and private entities to share information relating to the discovery and detection of money laundering, terrorist financing, and broader economic crime.<sup>133</sup> As Nicholas Maxwell, a leading expert on public-private information-sharing partnerships, explained, the Financial Action Task Force considers effective information sharing to be the “cornerstone” of a well-functioning anti-money laundering framework.<sup>134</sup> The framework set out by the Financial Action Task Force

really puts the private sector as the leading edge of the detection of money laundering. [I]t’s up to the private sector to spot suspicions of money laundering and terrorist financing within their business [and] client base and to report that through to public agencies through to a dedicated financial intelligence unit.<sup>135</sup>

Because the regime also places emphasis on prevention, another goal of information sharing is to prevent illicit flows from accessing the financial system.<sup>136</sup>

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132 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 7–10; Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 4, 2021, updated December 11, 2021), p 18.

133 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 6–7.

134 Ibid, pp 12–13.

135 Ibid, p 13.

136 Ibid, pp 13–14.

As I expand in Chapter 7, experts generally support increased collaboration between the public and private sector. Mr. Maxwell testified that there had been significant growth in the use of public-private partnerships in the five years preceding his testimony.<sup>137</sup> He concludes in a report prepared for the Commission that Canada has made insufficient use of public-private financial information sharing to detect money laundering.<sup>138</sup> However, while public-private information-sharing arrangements are common in other countries, they have posed difficulties in Canada. This is due in part to legal uncertainties and constraints, as participants have concerns about what information can properly be shared in light of Canadian privacy legislation and constitutional requirements.<sup>139</sup>

Project Athena is an example of a partnership that was in large part successful. It also illustrates, however, that lack of engagement by members of a partnership can slow its progress and even lessen its effectiveness. I describe Project Athena in detail in Chapter 39 and address some concerns about the propriety of the information-sharing arrangement it used in Chapter 7. Here, however, my focus is on the involvement of financial institutions in the initiative. In what follows, I describe the participation of the six major financial institutions and some lessons learned about ensuring future public-private partnerships are successful. In particular, the story of Project Athena offers two main lessons for financial institutions:

- they must be engaged, responsive, and open to creative solutions; and
- they must be represented by individuals who have the authority to implement such solutions in a timely manner.

A precursor to the Counter-Illicit Finance Alliance of British Columbia, Project Athena was a public-private partnership between the Combined Forces Special Enforcement Unit (CFSEU, a policing unit), financial institutions, the BC Lottery Corporation, and other stakeholders. Following Peter German's interim recommendation that gaming service providers complete a source-of-funds declaration whenever they received cash deposits or bearer bonds in excess of \$10,000,<sup>140</sup> it became more difficult to launder cash through casinos. As a result, criminals turned to other methods, including bank drafts. CFSEU had concerns about the anonymity and transferability of bank drafts. Most were anonymous in the sense that they did not include the name of the purchaser or the account number from which the funds were sourced. The concern was that the absence of this information made it easier for bank drafts to be given to casino patrons who were not themselves the account holders, which could further a money laundering scheme.<sup>141</sup>

137 Ibid, p 7.

138 Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 4, 2021, updated December 11, 2021), p 9.

139 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 30–31.

140 Exhibit 832, Peter M. German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia* (March 31, 2018), p 244.

141 Evidence of B. Robinson, Transcript, April 14, 2021, pp 32–35, 48–49.

In March and April 2018, CFSEU analyzed all the bank drafts received at BC casinos in January and February of that year. It contacted the financial institutions that issued those bank drafts to determine whether the person presenting the draft at the casino held an account with that financial institution. That analysis revealed that most casino patrons did have an account at the issuing financial institution; however, it also disclosed a number of discrepancies in the source-of-funds declarations completed by casino patrons when they made buy-ins at BC casinos.<sup>142</sup>

In May 2018, CFSEU convened a meeting with financial institutions (including HSBC, BMO, Scotiabank, RBC, TD, and CIBC), the BC Lottery Corporation, and the provincial Gaming Policy and Enforcement Branch to convey its concerns about the use of bank drafts. One of the solutions proposed at that meeting was to put the purchaser's name on the front of the bank draft in order to reduce anonymity.<sup>143</sup> Reporting entities were also asked to include the words "Project Athena" on certain suspicious transaction reports made to FINTRAC to streamline the process.<sup>144</sup>

During an October 2018 meeting, participants discussed the exchange of *tactical* information relating to the exploitation of bank drafts (that is, information about specific customers and drafts). A process was developed by which tactical information could be shared between the BC Lottery Corporation, CFSEU, financial institutions, and FINTRAC. Part of this process involved CFSEU analyzing information it received from the BC Lottery Corporation about the suspicious use of bank drafts at BC casinos and seeking information from financial institutions as to whether the individual in possession of the bank draft held an account with their institution.<sup>145</sup>

I discuss the benefits of this information-sharing system further in Chapter 39. One notable benefit was the fact that all parties were able to streamline their processes and focus on transactions that were truly suspicious. It also allowed reporting entities to flag reports in a way that ensured that FINTRAC could bring them to the attention of the proper law enforcement agency – when the threshold for disclosure was met under the *PCMLTFA*.

Even before the October 2018 meeting, CFSEU had begun to provide tactical information to financial institutions. A report sent by then-Sergeant Melanie Paddon of CFSEU to TD on August 14, 2018, is illustrative. It sets out the following information for the month of June 2018:

- the total number of bank drafts purchased from all financial institutions that were tendered at BC casinos that month;
- the number of those bank drafts that were issued by TD;

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142 Ibid, pp 44–46, 50; Exhibit 839, Project Athena and CIFA-BC Presentation, slide 10.

143 Evidence of B. Robinson, Transcript, April 14, 2021, pp 51–52; Exhibit 840, Project Athena Stakeholders Meeting October 24, 2018, slide 9.

144 Evidence of B. Robinson, Transcript, April 14, 2021, pp 51–52, 161–62.

145 Ibid, p 56.

- the number of patrons who tendered three or more bank drafts from all financial institutions at BC casinos, and of those patrons, the number using drafts from multiple banks; and
- the number of patrons who bought in at BC casinos with bank drafts purchased from TD, and a list of patrons identified as using drafts from multiple banks or with a high volume of bank drafts solely from TD.<sup>146</sup>

TD, along with the other participating financial institutions, received this information from CFSEU on a monthly basis. From the email correspondence, it appears that TD began receiving these monthly updates in June 2018 and continued to do so until June 2019 (providing information that, in total, covered a period from March 2018 to April 2019).<sup>147</sup>

In providing this information to financial institutions, CFSEU asked them to:

- consider the information and, where appropriate, carry out an internal review and file suspicious transaction reports with FINTRAC; and
- implement changes to their internal practices in order to add the purchaser's name to all bank drafts issued by the financial institution.<sup>148</sup>

Sergeants Ben Robinson and Paddon emphasized that it was left to the discretion of the financial institution to determine what to do with the information; it was a strictly voluntary process, and CFSEU did not direct financial institutions to investigate the information or to file suspicious transaction reports. Further, any reports filed with FINTRAC would be disclosed to law enforcement only if FINTRAC determined that the threshold to do so under the *PCMLTFA* was met.<sup>149</sup> However, other witnesses appeared to feel that there was more of an *expectation* that financial institutions would investigate the information and file suspicious transaction reports when warranted.<sup>150</sup>

While I elaborate on constitutional and privacy law concerns associated with tactical information sharing in Chapter 7, I note for present purposes that the request to make a change to bank drafts – which was separate from the disclosure of patron names – did not involve *tactical* information sharing. In other words, it did not involve any information sharing about particular clients of financial institutions. Rather, this was purely *strategic*

146 Exhibit 460, Email from Melanie Paddon re Project Athena June 2018, August 14, 2018 (redacted). See also Exhibit 459, Email from Melanie Paddon to Pierre McConnell re Project Athena, December 3, 2018, p 4; and Exhibit 463, Email from Melanie Paddon re Project Athena, Jan 2019, March 21, 2019 (redacted), p 1.

147 Exhibit 460, Email from Melanie Paddon re Project Athena June 2018, August 14, 2018 (redacted), p 1 (referring to an email sent on June 27, 2018); Evidence of M. Bowman, Transcript, January 20, 2021, p 92; Exhibit 466, Email from Melanie Paddon to Anna Gabriele, June 27, 2019, pp 2–3.

148 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 10–13; Evidence of B. Robinson, Transcript, April 14, 2021, pp 53–54.

149 Evidence of B. Robinson, Transcript, April 14, 2021, pp 53–55, 154–55, 158–59, 161–62; Evidence of M. Paddon, Transcript, April 14, 2021, pp 55, 155, 159–60.

150 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 10–11; Evidence of M. Bowman, Transcript, January 20, 2021, pp 125–26.

information sharing: law enforcement communicated a money laundering vulnerability to financial institutions and asked for a change in the institution's processes to address the vulnerability. As such, the constitutional and privacy law concerns do not arise in relation to the request to make changes to bank drafts.

As time went on, several banks demonstrated commendable engagement with the initiative. At a January 2019 meeting, a representative of HSBC indicated that the bank had started putting the purchaser's name on its bank drafts, and representatives of RBC provided an update on their reviews based on the tactical information provided by CFSEU.<sup>151</sup> An "action item" following that meeting was for financial institutions to add the purchaser's name to their bank drafts.<sup>152</sup>

At a meeting in April 2019, HSBC repeated that its tellers had started to write purchaser information on its drafts and noted that it was looking into a system to embed this information on its drafts. The meeting minutes indicate that this change "took no time to implement[;] all it took was communication to each bank staff."<sup>153</sup> BMO was also looking into a system to embed this information on its drafts. Scotiabank concluded that it did not distribute a high enough volume of drafts to justify the change. RBC tellers had started to write purchaser names on their drafts in May 2019, and the bank was looking into a long-term solution. CIBC's drafts already had the purchaser information embedded on them. Finally, TD indicated it "was looking to engage their new leadership and get their buy-in."<sup>154</sup>

As this discussion shows, most banks were engaged with Project Athena and took proactive actions in response to information being shared by CFSEU. Specifically, they agreed to actively participate in the project, to receive and make use of the information being shared, and to address the systemic vulnerabilities. In short, the initiative provided information to financial institutions that would allow them to identify potentially suspicious activity involving their clients, report it to FINTRAC where warranted, and make changes to their processes intended to address a money laundering vulnerability.

Unfortunately, not all banks were engaged to the same degree. As I expand below, TD did not participate at a level that would be reasonably expected given its particular circumstances. Throughout the project, TD was the largest source of bank drafts flagged as suspicious by CFSEU.<sup>155</sup> By May 2019, the executives of TD's anti-money laundering group were aware of this fact and that TD risked being out of step with its peers if it did not take action to reduce the anonymity of its drafts.<sup>156</sup> By July 2019, TD was one of only

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151 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 26–27; Exhibit 461, CFSEU-BC, Project Athena Stakeholders Meeting – Agenda, January 23, 2019.

152 Exhibit 462, Email from Ben Robinson re Project Athena Update, January 24, 2019 (redacted), p 1.

153 Exhibit 458, Meeting Minutes – Project Athena, April 24, 2019, p 3.

154 Ibid, p 4.

155 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 31, 41–42; Evidence of M. Paddon, Transcript, April 14, 2021, pp 68–70.

156 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 54–55.

two banks<sup>157</sup> not to have implemented either a manual solution (in which tellers wrote customer names on bank drafts) or an automated solution (in which the information was embedded on the drafts).<sup>158</sup> Despite the foregoing, TD did not make changes to its bank drafts until September 2020.<sup>159</sup> The change implemented at that time seems to have been prompted by the March 2020 inquiry by Commission counsel about TD's participation in Project Athena.<sup>160</sup>

I find it troubling that TD's changes to its bank drafts came over a year later than its peers. I emphasize at the outset that TD has put in place a variety of strong anti-money laundering measures and invests a great deal into its anti-money laundering program. The discussion that follows should not be taken as a critique of TD's anti-money laundering program generally. I also emphasize that Project Athena was a voluntary initiative and that aspects of it – particularly the fact that law enforcement was providing tactical information to banks – had not occurred in previous information-sharing arrangements. It is understandable that some banks, including TD, may have been uncomfortable with the sharing of tactical information in this way (see Chapter 7). However, it is fair to conclude that TD's delay in addressing the bank draft issue created a significant gap, given that other major banks had implemented changes to reduce anonymity by summer 2019. This in turn raised the possibility that TD could be exploited by criminals to launder significant sums of money through BC casinos.

I also note that Project Athena seems to have had difficulty engaging with others, including OSFI and the Canadian Banking Association, on the issue of bank draft anonymity.<sup>161</sup> These two institutions could presumably have provided valuable insight and assistance to the initiative, and possibly even required financial institutions to make changes to their drafts.

I heard testimony from two representatives of TD on its involvement in Project Athena: Michael Bowman, the chief anti-money laundering officer at TD, and Anna Gabriele, formerly a manager in TD's special investigations unit.<sup>162</sup> The evidence before me also includes transcripts of interviews conducted by Commission counsel with Mr. Bowman and with Caitlin Riddolls, the vice-president and head of anti-money laundering for Canadian bank invasion technology and shared services at TD, which were tendered during the evidentiary hearings.<sup>163</sup>

157 The other bank (Scotiabank) was not a significant source of suspicious bank drafts.

158 Exhibit 473, Caitlin Riddolls Interview, October 21, 2020, pp 29–30; Evidence of M. Paddon and B. Robinson, Transcript, April 14, 2021, p 67.

159 Evidence of M. Bowman, Transcript, January 20, 2021, pp 138–139; Evidence of A. Gabriele, Transcript, January 20, 2021, p 62.

160 Exhibit 478, Michael Bowman Interview, October 22, 2020, p 73.

161 Evidence of B. Robinson, Transcript, April 14, 2021, pp 59–61.

162 The special investigations unit is part of TD's financial intelligence unit. TD has two financial intelligence units (one Canadian and one American). These units (alongside other supporting units) form the global anti-money laundering operations team: Evidence of M. Bowman, Transcript, January 20, 2021, p 86.

163 Exhibit 478, Michael Bowman Interview, October 22, 2020; Exhibit 473, Caitlin Riddolls Interview, October 21, 2020.

TD began participating in Project Athena in early 2018. At that time, the bank was represented by a member of its global security and investigations team.<sup>164</sup> With time, responsibility for Project Athena shifted from the global security and investigations team to the financial intelligence unit.<sup>165</sup>

CFSEU began providing monthly reports to TD in June 2018.<sup>166</sup> In her August and September 2018 reports, Sergeant Paddon noted that TD had not yet addressed earlier reports on the March to June 2018 period.<sup>167</sup>

Ms. Riddolls stated that she became aware of Project Athena and the typology identified by it in December 2018 in a meeting with the “big six” banks, FINTRAC, and the RCMP.<sup>168</sup> She subsequently sent emails to Aaron Clark, the vice-president of Everyday Banking (the division responsible for deposit products and services including bank drafts), in December 2018 and May 2019. She inquired about TD’s practice about including payor names on drafts and noted the typology identified by Project Athena, the fact that other banks were implementing changes to their drafts, and that “if [TD’s] control frameworks were not similarly updated, there was the potential risk that we could be targeted by money launderers who wanted to leverage this typology.”<sup>169</sup>

Ms. Riddolls did not receive a response to either email.<sup>170</sup> She then engaged with others at TD’s Everyday Banking group to determine TD’s current practice and consider the feasibility of a manual solution or an automated solution.<sup>171</sup> It was estimated that the cost of an automated solution would be around \$1 million.<sup>172</sup> By July 2019, after consulting with her peers at other banks, Ms. Riddolls was aware that all but one of TD’s peers (Scotiabank) had implemented either a manual or automated solution.<sup>173</sup>

At the April 2019 meeting of Project Athena, CFSEU had reviewed data from the beginning of the initiative in March 2018 until January 2019. Over that 11-month period, the number of drafts sold by each of the banks that were subsequently flagged as suspicious by CFSEU (because the casino patron tendering the draft used three or more

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164 Evidence of M. Bowman, Transcript, January 20, 2021, p 92. The global security and investigations team is responsible for the physical security of banks. It is separate from the financial intelligence unit, which is responsible for anti-money laundering. The two teams used to have different reporting channels but now share a similar reporting structure: Evidence of M. Bowman, Transcript, January 20, 2021, pp 89–92.

165 Evidence of A. Gabriele, Transcript, January 20, 2021, p 5; Exhibit 459, Email from Alexandra Andreu re Project Athena casino patrons list Oct 2018, January 9, 2019 (redacted).

166 Evidence of M. Bowman, Transcript, January 20, 2021, p 92; Evidence of A. Gabriele, Transcript, January 20, 2021, p 18.

167 Exhibit 460, Email from Melanie Paddon re Project Athena – June 2018, August 14, 2018 (redacted), p 1; Exhibit 472, Email from M. Paddon to P. McConnell re Project Athena – Bank Drafts for July 2018, September 27, 2018 (redacted).

168 Exhibit 473, Caitlin Riddolls Interview, October 21, 2020, p 4.

169 Ibid, pp 6–10, 13.

170 Ibid, pp 7–8, 14.

171 Ibid, pp 16–17.

172 Ibid, p 21.

173 Ibid, p 30.

bank drafts in a single month, or used multiple drafts from different banks) ranged from 21 drafts purchased from the bank at the low end to 510 drafts from the bank at the high end.<sup>174</sup> Following that meeting, Ms. Gabriele asked a member of her team to compile and analyze the information that had been provided by CFSEU between March 2018 and January 2019. The analysis, which took a couple of days to complete, confirmed that a high volume of bank drafts was coming from TD – it was the bank from which the 510 bank drafts were purchased, and the value of these drafts totalled \$26 million.<sup>175</sup> This was the first use that TD made of the intelligence it had been receiving every month from CFSEU since mid-2018; however, it was still only a preliminary review and compilation rather than an investigative use of the information.<sup>176</sup>

On May 13, 2019, Ms. Gabriele met with Amy Hellen, the bank’s global head of anti-money laundering; Kevin Doherty, head of the Canadian financial intelligence unit; and John Hamers, a senior anti-money laundering manager at the financial intelligence unit and Ms. Gabriele’s direct boss.<sup>177</sup> Ms. Gabriele prepared a slide deck, which identified the two aspects of Project Athena (the tactical information provided by CFSEU and the request to make changes to bank drafts), presented the findings of her team’s preliminary analysis of the data, and noted the high volumes of TD drafts and the fact that all the big banks were participating. It also noted Ms. Gabriele’s view that “if TD did not participate, I believed that we would have been the only financial institution” not to; however, she understood that “that was never on the table for discussion” because TD was going to participate.<sup>178</sup>

Ms. Gabriele made two recommendations: to add more resources to the team in order to start acting on the information from CFSEU, and to take action on the bank draft anonymity issue. In relation to the first recommendation, she asked for a team of four investigators and a manager.<sup>179</sup> She understood from the meeting that TD would be participating in Project Athena but needed to figure out its approach. She was directed to continue working on current regulatory priorities and demands until further meetings took place at the executive level. Ms. Gabriele did not receive direction to start with the “end-to-end reviews” of the intelligence being provided by CFSEU.<sup>180</sup>

In June 2019, Ms. Gabriele asked Mr. Doherty whether she should attend the upcoming meeting of Project Athena on July 24, 2019.<sup>181</sup> He responded that “no action [was] required on Project Athena at this time,” noting that discussions were occurring among the financial intelligence unit and the Global Senior Executive Team about “the appropriate way to deal with initiatives like [Project] Athena.”<sup>182</sup>

174 Exhibit 458, Meeting Minutes – Project Athena, April 24, 2019, p 2.

175 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 31, 41–42; Evidence of M. Paddon, Transcript, April 14, 2021, pp 68–70.

176 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 35, 50.

177 Ibid, pp 21, 50–51; Evidence of M. Bowman, Transcript, January 20, 2021, p 87.

178 Exhibit 464, TD – Project Athena – A Public/Private Partnership Presentation (undated) (redacted); Evidence of A. Gabriele, Transcript, January 20, 2021, pp 53–56.

179 Evidence of A. Gabriele, Transcript, January 20, 2021, pp 56–57.

180 Ibid, pp 55–59.

181 Exhibit 466, Email from Kevin Doherty re Project Athena, June 21, 2019 (redacted), pp 1–4.

182 Ibid, p 1; Evidence of A. Gabriele, January 20, 2021, pp 65–66.

On July 11, 2019, Mr. Doherty emailed Ms. Hellen advising that, in line with recent discussions, “I will be asking Anna [Gabriele] to stand down from attending the next session in Vancouver later this month” as they had not yet identified which team should be responsible for the project and nothing was being done with the data outputs. Ms. Hellen agreed with this approach.<sup>183</sup> Mr. Doherty later told Ms. Gabriele that they were “standing down on Athena for now” and would not be attending the July 2019 meeting.<sup>184</sup>

Mr. Bowman testified that he does not recall having any communications with Mr. Doherty about Project Athena, nor was he aware of any “stand down” order.<sup>185</sup> He believes there was a miscommunication that led to this decision, in which an inquiry he made about what his team members were engaged in was misinterpreted as a direction for Ms. Gabriele to stand down.<sup>186</sup> He also noted that the July 2019 Project Athena meeting was the only one that TD did not attend, as TD attended the November 2019 meeting.<sup>187</sup>

The July 2019 meeting minutes of Project Athena note that suspicious bank drafts in descending order of dollar value were coming from TD, BMO, CIBC, RBC, HSBC, and Scotiabank. In 2018, a total of 2,955 bank drafts / certified cheques going to BC casinos were received from 17 different financial institutions, for a total value of \$151.9 million. Of those, 98 percent originated from the top six financial institutions, and the top two – TD and BMO – accounted for 66 percent of the dollar value amount or 63 percent of the count volume.<sup>188</sup>

By July 2019, it was clear that all but one of TD’s peers (Scotiabank, which was not a significant source of drafts flagged by Project Athena) had implemented either a manual or automated solution to the bank draft issue.<sup>189</sup> However, TD determined that other regulatory changes and issues should be prioritized at that time and that the bank draft issue would be revisited as part of a larger anti–money laundering project that was set to be delivered in June 2021.<sup>190</sup> Indeed, some documents before me suggest that TD’s involvement in Project Athena was put on hold due to “other operational priorities.”<sup>191</sup> Mr. Bowman emphasized that the financial intelligence unit was “drained” at the

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183 Exhibit 467, Email from Kevin Doherty to Amy Hellen re Project Athena, July 11, 2019. The Canadian banking direct channels team is part of the anti–money laundering team managed by Caitlin Riddolls: Exhibit 478, Michael Bowman Interview, October 22, 2020, p 45.

184 Exhibit 468, Message from Kevin Doherty to Anna Gabriele re Decision on TD’s involvement with Project Athena, July 11, 2019.

185 Exhibit 478, Michael Bowman Interview, October 22, 2020, pp 20–23, 43–44; Evidence of M. Bowman, Transcript, January 20, 2021, pp 114–15.

186 Evidence of M. Bowman, Transcript, January 20, 2021, pp 114–15; Exhibit 478, Michael Bowman Interview, October 22, 2020, pp 20–23, 43–44.

187 Evidence of M. Bowman, Transcript, January 20, 2021, pp 114–16.

188 Exhibit 469, Project Athena Meeting Minutes, July 24, 2019, pp 4–5; Evidence of M. Paddon, Transcript, April 14, 2021, p 69.

189 Exhibit 473, Caitlin Riddolls Interview, October 21, 2020, p 30; Evidence of M. Paddon, Transcript, April 14, 2021, p 67.

190 Exhibit 473, Caitlin Riddolls Interview, October 21, 2020, pp 30–35.

191 Exhibit 471, Email from M. Crowley to A. Gabriele re Project Athena, December 30, 2019 (redacted), p 1.

time and “did not have a person to spare” to focus on Project Athena.<sup>192</sup> He noted that operational work, generating alerts, name matching, transaction monitoring, and filing of reports are “a huge amount of work with a tremendous focus on us around workforce management and around productivity, and that ... was the number one priority.”<sup>193</sup> Further, in his view, it would not have been appropriate to bring in contractors to participate on TD’s behalf, as they would not have sufficient knowledge of the bank’s systems, data infrastructure, technology, and the like.<sup>194</sup>

I fully appreciate that banks have significant mandatory anti–money laundering and other obligations. I accept, as Mr. Bowman noted, that complying with all these obligations requires a significant amount of time and effort. I also appreciate that banks were never *obligated* (by OSFI or the *PCMLTFA*) to make changes to their bank drafts. However, it is important to recognize that TD’s peers operate under the same legal frameworks, and they were presumably dealing with similar pressures to comply with mandatory obligations while also participating in Project Athena. It is significant, in my view, that despite these pressures, TD’s peers were able to implement a change to their bank drafts over a year before TD did so.

It appears that TD Bank did not make any investigative use of the information from CFSEU until December 2019.<sup>195</sup> Ms. Gabriele testified that “end-to-end reviews” of the data provided by Project Athena ultimately occurred between December 2019 and March 2020.<sup>196</sup>

In March 2020, Commission counsel contacted TD to learn about its participation in Project Athena. Following a request for information from the Commission, TD advised in June 2020 that “[w]hile there is no legal or regulatory requirement for TD to add purchaser identifying information on bank drafts, TD has determined that there are likewise no legal or regulatory restrictions against doing so.” TD indicated that, given the potential practical benefits identified by Project Athena, it would be proceeding with the change and was “exploring a technology solution to print the name of the purchaser on each draft, which it would target to be deployed nationally.” TD’s letter indicates that, given other operational changes and challenges related to the COVID-19 pandemic, the plan was to deploy the new solution no later than June 2021.<sup>197</sup>

Mr. Bowman agreed that the Commission’s contact with TD in March 2020 prompted renewed focus and attention on the bank draft issue.<sup>198</sup> TD subsequently confirmed that the request to initiate a change to TD’s bank drafts was submitted in April 2020.

192 Evidence of M. Bowman, Transcript, January 20, 2021, p 118–119; Exhibit 478, Michael Bowman Interview, October 22, 2020, p 50.

193 Exhibit 478, Michael Bowman Interview, October 22, 2020, p 48.

194 Evidence of M. Bowman, Transcript, January 20, 2021, pp 117–21.

195 Evidence of A. Gabriele, Transcript, January 20, 2021, p 78; Evidence of M. Bowman, Transcript, January 20, 2021, pp 104, 132, 138.

196 Evidence of A. Gabriele, Transcript, January 20, 2021, p 59.

197 Exhibit 475, Letter from Michael Bowman re Misuse of Bank Drafts, TD’s Response, June 15, 2020, p 3.

198 Exhibit 478, Michael Bowman Interview, October 22, 2020, p 73.

In September 2020, TD implemented a change in all BC branches under which a customer's name would be manually written on a bank draft.<sup>199</sup> A national, automated solution was rolled out in September 2021.

Mr. Bowman and Ms. Riddolls emphasized that making a change to bank drafts – even a manual one – was not simple, as it required consultation with many departments.<sup>200</sup> They also explained that TD's general preference was for an automated solution on a national basis to reduce the risk of human error.<sup>201</sup> While I appreciate that TD had a preference for an automated solution, and that there are indeed benefits of adopting such a solution rather than a manual one, one does not preclude the other. Indeed, some of TD's peers chose to implement a temporary manual solution while they developed an automated solution. This approach seems to be a practical way of addressing a vulnerability promptly while developing a more long-term solution.

Mr. Bowman also expressed the view that the channels used at TD to become involved in Project Athena were not particularly effective. In particular, it was not ideal or typical that the anti-money laundering team at TD got involved through informal requests by the global security and investigations team.<sup>202</sup> He emphasized that Project Athena was a novel type of public-private partnership in that law enforcement provided actual intelligence to banks, and his impression from fellow chief anti-money laundering officers at other banks was that their corporate security and investigations units, rather than their anti-money laundering units, may have been involved.<sup>203</sup> He also expects that there were concerns at some levels of TD relating to the propriety of sharing information with the RCMP without a production order and the implications of privacy legislation.<sup>204</sup>

I accept that TD may have been uncertain about the propriety of the information sharing in Project Athena and indeed that others had similar concerns (see Chapter 7). However, I am troubled by TD's delay in implementing a change to its bank drafts (which did not involve tactical information sharing) to address a money laundering vulnerability

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199 Evidence of M. Bowman, Transcript, January 20, 2021, pp 138–139.

200 They explained that such changes involve considerations including: how to respond to customer questions; how to escalate situations where a customer refuses to have their name on the draft; how to provide information to the financial intelligence unit; how to communicate information to employees who are students or part-time; and how to ensure proper oversight and controls exist to verify that the change is being made: Evidence of M. Bowman, Transcript, January 20, 2021, pp 140–42; Exhibit 478, Michael Bowman Interview, October 22, 2020, pp 65–66; Exhibit 473, Caitlin Riddolls Interview, October 21, 2020, pp 26, 54–55.

201 Exhibit 473, Caitlin Riddolls Interview, October 21, 2020, p 18; Exhibit 478, Michael Bowman Interview, October 22, 2020, p 66.

202 Exhibit 478, Michael Bowman Interview, October 22, 2020, pp 32–33; Evidence of M. Bowman, Transcript, January 20, 2021, p 105.

203 Evidence of M. Bowman, Transcript, January 20, 2021, pp 105–106, 123–127; Exhibit 478, Michael Bowman Interview, October 22, 2020, pp 32–33, 36–37.

204 Evidence of M. Bowman, Transcript, January 20, 2021, pp 122–23, 148–49. Indeed, at the October 2018 meeting, it appears that TD expressed some concerns early on about the implications of the *Privacy Act* and information sharing with police in the absence of a production order: Exhibit 476, Project Athena Stakeholders Meeting Minutes, October 24, 2018, p 1.

flagged by law enforcement. It appears that, as early as December 2018, the vice-president of Everyday Banking was advised of the Project Athena typology, the actions that other banks had taken to change their bank drafts, the potential for TD to be the sole bank among its peers not to do so, and the fact that failing to do so could make TD vulnerable for money laundering. Yet, no change was made to its bank drafts until September 2020. Further, this action appears to have been prompted by inquiries by Commission counsel, raising the question of whether it would have occurred otherwise.

This delay is surprising given that senior management in TD’s anti-money laundering unit were aware by at least May 2019 that their bank was the single largest source of suspicious bank drafts being tendered at BC casinos, representing a sum of \$26 million from March 2018 to January 2019 alone. Despite this information, a request for a five-person investigation team was declined, and it appears that TD determined it did not have a single person it could spare to analyze the data being provided by Project Athena. Instead, Ms. Gabriele was told to stand down from the initiative. Although this may have involved some miscommunication, I find it concerning that one of Canada’s largest financial institutions was so delayed in addressing a vulnerability to bank drafts that had been identified by law enforcement. There were costs to these decisions, with millions of dollars of potentially suspicious funds entering BC casinos through TD bank drafts in the meantime.<sup>205</sup>

The story of Project Athena illustrates the need for all participants in public-private partnerships to be engaged, responsive, and willing to take concrete measures to address money laundering threats. Failing to do so can hinder the effectiveness of such partnerships and possibly enable continued criminal activity — this occurs when bad actors identify and then target institutions that are slower to implement changes. Further, it appears that the situation at TD was due, in part, to a failure to ensure that the correct department had carriage of the project. It is crucial that financial and other institutions have processes in place to allow the appropriate people to be advised of and involved in anti-money laundering initiatives.

## Private-Private Information Sharing

A second category of information sharing relates to collaboration between financial institutions themselves, referred to as “private-private information sharing.” Nicholas Maxwell, one of the world’s leading experts on public-private financial information-sharing partnerships, expresses the view that there has been inadequate private-private information sharing to detect money laundering in Canada.<sup>206</sup> In particular, in recent years, there has been a push to implement a “safe harbour”

<sup>205</sup> Sgt. Paddon agreed there was reason to think that money launderers began to target banks that did not have measures to address bank draft anonymity, although she noted there were also other reasons for that shift: Transcript, April 14, 2021, pp 70–71.

<sup>206</sup> Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 4, 2021, updated December 11, 2021), p 9.

provision for money laundering. In a report prepared for the Commission, Barbara McIsaac, a lawyer with expertise in privacy law, described the concept as

a provision in a statute or in a regulation or rule that specifies that certain conduct will not create liability if certain conditions are met. Generally, such a provision would exempt the entity that has shared the information from liability or censure by a regulator if it acted in good faith in doing so.<sup>207</sup>

Ms. McIsaac notes that a number of organizations, including the Canadian Bankers Association, have recommended that a safe harbour provision be adopted with respect to money laundering.<sup>208</sup> An example of a safe harbour provision can be found in section 314(b) of the US *Patriot Act*, which states that American financial institutions may

share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities. A financial institution or association that transmits, receives, or shares such information for the purposes of identifying and reporting activities that may involve terrorist acts or money laundering activities *shall not be liable to any person under any law or regulation of the United States*. [Emphasis added.]<sup>209</sup>

Mr. Maxwell's report explains that section 314(b) creates a voluntary program allowing reporting entities to share information for purposes of identifying and, where appropriate, reporting activities that may involve money laundering or terrorist financing.<sup>210</sup> According to the report, the number of institutions using the process in section 314(b) has nearly doubled between 2014 and 2018, and it has enabled US banks to “develop a more effective network intelligence picture of financial crime threats across participating entities.”<sup>211</sup>

In Canada, the federal *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 (known as “*PIPEDA*”) contains a kind of safe harbour provision in relation to fraud. Section 7(3)(d.2) states that an organization may disclose personal information with another organization where it is “reasonable for the purpose of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud.” Notably, it refers

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207 Exhibit 319, Barbara McIsaac Law, Report for the Cullen Commission on Privacy Laws and Information Sharing (November 17, 2020), pp 109–110.

208 Ibid.

209 *Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001*, 115 Stat 272, online: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf).

210 Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 4, 2021, updated December 11, 2021), p 24.

211 Ibid. He has observed that US banks now work together to flag transactions that will impact another bank, resolve certain risks, and ultimately report more efficiently to the financial intelligence unit: Evidence of N. Maxwell, Transcript, January 14, 2021, pp 102–103.

only to fraud; it does not encompass money laundering.<sup>212</sup> As a result, Mr. Maxwell took the view that there is “no legal gateway to share information between financial institutions for the prevention and suppression of money laundering and to support collaborative analytics between multiple financial institutions as there is for fraud.”<sup>213</sup>

The issue may not be that straightforward, however. Ms. McIsaac expresses the view that, properly understood, provincial and federal privacy laws do not prevent the disclosure of personal information for the purposes of combatting money laundering. Rather, there is a strong *assumption* that they do. She concludes that “the principal way in which Canadian privacy laws may be detrimental to combatting money laundering is in their perception,” noting that in the absence of clear guidance as to when information sharing is permitted, “potential information sharers will be more likely to err on the side of caution and default to the position of non-disclosure.”<sup>214</sup> The problem is that, under provincial and federal legislation, the sharing of personal information is left to the discretion of the public or private entity (unless there is a legal requirement to provide it), and they can be penalized – through reputational harm or potential civil liability – if they are found to have shared information in a manner that does not comply with the legislation.<sup>215</sup> Ms. McIsaac believes that public and private entities must have a better understanding – and regulators and privacy commissioners must give clearer direction – of when information can be shared for the purposes of combatting money laundering.<sup>216</sup>

Despite the foregoing, Ms. McIsaac notes that a safe harbour provision would likely provide “more confidence” to public and private bodies that they will be protected from liability or censure by a regulator if they disclose personal information in good faith for the purposes of combatting money laundering.<sup>217</sup> She does not, however, express a view as to whether such a provision *should* be implemented.<sup>218</sup>

The chief anti-money laundering officers at the credit unions I heard from supported the development of a safe harbour provision. Ms. Herring testified that a provision similar to section 314(b) of the *Patriot Act* “would be ideal” in ensuring that credit unions have protection when sharing information in the context of complex investigations.<sup>219</sup> I also heard from Ms. Tolfo that there is a certain “conservatism” among credit unions given their heavy regulation:

212 Interestingly, the *Patriot Act* appears to have the opposite effect, providing an exception for money laundering and terrorist financing but not for fraud: Evidence of N. Maxwell, Transcript, January 14, 2021, p 102.

213 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 100–101.

214 Exhibit 319, Barbara McIsaac Law, Report for the Cullen Commission on Privacy Laws and Information Sharing (November 17, 2020), pp 6, 109.

215 Ibid, p 109; Evidence of B. McIsaac, Transcript, December 3, 2020, p 81.

216 Evidence of B. McIsaac, Transcript, December 3, 2020, pp 30–31.

217 Exhibit 319, Barbara McIsaac Law, Report for the Cullen Commission on Privacy Laws and Information Sharing (November 17, 2020), p 7.

218 Evidence of B. McIsaac, Transcript, December 3, 2020, p 115.

219 Evidence of L. Herring, Transcript, January 19, 2021, pp 25–26.

[T]he challenge that [financial institutions] have is we are so heavily regulated, it's complex. There are a lot of laws and regulations that often conflict with one another ... I think that often tends to end up with individuals and institutions taking a really conservative approach around things ... [For example, when] choosing to no longer work with a business or a consumer because you've decided that the risk is too high [that is, de-risking] ... we are challenged in terms of not being able to share those details, specific details because of privacy law challenges ... [T]here's a lot of validity to the privacy law area, but it also makes it is very challenging in that each institution is ... on their own in the sense that they have to separately catch indicators around why someone may be coming to open up a new bank account having no idea that a financial institution down the street has just chosen to no longer do business with that person. So it's a fine balance in terms of not wanting to supply information that is going to enable the people who want to launder money to get smarter to be able to improve their ability versus making sure that we can freely share the information to try and support ultimately FINTRAC and law enforcement in using the data we provide.<sup>220</sup>

To similar effect, in evidence from the national bank CAMLOs, I heard that the lack of a safe harbour provision in Canada was a significant concern. The bank CAMLOs were supportive of such a provision, which would provide protection for banks that decide to share information while also ensuring a proper balance with privacy rights.

Mr. Maxwell noted that it is a common technique for money launderers to spread their accounts and money laundering activity across multiple institutions and that it can be difficult for individual institutions to understand what is occurring because they have only a small window into the criminal activity.<sup>221</sup> He opined that in the absence of a safe harbour provision, when one financial institution de-risks a client, that individual can enter the financial system at another point, learning along the way what tipped off the previous institution.<sup>222</sup> In his view, a safe harbour provision would “allo[w] a network to defeat a network”:

There [are] networks of organized crime who are fantastic at collaborating. They're fantastic at sharing information and they absolutely spread their risk across multiple reporting entities. [E]stablishing a clear legal basis for private/private sharing to detect money laundering between reporting entities ... [would] support reporting entities and identify unknown threats to law enforcement, the criminality they are not already tracking, the suspects they don't already know about ... It also should support a more effective preventive function, which is a huge pillar of what the system should be achieving.<sup>223</sup>

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220 Evidence of E. Tolfo, Transcript, January 19, 2021, pp 26–28.

221 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 101–102.

222 Ibid, pp 108–110; Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 4, 2021, updated December 11, 2021), p 25.

223 Ibid, pp 116–17.

From Mr. Maxwell's interviews with reporting entities, he observed that many were interested in safe harbour provisions and that, despite raising the issue with the federal government, "the response has so far been very negative towards that proposal. So interviewees were sceptical it would happen."<sup>224</sup>

The BC Civil Liberties Association strongly disagrees that a safe harbour provision is necessary. It submits that privacy legislation already allows for information sharing for the purposes of combatting money laundering in appropriate cases, referring to Ms. McIsaac's view that I noted above. It also points to findings by the Office of the Privacy Commissioner of Canada that entities already report excessive information to FINTRAC. In the BC Civil Liberties Association's view, any hesitancy about engaging in legal information sharing for the purposes of combatting money laundering can be addressed through education and clear direction from regulators. It further submits that any provisions that are adopted should be very carefully worded and tightly constrained to avoid undermining privacy rights any more than is absolutely necessary.<sup>225</sup>

I am persuaded that a safe harbour provision could have a meaningful impact on anti-money laundering activity in this province. The evidence before me suggests that both provincial and federal financial institutions are supportive of a safe harbour provision and consider the lack of such a provision to be problematic, particularly because a similar one exists for fraud-related information. It is also notable the Canadian Bankers Association expressed support for a safe harbour provision (with appropriate balances for privacy considerations) before the House of Commons' Standing Committee on Finance. The committee subsequently recommended in its 2018 report that the Government of Canada consider tabling legislation to introduce a safe harbour provision.<sup>226</sup> A response from the Government of Canada dated February 21, 2019, indicates that it agreed substantively with the recommendation to create a safe harbour provision and that it was "reviewing the Recommendations to enhance public-private and private-private information sharing options."<sup>227</sup>

It may be, as Ms. McIsaac and the BC Civil Liberties Association suggest, that a safe harbour provision for money laundering is not technically necessary because existing privacy legislation already permits sharing between financial institutions to combat money laundering. However, I am satisfied that financial institutions do not currently believe they are able to do so without facing liability in the absence of a specific safe harbour provision relating to money laundering. I am also satisfied that a formal safe harbour provision would provide needed comfort and clarity for financial institutions

<sup>224</sup> Ibid, pp 105–106.

<sup>225</sup> Closing submissions, BC Civil Liberties Association, paras 73–75; see also Evidence of B. McIsaac, Transcript, December 3, 2020, pp 117–18.

<sup>226</sup> Exhibit 436, House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward, Report of the Standing Committee on Finance* (November 2018), pp 41, 44 (Recommendation 18).

<sup>227</sup> Standing Committee on Finance, Reports, 42nd Parliament, 1st Session (December 3, 2015–September 11, 2019), Government Response to Report 24, online: <https://www.ourcommons.ca/Committees/en/FINA/Work?show=reports&parl=42&session=1>.

when deciding to share information relating to money laundering and that a legislated measure would ensure that sufficient protections for privacy have been considered.

For a safe harbour provision to be most effective, it would need to apply to both provincially and federally regulated financial institutions. Ideally, the provision would be located in *PIPEDA* alongside the provision relating to fraud. As *PIPEDA* is a federal statute, I cannot make recommendations to the federal government on this point directly. However, given the importance of such a provision for British Columbia, I am of the view that the provincial government should urge the federal government to implement a safe harbour provision allowing financial institutions to share information related to potential money laundering activity.

**Recommendation 48:** I recommend that the Attorney General of British Columbia urge the appropriate federal minister to introduce amendments to the federal *Personal Information Protection and Electronic Documents Act*, providing for a “safe harbour provision” allowing financial institutions to share information related to potential money laundering activity.

Although a federal provision is important to enable federally regulated financial institutions to engage in this type of information sharing, the Province can equally make changes to allow provincially regulated financial institutions (notably credit unions) to do so. The Province should begin the process of introducing such a provision. This should be done in consultation with the Office of the Information and Privacy Commissioner to ensure that the proper protections for privacy are put in place. There should also be consultation with the appropriate federal minister to ensure that the safe harbour provisions are compatible.

**Recommendation 49:** I recommend that the Province introduce, in consultation with the Office of the Information and Privacy Commissioner, a safe harbour provision allowing provincially regulated financial institutions to share information related to potential money laundering activity.

Before concluding on safe harbour provisions, I note that a related issue is the concept of “keep open” requests. As Mr. Maxwell explained, keep open requests are

a formal process whereby law enforcement can request an account be kept open and that’s basically saying to the reporting entity, “keep open this account; we understand that you’ve identified suspicion, but we are interested in receiving the reports and we don’t want you to close the account because it would harm our investigation.”<sup>228</sup>

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228 Evidence of N. Maxwell, Transcript, January 14, 2021, p 110.

Mr. Maxwell's interviews with stakeholders revealed that some believed FINTRAC would support financial institutions keeping an account open in such an instance, while others were concerned about a lack of clarity and the potential for civil action and other penalties if they complied with the request from law enforcement.<sup>229</sup> Mr. Maxwell's report to the Commission notes that currently, in the absence of a formal framework for "keep open" requests, a reporting entity may simply close an account when it receives information from law enforcement (such as a production order), which could undermine or disrupt the law enforcement investigation (closing an account prematurely or inexplicably tipping off a bad actor).<sup>230</sup> Mr. Maxwell concluded that the law of a legal framework for "keep open" requests and clear regulatory guidance is a challenge in Canada.<sup>231</sup>

Mr. Maxwell's report notes that FinCEN (the US equivalent to FINTRAC) has made guidance available since 2007 about keep open requests. The guidance states, among other things, that law enforcement agency requests to keep an account open must be in written form, last no longer than six months, and be recorded by the financial institution for five years. The process is voluntary, with the decision to maintain or close an account ultimately left to the financial institution. However, Mr. Maxwell notes that it "remains possible that current US keep open letters also do not protect regulated entities from all supervisory, criminal or reputational risks in maintaining an account suspected of links to financial crime or terrorist activity."<sup>232</sup>

It appears there may be room for improvement in the American regime in terms of ensuring sufficient legal and reputational protection for financial institutions assisting with keep open requests. Nonetheless, on the evidence before me, I am persuaded that a formal keep open regime similar to that in effect in the United States would be beneficial in British Columbia. It appears that such a regime would require federal legislative change. I therefore recommend that the BC Attorney General engage with his federal counterpart and other stakeholders to implement a formal keep open regime for financial institutions.

**Recommendation 50:** I recommend that the Attorney General of British Columbia engage with his federal counterpart and other stakeholders to implement a formal "keep open" regime for financial institutions in which they can, at the request of law enforcement, keep an account suspected of involvement in money laundering open in order to further a law enforcement investigation.

229 Ibid, pp 110–11.

230 Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 4, 2021, updated December 11, 2021), p 25.

231 Evidence of N. Maxwell, Transcript, January 14, 2021, p 111.

232 Exhibit 411, Nicholas Maxwell, Future of Financial Intelligence Sharing Briefing Paper – Canada in Context (January 4, 2021, updated December 11, 2021), p 26.

## Conclusion

In this chapter, I have reviewed the money laundering risks facing financial institutions, both provincial and federal. Financial institutions play a key role in the anti-money laundering regime: as gatekeepers to the financial system, they likely encounter suspicious activity far more often than other reporting entities, and they are also well placed to observe suspicious activity involving those other entities when they are on the other side of transactions. Financial institutions are therefore important partners for law enforcement and FINTRAC alike.

Based on the evidence before me, financial institutions in this province are aware of the important role they play in combatting money laundering. The credit unions and banks I heard from have cogent anti-money laundering programs in place, although I cannot go the next step to evaluate the effectiveness in particular of federally regulated banks' programs. I am also of the view that the new BCFSA takes anti-money laundering seriously, though I have made recommendations above that will enhance its focus on the issue. Finally, I have outlined in this chapter the vital importance of information sharing, both between financial institutions and public authorities, as well as among financial institutions themselves. Information sharing certainly presents unique legal and constitutional difficulties that need to be addressed; however, it is clear that a constitutional information-sharing regime is key to the fight against money laundering.

## Chapter 21

# Money Services Businesses

Money services businesses, often referred to as MSBs, provide services that are similar, but not identical, to those offered by banks and credit unions. They are commonly known to handle money transfers and foreign currency exchange. Many tend to be much smaller than banks or credit unions, and their business structures less formal.

It is widely recognized that there are significant money laundering vulnerabilities associated with MSBs. They are frequently associated with professional money launderers and informal value transfer systems, which I discuss in more detail in Chapters 2, 3, and 37. Although MSBs are required to register with FINTRAC, many remain unregistered. This leaves FINTRAC and law enforcement in the dark about their activities. Further, given the risks inherent to MSBs, financial institutions often “de-risk” them – in other words, refuse to provide banking services to them – forcing some MSBs to operate underground and further hiding their activities from the authorities.

In this chapter, I begin by explaining what MSBs are and the regulatory framework applicable to them. I then examine the money laundering risks arising in this sector, which include risks associated with the business model as well as the consequences of de-risking and the existence of unregistered MSBs. I then discuss investigation challenges associated with MSBs. Finally, I consider the desirability of a provincial regulator for MSBs.

### **What are MSBs?**

MSBs are non-bank persons or entities that provide transfer and exchange services. Clients use MSBs to exchange or transfer value and to purchase or redeem negotiable instruments. MSBs do *not*, however, accept deposits or make loans in the same way as

banks, credit unions, or trusts.<sup>1</sup> Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*), MSBs include persons or entities that have a place of business in Canada and are engaged in the business of providing at least one of the following services:

- foreign exchange dealing (for example, converting USD into CAD);
- remitting funds or transmitting funds by any means or through any person, entity, or electronic funds transfer network;
- issuing or redeeming money orders, traveller’s cheques, or other similar negotiable instruments except for cheques payable to a named person or entity; or
- dealing in virtual currencies.<sup>2</sup>

This definition includes alternative money remittance systems, such as the *hawala*, *hundi*, *chitti*, and *undiya* systems (discussed further in Chapter 37).<sup>3</sup> The *PCMLTFA* also covers foreign MSBs, which are defined as persons or entities that do not have a place of business in Canada but provide one of the above services to persons or entities in Canada.<sup>4</sup>

A report prepared by FINTRAC in 2010 notes that many kinds of MSBs operate in Canada. These include large multinational companies with thousands of employees, branches, and franchised agents, as well as very small independent businesses with no employees and engaged in very low volumes of transactions.<sup>5</sup> Donna Achimov, deputy director and chief compliance officer at FINTRAC, testified that the vast majority of MSBs are “mom and pop” organizations located in a residence, convenience store, or the like.<sup>6</sup>

Although much of this chapter focuses on ways in which MSBs can be misused, it is important to emphasize that they have legitimate uses as well. Many MSBs provide convenient and affordable services to disadvantaged and vulnerable groups, including low-income, rural, and undocumented migrants. They also help individuals remit funds to family and friends in low- and middle-income countries.<sup>7</sup> Further, many new financial

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1 Exhibit 441, FINTRAC, *Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs)*, July 2010, p 2; Exhibit 440, BC Ministry of Finance, *Money Services Businesses Public Consultation Paper* (March 2020), p 3.

2 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 1(2), “money services business”; *PCMLTFA*, s 5(h); Evidence of J. Iuso, Transcript, January 18, 2021, pp 7–8.

3 Exhibit 441, FINTRAC, *Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs)*, July 2010, p 3.

4 *PCMLTF Regulations*, s 1(2), “foreign money services business”; *PCMLTFA*, s 5(h.1).

5 Exhibit 441, FINTRAC, *Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs)*, July 2010, p 3.

6 Evidence of D. Achimov, Transcript, January 18, 2021, p 132.

7 Exhibit 440, BC Ministry of Finance, *Money Services Businesses Public Consultation Paper* (March 2020), p 4.

technology firms (sometimes referred to as “FinTech”) are considered MSBs because they develop and apply new technologies to existing bank infrastructure.<sup>8</sup> The MSB definition in the *PCMLTFA* has also been expanded recently to encompass virtual asset service providers, which play an important role in the virtual asset space (see Chapter 35).

I heard evidence from Michael Cox, chief compliance officer and director of finance and risk management at the Vancouver Bullion and Currency Exchange, a large registered MSB in Greater Vancouver. The exchange provides services including transfers to individual and corporate clients, as well as currency exchange. It is also registered with FINTRAC as a dealer in precious metals and stones, which is not a common service provided by most MSBs. The exchange does not, however, provide cryptocurrency services. Mr. Cox testified that the exchange’s main competitors are the big five Canadian banks. Significantly, at the request of its banking partners, the exchange does not provide services to other MSBs<sup>9</sup> – a point I return to later in this chapter.

## The Canadian Money Services Business Association

The Canadian Money Services Business Association (CMSBA) was founded to provide advocacy, training, networking, and education for its members.<sup>10</sup> Importantly, it is not a regulator. Members of CMSBA include registered MSBs as well as partial and full associate members. The latter are not MSBs but offer services to them, such as consulting firms, law firms, and corporate entities. CMSBA verifies an MSB’s registration with FINTRAC when the MSB signs up for membership.<sup>11</sup>

Joseph Iuso, executive director of CMSBA, testified that the association had between 80 and 100 registered members at the time of the hearing. Most are small and medium-sized MSBs, with the exception of the Vancouver Bullion and Currency Exchange, Ria Money Transfer (one of the world’s largest money transfer services), and Canada Post. Mr. Iuso’s experience is that larger MSBs are less inclined to join CMSBA than smaller ones, which, he believes, stems from a disinclination for larger MSBs to engage with smaller ones.<sup>12</sup>

## Regulation of MSBs

At the time of writing, MSBs are not subject to provincial regulation in British Columbia. They do, however, have a variety of obligations under the *PCMLTFA*, and they are addressed by the Financial Action Task Force’s 40 recommendations.

<sup>8</sup> Ibid, p 5.

<sup>9</sup> Evidence of M. Cox, Transcript, January 18, 2021, pp 11–13.

<sup>10</sup> Evidence of J. Iuso, Transcript, January 18, 2021, pp 9–10, 74.

<sup>11</sup> Ibid, pp 10–11, 68–69, 73.

<sup>12</sup> Ibid, pp 73–74.

## Requirements under the *PCMLTFA*

MSBs are subject to a number of requirements under the *PCMLTFA*. My discussion in this section focuses largely on domestic MSBs; however, foreign MSBs operating in Canada have similar obligations.

MSBs must implement a compliance program, which has six aspects. They must:

- appoint a compliance officer responsible for implementing the program;
- develop and apply written compliance policies and procedures that are kept up to date;
- conduct a risk assessment of the business to assess and document the risk of a money laundering offence or a terrorist activity financing offence occurring in the course of the business's activities;
- develop and maintain a written, ongoing compliance training program for employees, agents, mandataries, or other authorized persons;
- institute and document a plan for the ongoing compliance training program and deliver the training; and
- institute and document a plan for a review (at least every two years) of the compliance program for the purpose of testing its effectiveness.<sup>13</sup>

MSBs must also verify their clients' identities in a variety of situations, including when they:

- receive \$10,000 or more in cash;<sup>14</sup>
- receive the equivalent of \$10,000 or more in virtual currency;<sup>15</sup>
- issue or redeem \$3,000 or more in traveller's cheques, money orders, or similar negotiable instruments;<sup>16</sup>
- initiate an electronic funds transfer of \$1,000 or more;<sup>17</sup>
- transfer virtual currency in an amount equivalent to \$1,000 or more;<sup>18</sup> and
- exchange virtual currency for funds, funds for virtual currency, or one virtual currency for another in an amount equivalent to \$1,000 or more.<sup>19</sup>

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<sup>13</sup> *PCMLTFA*, s 9.6(1); *PCMLTF Regulations*, s 156(1).

<sup>14</sup> *PCMLTF Regulations*, ss 84(a), 105(7)(a), 109(4)(a), and 112(3)(a).

<sup>15</sup> *Ibid*, ss 84(b), 105(7)(a), 109(4)(a), and 112(3)(a).

<sup>16</sup> *Ibid*, ss 95(1)(a) and 105(7)(a).

<sup>17</sup> *Ibid*, ss 95(1)(b) and 105(7)(a).

<sup>18</sup> *Ibid*, ss 95(1)(d) and 105(7)(a).

<sup>19</sup> *Ibid*, ss 95(1)(e) and 105(7)(a).

MSBs have a variety of record-keeping obligations relating to the above situations.<sup>20</sup> They must also take reasonable measures to verify the identity of every person or entity that conducts or attempts to conduct a suspicious transaction.<sup>21</sup> MSBs are also required to verify the identity of beneficiaries of remittances and electronic funds transfers of \$1,000 or more,<sup>22</sup> and of corporations or other entities 30 days after beginning a service agreement with them.<sup>23</sup> Further, they must obtain beneficial ownership information when verifying the identity of a legal entity and take reasonable measures to verify the accuracy of that information.<sup>24</sup> MSBs are also required to take reasonable measures to determine if a third party is involved in a transaction,<sup>25</sup> and they have obligations with respect to politically exposed persons.<sup>26</sup>

The *PCMLTFA* imposes a number of reporting obligations on MSBs. These include reporting to FINTRAC:

- the receipt of \$10,000 or more in cash in a single transaction<sup>27</sup> from a person or entity;<sup>28</sup>
- the initiation or receipt of an international electronic funds transfer of \$10,000 or more in a single transaction;<sup>29</sup>
- the receipt of the equivalent of \$10,000 or more in virtual currency in a single transaction;<sup>30</sup> and
- every financial transaction that occurs or is attempted in the course of the MSB's activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission or attempted commission of a money laundering or terrorist activity financing offence.<sup>31</sup>

Mr. Cox testified that the Vancouver Bullion and Currency Exchange has implemented a compliance program that is, in some respects, more stringent than the FINTRAC requirements. For example, it conducts an annual external compliance review and verifies its clients' identities for transactions at a lower threshold than is required by the *PCMLTFA*. It also has a policy that clients who attempt to alter a transaction to avoid showing identification (for example, if a client wanted to change a transaction

<sup>20</sup> Ibid, ss 31–37.

<sup>21</sup> *PCMLTFA*, s 7; *PCMLTF Regulations*, ss 85(1), 105(7)(c), 109(4)(b), and 112(3)(b).

<sup>22</sup> *PCMLTF Regulations*, ss 95(1)(e.1), (f), and 105(7)(a).

<sup>23</sup> Ibid, ss 95(3), (4), 109(4)(g), and 112(3)(g).

<sup>24</sup> Ibid, ss 138(1), (2), and 123.1(b).

<sup>25</sup> Ibid, ss 134(1) and 136(1).

<sup>26</sup> Ibid, s 120.

<sup>27</sup> A “single transaction” includes two or more transactions conducted in a 24-hour period if they are conducted by or on behalf of the same person or entity or for the same beneficiary: *ibid*, ss 126–129.

<sup>28</sup> *PCMLTF Regulations*, s 30(1)(a).

<sup>29</sup> Ibid, ss 30(1)(b), (e).

<sup>30</sup> Ibid, ss 30(1)(c), (f).

<sup>31</sup> *PCMLTFA*, s 7.

amount from \$2,000 to \$1,950 to come within a threshold) are not permitted to conduct a transaction until they are identified.<sup>32</sup> The exchange also runs transaction monitoring scenarios, which identify scenarios having the potential for money laundering based on the exchange's observations, feedback from banking partners or FINTRAC, external compliance reviews, or elsewhere.<sup>33</sup> Further, it has a policy (which is not required by FINTRAC) of waiting 48 hours before paying out precious metals on transactions that raise concerns, such as concerns about fraudulent bank drafts.<sup>34</sup>

MSBs must also conduct ongoing monitoring of their business relationships with clients.<sup>35</sup> This involves implementing a process to review all the information obtained about a client in order to detect suspicious transactions, keeping information up to date, re-assessing the level of risk associated with the client's transactions and activities, and determining whether the client's transactions and activities are consistent with the information obtained about them and their risk assessment.<sup>36</sup> This monitoring must be done periodically based on the MSB's risk assessment of the client, and enhanced monitoring is necessary for high-risk clients.<sup>37</sup> The MSB must keep a number of records relating to this ongoing monitoring.<sup>38</sup>

MSBs are required to register with FINTRAC.<sup>39</sup> The registry of MSBs is available online, meaning anyone who wishes to look at the registry can do so through the FINTRAC website.<sup>40</sup> According to figures provided by FINTRAC to CMSBA, there were 1,903 MSBs registered with FINTRAC at the time of hearing.<sup>41</sup> Of these, 1,569 provided money transmission and remission services, 1,430 provided foreign exchange services, 226 issued and redeemed negotiable instruments, and 471 were dealers in virtual currency.<sup>42</sup> There were 65 registered foreign MSBs, which have been required to register with FINTRAC since June 1, 2020.<sup>43</sup>

Ms. Achimov testified that a record-high number of MSBs are registered nationally. In the few weeks prior to her testimony, FINTRAC had registered 1,923 MSBs, 398 of which were in BC and 115 of which offered virtual currencies.<sup>44</sup> Ms. Achimov explained that, prior to registering an MSB, FINTRAC checks to ensure that an applicant is

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32 Evidence of M. Cox, Transcript, January 18, 2021, pp 40–41.

33 Ibid, pp 42–43.

34 Ibid, pp 45–46.

35 *PCMLTF Regulations*, s 123.1. An MSB enters a business relationship with a client the second time it is required to verify the client's identity within a five-year period or when entering a service agreement: *PCMLTF Regulations*, ss 4.1(b), (d), and (e).

36 *PCMLTF Regulations*, s 123.1.

37 Ibid, ss 123.1, 157(b)(ii).

38 Ibid, s 146(1).

39 *PCMLTFA*, s 11.1.

40 FINTRAC, "Money Services Businesses (MSB) Registry Search," online: <https://www10.fintrac-canafe.gc.ca/msb-esm/public/msb-search/search-by-name/>.

41 Evidence of J. Iuso, Transcript, January 18, 2021, pp 8–9.

42 Ibid. Mr. Iuso noted that it is unclear how many MSBs provided multiple services: *ibid*, p 9.

43 Evidence of J. Iuso, Transcript, January 18, 2021, p 9.

44 Evidence of D. Achimov, Transcript, January 18, 2021, pp 178–79.

a registered Canadian business. It also does criminal record checks of applicants (including of the directors, owners, and president of applicants that are corporations) and other checks such as consulting terrorist listings and media mentions.<sup>45</sup> In the absence of effective beneficial ownership registry data, FINTRAC does not have access to that sort of information about MSBs.<sup>46</sup> Although there are currently no restrictions on where an MSB might operate, FINTRAC considers the place of operation (for example, MSBs that operate from a residence).<sup>47</sup>

Section 11.11 of the *PCMLTFA* lists persons and entities that are not eligible for registration. These include (but are not limited to) persons or entities who:

- are subject to sanctions;
- are listed as terrorist entities under the *Criminal Code*;
- have been convicted of a money laundering or terrorist financing offence; or
- have been convicted of other listed offences.

Ms. Achimov testified that FINTRAC can only refuse registration if an applicant has been *convicted* of specified offences. It is insufficient if there has been only an investigation or a charge.<sup>48</sup> However, FINTRAC may consider ongoing investigations to inform its compliance activities and risk rating.<sup>49</sup> FINTRAC keeps track of MSBs that are refused registration.<sup>50</sup>

I appreciate that section 11.11 of the *PCMLTFA* provides that certain listed persons and entities are ineligible for registration, and that the focus is on *convictions*. Notably, however, the section does not state that *only* people or entities who have been convicted of such offences are ineligible. It may be (but I do not resolve the point) that certain individuals or entities could, or should, be found ineligible for registration on other bases.

In this regard, the situation of Silver International Investment Ltd. (Silver International) is illustrative. As I discuss in more detail in Chapter 3, Silver International was investigated by the RCMP as part of Project E-Pirate, the only major money laundering investigation in British Columbia to result in criminal charges between 2015 and 2020.<sup>51</sup> The RCMP was investigating an alleged money laundering scheme involving informal value transfer, cash facilitation at BC casinos,

45 Ibid, pp 129–131.

46 Ibid, p 131.

47 Ibid, p 132.

48 Ibid, pp 133, 161, 194.

49 Ibid, pp 133–34.

50 Ibid, p 177.

51 Note, however, that the Crown entered a stay of proceedings on November 22, 2018, with the result that the matter did not proceed to trial: Exhibit 663, Affidavit of Cpl. Melvin Chizawsky, February 4, 2021, Exhibit A, para 125.

and an unlicensed gaming house. Between April 2015 and February 2016, the RCMP conducted 40 days of surveillance on an individual named Paul Jin and his associates.<sup>52</sup> The surveillance revealed that Mr. Jin was frequently attending the offices of Silver International, and police came to believe that he was moving cash from Silver International to another property for repackaging and that he was running an unlicensed gaming house.<sup>53</sup>

On October 15, 2015, the RCMP executed search warrants at Silver International and several other locations, which resulted in the seizure of large sums of cash as well as financial ledgers and daily transaction logs.<sup>54</sup> An analysis conducted by a financial analyst at the RCMP concluded that Silver International had conducted 474 debit transactions totalling \$83,075,330 and 1,031 credit transactions totalling \$81,462,730 for the 137-day period between June 1, 2015, and October 15, 2015, which corresponded on an annual basis to approximately \$221 million in debit transactions and \$217 million in credit transactions.<sup>55</sup>

Surprisingly, despite the lengthy investigation by the RCMP culminating in several search warrants in October 2015, Silver International was registered with FINTRAC as a money services business three months later in December 2015.<sup>56</sup> When asked about this, Ms. Achimov stated that she was not at liberty to discuss specific cases. However, she testified that suspected criminality in isolation would not qualify as a reason for FINTRAC to refuse registration of an MSB, noting that a criminal conviction would be required.<sup>57</sup>

I recommend later in this chapter that the Province subject money services businesses to regulation by BCFSa. In my view, the anomalous result that an applicant for registration as an MSB could be the subject of a major and active money laundering investigation by law enforcement that had revealed significant evidence of criminality and still be registered by FINTRAC calls for added scrutiny, which could be achieved through regulation by BCFSa.

MSBs must re-register with FINTRAC every two years.<sup>58</sup> Ms. Achimov testified that this is where FINTRAC does the “deeper dive.”<sup>59</sup> It also does a periodic review of MSBs to verify whether they have any convictions.<sup>60</sup> As I expand below, although a more detailed analysis of an MSB’s eligibility after two years is a good start, I do not believe it is sufficient and am recommending that BCFSa conduct compliance examinations prior to the two-year mark.

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52 Exhibit 663, Affidavit of M. Chizawsky, para 116.

53 Ibid, paras 38, 107, 108, 115.

54 Ibid, paras 65–66.

55 Ibid, para 99. See **Chapter 3** for a more detailed discussion of these findings.

56 Evidence of M. Chizawsky, Transcript, March 1, 2021, p 104.

57 Evidence of D. Achimov, Transcript, January 18, 2021, p 133.

58 *PCMLTFA*, s 11.19.

59 Evidence of D. Achimov, Transcript, January 18, 2021, p 175.

60 Ibid.

## Money Laundering Risks

There are a number of money laundering risks associated with MSBs. This section addresses the risks relating to more traditional MSBs. I discuss virtual asset service providers (which are now deemed to be MSBs) in Chapter 35 and informal value transfer services (which are also considered MSBs) in Chapters 3 and 37.

Although there are particular risks associated with MSBs, as outlined below, it is important to note that many of the risks apply equally to credit unions, banks, and other financial institutions.<sup>61</sup> Barry MacKillop, deputy director of intelligence at FINTRAC, testified that, in terms of the quantity of money being moved, much more is moved through the formal financial system using banks than through MSBs. However, he acknowledged that there may be higher risks relating to certain aspects of MSBs, for example, unregistered ones.<sup>62</sup>

### Risk Assessments

Canada's 2015 national risk assessment and the Financial Action Task Force's 2016 mutual evaluation of Canada both addressed the risks relating to MSBs. In the national risk assessment, MSBs were rated as having a "medium" to "very high" risk.<sup>63</sup> The assessment notes that "[a]lthough the MSB sector is broadly vulnerable, the degree of vulnerability is not uniform largely because of the variations in terms of size and business models."<sup>64</sup> It adds that the MSB sector handles billions of dollars in transactions every year and estimates that MSBs registered with FINTRAC handle approximately \$39 billion per year.<sup>65</sup>

National full-service MSBs and small independent MSBs were rated as having a "very high" vulnerability rating. The former conduct a large amount of transactional business of products and services that have been found vulnerable to money laundering and terrorist financing, and these products and services are accessible to clientele in vulnerable businesses or locations.<sup>66</sup> Meanwhile, small independent MSBs, which are predominantly family owned, provide wire transfer services largely through informal networks. They can be used by high-risk clients to wire funds to high-risk jurisdictions, and because they tend to be small and low profile, they are vulnerable to exploitation.<sup>67</sup>

The products and services that were said to be used for money laundering and terrorist financing most frequently were international electronic funds transfers, currency exchanges, negotiable instruments, and cash transactions. The assessment report also identifies five main money laundering methods or techniques involving MSBs:

61 Evidence of B. MacKillop, Transcript, January 18, 2021, p 104.

62 Ibid.

63 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015), p 32.

64 Ibid, p 38.

65 Ibid, p 35

66 Ibid, p 32.

67 Ibid.

- structuring or attempting to circumvent record-keeping requirements;
- attempting to circumvent client identification requirements;
- smurfing, using nominees and/or other proxies;
- exploiting negotiable instruments; and
- refining.<sup>68</sup>

The 2016 mutual evaluation similarly found that full-service MSBs are vulnerable to money laundering because they are widely accessible, are exposed to clients in vulnerable businesses or are conducting activities in locations of concern, and may attract clientele such as drug traffickers.<sup>69</sup> The evaluation found that MSBs that operated globally were aware of the risks they face and had developed criteria to evaluate risks and determine controls. However, smaller MSBs seemed “far less aware” of their obligations and vulnerabilities.<sup>70</sup>

## Typologies

Many of the money laundering risks associated with MSBs arise due to the involvement of professional money launderers and informal value transfer systems.<sup>71</sup> Indeed, both FINTRAC and the Criminal Intelligence Service British Columbia / Yukon Territory consider that the use of MSBs by professional money launderers poses a high threat in this province.<sup>72</sup> They have observed that organized crime groups use professional money launderers who own MSBs operating in BC to launder funds.<sup>73</sup> The use of MSBs by professional money launderers is said to be high threat because it involves complex, long-term money laundering operations, manipulation of the money transfer system, and transnational organized crime groups. Further, the professional money launderer is often detached from the predicate offence, posing difficulties for law enforcement seeking to investigate and prosecute them.<sup>74</sup>

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68 Ibid, p 48.

69 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), p 16, para 55.

70 Ibid, p 79, para 210.

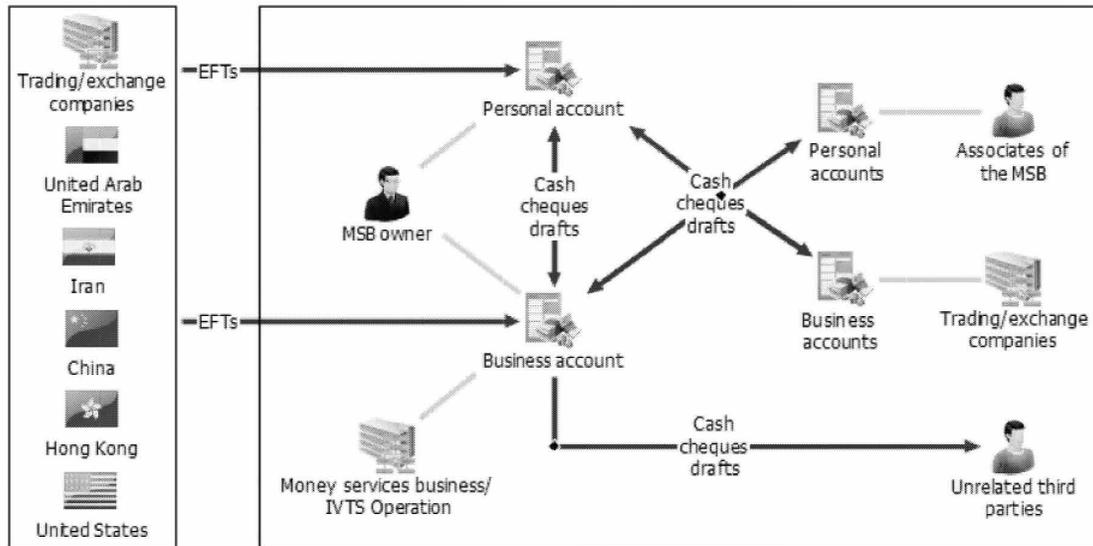
71 I discuss informal value transfer systems and the involvement of professional money launderers further in Chapters 2, 3, and 37.

72 Exhibit 437, Criminal Intelligence Service BC / Yukon, “Criminal Market Narrative – Money Laundering” (2018) p 8; Exhibit 438, Criminal Intelligence Service BC / Yukon, “Professional Money Launderers Who Own/Control Money Services Businesses” (November 2018); Exhibit 442, FINTRAC, “Financial Intelligence Report: Professional Money Laundering in Canada” (2019).

73 Exhibit 437, Criminal Intelligence Service BC / Yukon, “Criminal Market Narrative – Money Laundering” (2018), p 7; Exhibit 438, Criminal Intelligence Service BC / Yukon, “Professional Money Launderers Who Own/Control Money Services Businesses” (November 2018), pp 1, 5–6; Exhibit 442, FINTRAC, “Financial Intelligence Report: Professional Money Laundering in Canada” (2019), pp 1, 9.

74 Exhibit 437, Criminal Intelligence Service BC / Yukon, “Criminal Market Narrative – Money Laundering” (2018), p 8; Exhibit 438, Criminal Intelligence Service BC / Yukon, “Professional Money Launderers Who Own/Control Money Services Businesses” (November 2018), p 1.

Money laundering using MSBs owned by professional money launderers often feature a variety of complex transactions. A diagram<sup>75</sup> in a 2019 FINTRAC report is illustrative (Figure 21.1):



**Figure 21.1: Typical Professional Money Laundering Services Through MSBs**

Source: Exhibit 442, FINTRAC, “Financial Intelligence Report: Professional Money Laundering in Canada” (2019), p 8

This diagram depicts a variety of transactions being made between foreign trading and exchange companies; transfers between an MSB owner’s personal and business accounts; and transfers of cash, cheques, and drafts to associates of the MSB, trading and exchange companies, and unrelated third parties.<sup>76</sup> When foreign trading or exchange companies are involved, the scheme may involve trade-based money laundering in which goods may be undervalued, overvalued, or non-existent.<sup>77</sup>

Mr. MacKillop testified that these kinds of schemes occur in BC, noting that once the money is in Canada, it can be further laundered through casinos and real estate. He explained that the money is not truly being transferred: rather, money is deposited into a bank account in another country, withdrawn in Canada, and provided to individuals who can then use it in casinos or in real estate.<sup>78</sup> He noted that financial institutions are effectively intermediaries in these scenarios because all MSBs would need a bank account to move the money; FINTRAC can therefore see reports from these institutions.<sup>79</sup> Indeed, given the value of the information coming in from the financial

<sup>75</sup> Exhibit 442, FINTRAC, “Financial Intelligence Report: Professional Money Laundering in Canada” (2019), p 8.

<sup>76</sup> Ibid.

<sup>77</sup> Evidence of B. MacKillop, Transcript, January 18, 2021, p 111.

<sup>78</sup> Evidence of B. MacKillop, Transcript, January 18, 2021, pp 115–16.

<sup>79</sup> Ibid, pp 111–12.

institution in these scenarios, de-risking is unpalatable: if the financial institution de-risks an MSB, FINTRAC will no longer have a lens into the activity.<sup>80</sup>

Megan Nettleton, acting supervisor at the RCMP's Financial Crime Analysis Unit, described a typical scheme involving a foreign national and criminally controlled MSB as follows. The scheme is essentially one of informal value transfer. It begins with a foreign national seeking to transfer funds to Canada from a country that has restrictions on capital flight. A deposit is made in that foreign country through a bank account that is controlled by someone associated with an MSB in Canada. A cash courier working for organized crime drops off cash at the MSB, which lends the money to the foreign national (who may or may not realize the funds are illicit in Canada). The money is loaned at a commission and then paid back to the MSB or professional money launderer who owns it. The foreign national then uses the money to gamble or for other purposes, thereby laundering it on behalf of the organization. The MSB may also provide loans as a private mortgage lender to the foreign national for the purpose of buying a house, or might set up, with the assistance of lawyers, registered numbered companies that can purchase real estate with minimal detection. Ms. Nettleton noted that these kinds of schemes can involve millions of dollars.<sup>81</sup>

A 2018 report by the Criminal Intelligence Service BC / Yukon describes the various techniques that may be used by professional money launderers who own or control MSBs, including:

- structuring transactions between various MSBs;
- using nominees to manage and move millions of dollars through various accounts;
- collaborating worldwide with other money launderers;
- using informal value transfer systems to assist organized crime clientele;
- using structuring or smurfing methods to break down large transactions so they fall below the \$10,000 reporting threshold;
- layering transactions using other MSBs to facilitate electronic funds transfers;
- creating false bookkeeping to conceal the “real” books from FINTRAC; and
- using underground banking channels such that goods of value or money are moved while the money remains in the original country.<sup>82</sup>

A 2010 FINTRAC report on typologies and trends for Canadian MSBs contains a similar list of techniques, including structuring (which is the most prevalent technique observed

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80 Evidence of A. Ryan, Transcript, January 18, 2021, pp 113–14.

81 Evidence of M. Nettleton, Transcript, January 18, 2021, pp 19–22.

82 Exhibit 438, Criminal Intelligence Service BC / Yukon, “Professional Money Launderers Who Own/Control Money Services Businesses” (November 2018), pp 1, 3–4.

by FINTRAC); attempting to circumvent client identification and verification measures; smurfing and using nominees and/or other proxies; exploiting negotiable instruments; and refining.<sup>83</sup> It also highlights that an emerging issue at the time was the convergence and combination of new payment methods (including prepaid cards, internet payment services, and mobile payment services), sometimes alongside traditional payment methods. The risks that arise in this regard include that prepaid payment methods can be funded anonymously or by a third party, meaning that customer due diligence will not be done; withdrawals and conversion of funds can be done more quickly than with traditional channels, rendering it more difficult to follow the money trail; and the payment systems are distributed through the internet, making the establishment of a customer relationship on a non-face-to-face basis difficult, if not impossible.<sup>84</sup>

I note that many MSBs are aware of the risks in their sector and comply with the *PCMLTFA*. Mr. MacKillop noted that many suspicious transaction reports submitted by MSBs flag conduct such as very quick movement of funds, the use of different agents during a 24- or 36-hour period, and movement of money that is inconsistent with one's level of employment or status.<sup>85</sup> He added that some larger MSBs are uniquely positioned to report to FINTRAC, as they can identify transactions involving individuals in other countries.<sup>86</sup> However, FINTRAC tends to receive many more reports from banks, trust loans, credit unions, and *caisses populaires* than from MSBs, which Mr. MacKillop stated “speaks to the percentage of the financial transactions that actually occur,” as well as changes to the reporting system of *caisses populaires* that have led to higher quality reports being submitted.<sup>87</sup>

## De-risking

Most MSBs need accounts at mainstream financial institutions to process transfers and settle accounts. An issue arises, however, because some financial institutions avoid doing business with MSBs, perceiving them as high risk in terms of their anti-money laundering and counterterrorist financing obligations (or sometimes as competitors).<sup>88</sup> The practice of declining a customer (or sometimes a market segment) because of such concerns is known as “de-risking.”<sup>89</sup>

83 Exhibit 441, FINTRAC, *Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs)*, July 2010, pp 5–6. Mr. MacKillop believes this is the most recent typology report on MSBs from FINTRAC's intelligence branch: Evidence of B. MacKillop, Transcript, January 18, 2021, pp 102–103.

84 Exhibit 441, FINTRAC, *Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs)*, July 2010, p 16.

85 Evidence of B. MacKillop, Transcript, January 18, 2021, p 118.

86 Ibid, pp 118–19.

87 Ibid, pp 121–22.

88 Exhibit 440, BC Ministry of Finance, *Money Services Businesses Public Consultation Paper* (March 2020), p 5; Exhibit 311, BC Ministry of Finance, *Briefing Document: Money Services Businesses Consultation – Summary* (June 8, 2020), p 4.

89 Exhibit 440, BC Ministry of Finance, *Money Services Businesses Public Consultation Paper* (March 2020), p 5.

De-risking has caused serious issues for some MSBs, as well as for virtual asset service providers (see Chapter 35). Some MSBs have trouble maintaining accounts with financial institutions, which has a serious impact on their business model: it limits their ability to transmit remittances and may cause them to conduct transactions through less transparent informal channels.<sup>90</sup> Further, existing MSB-banking relationships may be very restrictive and costly, and there is always a concern that the bank will close the account.<sup>91</sup>

Between 2009 and 2015, the number of MSBs shrunk from over 2,400 to approximately 800. CMSBA heard from its members that this was because of de-risking.<sup>92</sup> Indeed, de-risking has been a significant concern at meetings of CMSBA. Mr. Cox testified that being de-risked can be the difference between an MSB staying open or closing.<sup>93</sup> Similarly, Mr. Iuso described banking services as being

like a utility, like a telco providing the phone line service or an internet provider providing the internet service. It's necessary for us to operate. Otherwise, the MSBs end up going further underground or further obfuscating their business practices, which leads to, we believe, more activity that isn't caught or isn't reported.<sup>94</sup>

A further issue arises because some larger MSBs, at the request of their financial partners, do not offer services to other MSBs. For example, the Vancouver Bullion and Currency Exchange does not provide services to other MSBs at the request of its banking partners.<sup>95</sup> As Mr. Cox explained:

MSBs are an inherently high-risk industry ... [T]he potential for money laundering is well known ... [O]ur banking partners seem to be comfortable with vetting [the Vancouver Bullion and Currency Exchange]. They have reviewed our system and are comfortable that we are handling our clients and transactions appropriately. I believe their concern is that although they have vetted our company, they are not able to vet our customer's customers, the clients of another MSB that we might have onboarded. So [it is] just one level removed from what they are comfortable with.<sup>96</sup>

From March 6 to April 30, 2020, the Province sought input from the MSB industry on the potential for provincial regulation of the sector.<sup>97</sup> During the consultation, it

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90 Ibid.

91 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 4.

92 Exhibit 440, BC Ministry of Finance, Money Services Businesses Public Consultation Paper (March 2020), p 5; Evidence of J. Iuso, Transcript, January 18, 2021, pp 58–59.

93 Evidence of M. Cox, Transcript, January 18, 2021, pp 61–62.

94 Evidence of J. Iuso, Transcript, January 18, 2021, pp 59–60.

95 Evidence of M. Cox, Transcript, January 18, 2021, p 13.

96 Evidence of M. Cox, Transcript, January 18, 2021, pp 13–14.

97 See Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020); and Exhibit 440, BC Ministry of Finance, Money Services Businesses Public Consultation Paper (March 2020).

heard suggestions that banks and credit unions should be required to provide reasons for declining to provide banking services to MSBs and that MSBs should have redress or an appeal process if they were unable to obtain a bank account.<sup>98</sup> Indeed, Mr. Iuso and Mr. Cox were both supportive of a requirement that financial institutions provide banking services to MSBs that meet certain requirements.<sup>99</sup> Mr. Cox added that it would be ideal for MSBs to have access to services offered by banks, although services from credit unions may also assist.<sup>100</sup> Relatedly, CMSBA suggested that BC financial institutions should be required to remove registered MSBs from their “high-risk” anti-money laundering category if they have no history of non-compliance.<sup>101</sup>

While I understand the difficulties that arise for MSBs who are unable to secure reliable banking services, I do not see it as tenable to require that financial institutions accept a certain category or group of clients. Financial institutions have numerous requirements under the *PCMLTFA* and other legislation, leading to risk assessments that can be quite complex. They should not be forced to accept clients that do not meet their risk tolerance. However, given the clear difficulties that de-risking poses for MSBs, I urge CMSBA and financial institutions to discuss this issue and understand each other’s respective concerns in the hope of expanding the availability of financial services for MSBs. It seems that it would be best to have an agreed-upon protocol that facilitates MSBs securing the services of financial institutions. Such a protocol will, I hope, be considered and developed collaboratively by financial institutions and MSBs.

## Unregistered MSBs

As I noted above, MSBs are required to register with FINTRAC every two years. However, some MSBs do not register. As unregistered MSBs do not report to FINTRAC, the latter lacks visibility into their activities.<sup>102</sup> Unregistered MSBs may seek to use registered MSBs to wire funds or settle transactions, which in turn presents risks for registered MSBs. This leads to opportunities for anonymity (given the lack of reporting) and can create investigative obstacles and reputational risk for registered MSBs who could be unwittingly facilitating illegal activity.<sup>103</sup> Indeed, the Province’s consultation revealed that CMSBA and mid-sized MSBs in BC had significant concerns around unregistered MSBs operating without oversight.<sup>104</sup>

98 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 4.

99 Evidence of M. Cox, Transcript, January 18, 2021, pp 62–63; Evidence of J. Iuso, Transcript, January 18, 2021, pp 59–60.

100 Evidence of M. Cox, Transcript, January 18, 2021, p 63.

101 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 5.

102 Evidence of B. MacKillop, Transcript, January 18, 2021, pp 103, 122–23.

103 Exhibit 441, FINTRAC, *Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs)*, July 2010, pp 15–16.

104 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 3; Evidence of J. Iuso, Transcript, January 18, 2021, p 55.

The main way that FINTRAC can become aware of unregistered MSBs is when another reporting entity, such as a bank, identifies an individual or entity acting as an MSB, realizes the individual or entity is not on the public registry, and files a suspicious transaction report.<sup>105</sup> If someone other than a reporting entity comes across an unregistered MSB, they can submit a voluntary information record, which FINTRAC can then analyze and disclose to law enforcement if the threshold for disclosure is met.<sup>106</sup> Through its annual review of MSBs, FINTRAC also considers whether all registered MSBs are still operating, their registration has expired or ceased, they have been denied registration, or they are no longer operating.<sup>107</sup> Although unregistered MSBs may be uncovered through such steps, identifying unregistered MSBs remains one of the “constant challenges” in this sector.<sup>108</sup>

Ms. Nettleton testified that the RCMP had recently carried out a project (known as the Money Services Businesses Compliance Project) to examine unregistered MSBs. It found that most are difficult to find because they do not readily advertise themselves.<sup>109</sup> The project examined over 529 MSBs that were unregistered or had their registration revoked or lapsed. It did not find significant criminality among the 529 MSBs; however, the RCMP used its own data banks rather than doing door knocks or conducting surveillance on specific entities. Further, the fact that an MSB is registered and compliant does not necessarily eliminate the money laundering risk.<sup>110</sup> For example, sometimes an MSB is subject to regulatory action and simply re-registers with a different address. Such a simple step may permit it to continue its illegal activity despite being registered.<sup>111</sup> Indeed, the fact that Silver International was able to obtain registration despite being actively investigated by law enforcement suggests that both registered and unregistered MSBs may be able to conduct criminal or suspicious activity for some time without detection, or, even if detected, without action that interrupts their operation.

It appears that some MSBs are unregistered due to language barriers and a resulting lack of awareness in some cultural and linguistic groups.<sup>112</sup> Ms. Achimov testified that FINTRAC is aware of these barriers and tries to reach those MSBs through professional associations. She added that some regional offices have multiple linguistic capabilities and that FINTRAC has produced some basic information about compliance in several languages.<sup>113</sup> It also attempts to create awareness with unregistered MSBs, including through social media, and works with different communities in an effort to reach MSBs that may not be members of professional associations.<sup>114</sup>

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105 Evidence of B. MacKillop, Transcript, January 18, 2021, pp 122–23; Evidence of D. Achimov, Transcript, January 18, 2021, p 123.

106 Evidence of B. MacKillop, Transcript, January 18, 2021, pp 126–27.

107 Evidence of D. Achimov, Transcript, January 18, 2021, pp 160–61.

108 Exhibit 448, FINTRAC, Report to the Minister of Finance on Compliance and Related Activities (September 2018), pp 8–9; see also Evidence of D. Achimov, Transcript, January 18, 2021, pp 140–41.

109 Evidence of M. Nettleton, Transcript, January 18, 2021, pp 51–52, 57.

110 Ibid, pp 53–54, 75–76.

111 Ibid, p 52.

112 Evidence of M. Nettleton, Transcript, January 18, 2021, p 52; Evidence of J. Iuso, Transcript, January 18, 2021, pp 54–56.

113 Evidence of D. Achimov, Transcript, January 18, 2021, pp 154, 166–67.

114 Ibid, pp 167–68.

A 2016 FINTRAC report notes that one way of identifying unregistered MSBs is by enhancing the reporting it receives from financial institutions.<sup>115</sup> Mr. MacKillop testified that this continues to be the case, noting that FINTRAC consistently does outreach with financial institutions and other reporting entities.<sup>116</sup>

## Compliance Examinations by FINTRAC

FINTRAC conducts relatively few compliance examinations of MSBs. Canada helpfully provided tables setting out the number of MSBs examined nationally and in BC between 2015 and 2020.<sup>117</sup> Table 21.1 indicates, in relation to MSBs located in this province:

**Table 21.1: Number of MSBs Operating in BC Between 2015 and 2020**

<b>Fiscal Year</b>	<b>Number of MSBs</b>	<b>Number of Onsite Examinations<sup>118</sup></b>	<b>Number of Desk Examinations</b>
2015–16	164	33	14
2016–17	155	24	6
2017–18	190	13	1
2018–19	222	24	0
2019–20	317	13	3

Source: Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 1

It is notable that the number of MSBs nearly doubled between the 2015–16 and 2019–20 fiscal years, growing from 164 to 317. During that time, the number of onsite examinations, however, dropped from 33 to 13. Similarly, the number of desk examinations fell from 14 to three. When asked why FINTRAC conducted fewer examinations in 2019–20 when the number of MSBs in BC had almost doubled since 2015–16, Ms. Achimov explained that there are a number of factors that inform FINTRAC’s examinations. The main one is risk scoring, but others include FINTRAC’s capacity, difficulties relating to the COVID-19 pandemic, and the situation of the MSB (for example, a desk examination may be more suitable than an onsite one for an MSB that is operating virtually).<sup>119</sup>

On the subject of FINTRAC’s capacity, I was advised that the BC office has approximately 15 people who examine all the reporting entities in this province.<sup>120</sup>

115 Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), p 6.

116 Evidence of B. MacKillop, Transcript, January 18, 2021, pp 127–28.

117 Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 1.

118 An onsite examination involves FINTRAC compliance evaluators visiting the MSB’s premises, whereas a “desk examination” is conducted over the phone: Evidence of D. Achimov, Transcript, January 18, 2021, pp 136–37.

119 Evidence of D. Achimov, Transcript, January 18, 2021, pp 142–143, 144–45.

120 Evidence of D. Achimov, Transcript, January 18, 2021, pp 145–146.

FINTRAC’s report to the federal Minister of Finance in 2018 explains that a decrease in the number of examinations was due in part to a “higher than expected employee turnover in the regional offices” as well as “regional restructuring to ensure sufficient coverage of the higher-risk areas, including major financial entities.”<sup>121</sup> Ms. Achimov explained that there was a high turnover in the Toronto regional office at that time, which led to a reallocation of some resources and a need to train new employees.<sup>122</sup>

I also note that these figures do not take account of MSBs whose status had expired or that were not registered at the end of the fiscal year.<sup>123</sup> I understand from that caveat that the figures would not take account of applicants who, for example, were found ineligible on the basis of a prior criminal conviction or had their status revoked for that reason. It is therefore unclear how many non-successful applicants there were and if any had links to criminality.

Canada also provided statistics on the number of examinations done in the first two years of an MSB’s existence (see Table 21.2).<sup>124</sup> This is of interest given that MSBs must re-register every two years. Further, as Ms. Achimov noted, many MSBs are by their existence very short-lived. She explained that many MSBs are “small mom and pop organizations” and are very volatile.<sup>125</sup>

**Table 21.2: Number of MSBs in BC Examined in the First Two Years of Registration**

<b>Fiscal Year</b>	<b>New Registration Count</b>	<b>Examined Within 2 Years of Registration</b>	<b>Examined After 2 Years of Registration</b>	<b>MSB Registration Active and Available in the Pool</b>	<b>MSB Registration Inactive<sup>126</sup></b>
2015–16	34	10	3	2	19
2016–17	29	5	4	3	17
2017–18	59	4	1	23	31
2018–19	65	3	0	52	10
2019–20	124 <sup>127</sup>	1	0	111	12

Source: Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 3

121 Exhibit 448, FINTRAC, Report to the Minister of Finance on Compliance and Related Activities (September 2018), p 8.

122 Evidence of D. Achimov, Transcript, January 18, 2021, p 159.

123 Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 2.

124 Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 3.

125 Evidence of D. Achimov, Transcript, January 18, 2021, pp 142, 151.

126 This includes registrations that are ceased, expired, cancelled, or revoked: Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 3.

127 The marked increase from 65 to 124 MSBs can be attributed to the pre-registration of MSBs dealing in virtual currency and of foreign MSBs. A similar increase occurred nationally, from 321 to 532: Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), pp 2–3.

It is notable that of the 59 new MSBs registered in 2017–18, only four were examined in the first two years, and only one after that. The figures in 2018–19 (65 new registrations, three examined within the first two years, and zero after that) and 2019–20 (124, one, and zero, respectively) are striking as well (although I am mindful that these figures were provided in January 2021, meaning those relating to the 2019–20 registrations may have since changed). I also note that the figures do not include (a) situations where FINTRAC attempted to conduct an examination but was not able to because the MSB was no longer operating, or (b) any follow-up examinations of MSBs with deficiencies.<sup>128</sup>

Ms. Achimov testified that FINTRAC’s methodology looks at a cross-section of both established MSBs and those that are just starting up.<sup>129</sup> Indeed, FINTRAC’s report to the Minister from 2020 indicates that it conducts annual MSB validations to identify those that may be operating with expired, ceased, revoked, or denied registrations; those that may no longer be operating; and those that are suspected of operating but are not registered.<sup>130</sup> Examinations of MSBs operating for under two years might be triggered by intelligence, regional knowledge, media coverage, or themed examinations (for example, requirements in a ministerial directive).<sup>131</sup> Ms. Achimov explained that, as with any business, MSBs must “have the opportunity to have a bit of a track record. They have to have the ability to file their reports, to have something that we can review.” She continued that FINTRAC tends to look six to eight months in the past but may decide to look at very new organizations within six months if there is media coverage, they are alerted to suspicious activity, or other reasons warrant moving up an examination.<sup>132</sup>

It strikes me that it would be useful for there to be more scrutiny of MSBs in the first two years of registration. Early examinations would presumably deter those seeking to use MSBs for criminal purposes and would seem to encourage better practices among MSBs from the beginning. Given the low numbers of examinations done by FINTRAC in the first two years of an MSB’s existence, the Province should fill this gap. As I discuss below, I am of the view that BCFSA, acting as a regulator for MSBs, would be well placed to examine MSBs in their early years.

Annette Ryan, chief financial officer and deputy director of the enterprise policy research and program sector at FINTRAC, noted that FINTRAC’s fall 2020 policy snapshot had an increased focus on penalties and administration relating to registration. It speaks of tightening the registration process and adjusting penalties.<sup>133</sup> She also noted that FINTRAC released an operational alert<sup>134</sup> relating to MSBs in July 2018, flagging certain

128 Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 2.

129 Evidence of D. Achimov, Transcript, January 18, 2021, pp 141–42.

130 Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 30, 2020), pp 21–22.

131 Exhibit 446, FINTRAC Statistics Letter (January 15, 2021), p 2.

132 Evidence of D. Achimov, Transcript, January 18, 2021, p 147.

133 Evidence of A. Ryan, Transcript, January 18, 2021, pp 107, 162.

134 An operational alert is a public document intended to inform reporting entities about emerging trends that constitute suspicious activity. It is meant to help the community flag certain transactions, adjust their reporting process, etc.: Evidence of A. Ryan, Transcript, January 18, 2021, p 109.

kinds of MSBs of concern. That alert referred to MSBs engaged in legitimate activities that allow some money laundering as part of their business (knowingly or unwittingly), as well the potential for MSBs to be owned or operated by illicit actors.<sup>135</sup>

Mr. MacKillop testified that FINTRAC’s compliance department cannot share information with the intelligence group. This is because compliance examinations do not require warrants.<sup>136</sup> However, the intelligence group can share limited information with the compliance group. For example, it could share reports indicating suspicious activity flagged by an MSB or by another reporting entity relating to a potential unregistered MSB.<sup>137</sup> Mr. MacKillop stated that FINTRAC does not often come across entities that are acting as MSBs, however. More commonly, it encounters a lack of reporting or insufficient information in a report, in which case it would communicate this to the compliance department so that they can provide some awareness and understanding to the MSB about what reports require.

## Investigative Challenges

MSBs present unique investigative challenges for both law enforcement and FINTRAC. A key challenge is that the use of MSBs by organized crime and professional money launderers is almost certainly underreported.<sup>138</sup> Ms. Nettleton testified that this intelligence gap still exists.<sup>139</sup> She explained that there are several reasons for this, including that:

- FINTRAC reporting does not capture all the relevant activity (such as bulk cash smuggling or domestic transfers);
- the RCMP’s intelligence group focuses not only on money laundering but other offences;
- uncovering such activity often requires use of tools such as phone data, human sources, and intercepts, which the RCMP typically considers as “last resorts” given how intrusive they are;
- reports from FINTRAC are not sources of “live” intelligence (they are necessarily after the fact);
- under the *PCMLTFA*, FINTRAC can only disclose information that meets its threshold and is related to money laundering (that is, not with respect to other offences that may be of interest to law enforcement); and

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135 Evidence of A. Ryan, Transcript, January 18, 2021, p 109.

136 Evidence of B. MacKillop, Transcript, January 18, 2021, pp 98–99.

137 Ibid.

138 Exhibit 437, Criminal Intelligence Service BC / Yukon, “Criminal Market Narrative – Money Laundering” (2018), pp 2, 8; Exhibit 438, Criminal Intelligence Service BC / Yukon, “Professional Money Launderers Who Own/Control Money Services Businesses” (November 2018), p 7; Evidence of M. Nettleton, Transcript, January 18, 2021, pp 28–29, 33.

139 Evidence of M. Nettleton, Transcript, January 18, 2021, p 33.

- law enforcement lacks capacity (both in terms of experienced investigators and civilian staff such as translators and analysts) to effectively investigate MSBs.<sup>140</sup>

In its 2017 report to the Minister of Finance, FINTRAC notes that it made one “non-compliance disclosure” to law enforcement relating to an MSB.<sup>141</sup> Non-compliance disclosures are made “where there is extensive non-compliance with the *PCMLTFA* or little expectation of immediate or future compliance by the reporting entity.”<sup>142</sup> FINTRAC’s 2020 report indicates it made seven non-compliance disclosures in relation to the 114 MSBs it examined.<sup>143</sup> Ms. Achimov testified that, in the four years prior to her testimony, FINTRAC had made 27 non-compliance disclosures in relation to all reporting entities (that is, not specifically relating to MSBs).<sup>144</sup> While I appreciate that FINTRAC must comply with its disclosure threshold in the *PCMLTFA*, these numbers strike me as low. I assume, though I am unable to determine on the evidence before me, that they are low in part because of the recognized underreporting by MSBs, the fact that some MSBs do not register with FINTRAC, and the relatively low number of compliance examinations done by FINTRAC.

Mr. Iuso testified that CMSBA does not receive any information relating to anti-money laundering from the RCMP or FINTRAC. It does, however, receive annual reports from FINTRAC on the number of suspicious transactions and other reports by MSBs and the number of MSBs that have been examined. CMSBA does not currently have a memorandum of understanding with FINTRAC.<sup>145</sup> It does, however, participate in working groups with FINTRAC about updates to legislation, policy interpretations, and guidance, and FINTRAC has an outreach employee dedicated to dealing with CMSBA.<sup>146</sup> FINTRAC engaged with MSB associations (including CMSBA and virtual currencies dealers) multiple times between 2019 and 2020,<sup>147</sup> and it provides notices and alerts to CMSBA to forward to its members.<sup>148</sup>

Mr. Cox testified that the Vancouver Bullion and Currency Exchange receives regular requests for information from the RCMP and the Canada Revenue Agency. While it does receive many requests from FINTRAC, they are also in contact about future guidelines and rules.<sup>149</sup> Mr. Cox explained that his experience with FINTRAC was that it was initially adversarial to the Vancouver Bullion and Currency Exchange – focused

140 Ibid, pp 26–31, 33–34.

141 Exhibit 447, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 30, 2017), p 15.

142 Ibid.

143 Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 30, 2020), pp 20–21.

144 Evidence of D. Achimov, Transcript, January 18, 2021, pp 156–57.

145 Evidence of J. Iuso, Transcript, January 18, 2021, pp 60–61.

146 Ibid, pp 64–65.

147 Exhibit 449, List of FINTRAC Engagement Activities with Different Stakeholders, April 1, 2017 to December 4, 2020, pp 1, 2, 7, 8, 11, 14, 15, 17, 18, 20, 22.

148 Evidence of J. Iuso, Transcript, January 18, 2021, pp 65–66.

149 Evidence of M. Cox, Transcript, January 18, 2021, p 63.

on finding out what it had done wrong – but that FINTRAC had shifted toward a more collaborative approach. However, he finds that FINTRAC can be slow to respond to requests to clarify policy interpretations or rules.<sup>150</sup>

In Chapter 41, I recommend the creation of a provincial law enforcement unit dedicated to anti-money laundering. My hope is that this new unit will be able to avoid some of the pitfalls I have just described. In particular, as I expand in that chapter, I recommend that the new unit have a dedicated intelligence division and access to surveillance teams. The unit should also be responsible for developing tactical information-sharing initiatives with the private sector, which should include entities such as CMSBA and individual MSBs. Indeed, as I discuss next, I am recommending that BCFSA serve as a regulator for MSBs in this province, which will be well placed to engage with the new anti-money laundering unit.

## A Provincial MSB Regulator

As I have noted throughout this chapter, the Province has been contemplating a potential provincial MSB regulator. This step was recommended by both Dr. Peter German and Professors Maloney, Unger, and Somerville.<sup>151</sup> The latter suggested that it would make sense for FICOM (now the British Columbia Financial Services Authority or BCFSA<sup>152</sup>) to operate the regulatory regime, noting that this solution would give BCFSA visibility over all the activities in the financial sector and would be less disruptive and costly than creating a new regulator.<sup>153</sup>

At the time of writing, Quebec is the only province that regulates MSBs. Under the Quebec *Money Services Businesses Act*,<sup>154</sup> MSBs are defined as businesses engaged in currency exchange; funds transfer; the issue or redemption of traveller's cheques, money orders, or bank drafts; cheque cashing; and the operation of ATMs.<sup>155</sup> All MSBs must hold a licence for the particular activities they are engaged in.<sup>156</sup> The Quebec Minister of Finance maintains a registry of all registered MSBs.<sup>157</sup>

When applying for a licence, an applicant must provide a variety of documents disclosing information about its legal structure, its agents, the financial institutions and lenders it deals with, a business plan, and government-issued identification for

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150 Ibid, p 67. Mr. Iuso added that depending on the kind of question, FINTRAC can take 30 to 90 days to respond to requests by CMSBA: Transcript, January 18, 2021, pp 67–68.

151 Exhibit 832, Peter M. German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia* (March 31, 2018), p 218, Recommendation 46; Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, “Combatting Money Laundering in BC Real Estate,” Expert Panel, March 31, 2019 [Maloney Report], pp 80–81.

152 I discuss BCFSA in more detail in Chapter 20.

153 Exhibit 330, Maloney Report, p 80.

154 *Money Services Businesses Act*, CQLR c E-12.000001.

155 Ibid, s 1.

156 Ibid, ss 3, 4.

157 Ibid, s 58.

key individuals.<sup>158</sup> Notably, these documents must include the name, date of birth, address, and phone number of each of the applicant's officers, directors or partners, and branch managers; any person or entity who directly or indirectly owns or controls the money services business; and each of the applicant's employees working in Quebec.<sup>159</sup> Applicants must also provide the same kind of information for any of their mandataries (the civil law equivalent of agents).<sup>160</sup> These requirements, which I will refer to as "business relationship" requirements, are essential in order to identify "straw" applicants and to prevent criminals from using "clean" operators to hold the MSB licence when they would not be eligible themselves.

Applications are sent to the provincial police force, the Sûreté du Québec, to conduct police checks.<sup>161</sup> MSBs can be refused registration for several reasons, including that they are "not of good moral character," are insolvent or bankrupt, have specified convictions, or have demonstrated a lack of compliance with the Act or other statutes.<sup>162</sup>

I pause here to note the significance of the "good moral character" provision, which states:

A lack of good moral character is determined in light of such factors as the connections the persons or entities referred to in the first paragraph maintain with a criminal organization within the meaning of subsection 1 of section 467.1 of the *Criminal Code* (R.S.C. 1985, c. C-46) or with any other person or entity who engages in money laundering for criminal activities or in trafficking in a substance included in any of Schedules I to IV to the *Controlled Drugs and Substances Act* (S.C. 1996, c. 19). It is also determined in light of any other event of such a nature as to affect the validity of the licence or give the Minister cause to act under any of sections 11 to 17.<sup>163</sup>

It seems likely that such a provision would have led Silver International to be denied registration, or at least be further scrutinized prior to being registered. As noted above, applications in Quebec are sent to the Surêté du Québec for police checks. I expect that law enforcement would have serious concerns about registering an applicant at the centre of a large financial crime investigation and whose premises had recently been the target of search warrants that revealed large amounts of suspicious cash. I am not suggesting that any applicant that is being investigated should be denied registration as a matter of course. However, the Quebec approach allows for consideration of suspicious activity by an applicant that falls short of a criminal conviction, which differs from FINTRAC's current practice.

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158 Ibid, s 6.

159 Ibid, s 6(1).

160 Ibid, s 6(2).

161 Ibid, ss 7–9.

162 Ibid, ss 11, 12, 14, 15, 23.

163 Ibid, s 23.

An applicant can also be refused registration under the Quebec regime if its business activities are not commensurate with its legal sources of financing, if a reasonable person would conclude that it is lending money to a business that would be unable to obtain a licence, or if its structure enables it to evade the Act or another fiscal law.<sup>164</sup>

Other aspects of the Quebec regime include that MSBs must verify the identity of their customers,<sup>165</sup> hold a bank account with a financial institution, keep specified records, and report transactions for which they have reasonable grounds to believe may constitute an offence under the Act.<sup>166</sup>

The Quebec Minister of Finance is authorized to enter into agreements with other governments and international organizations for the purpose of facilitating the administration or enforcement of the Act. Under such an agreement, the Minister may share personal information without the consent of the MSB if there are reasonable grounds to believe that the MSB (or an individual associated with it) has committed or is about to commit a criminal or penal offence.<sup>167</sup> The Minister can also apply to the provincial court for authorization to share information with the police for similar reasons.<sup>168</sup> The Act provides for monetary administrative penalties and penal provisions.<sup>169</sup>

The Government of British Columbia's consultation relating to MSB regulation revealed that CMSBA and medium-sized MSBs based in BC are generally not opposed to a provincial licensing regime for MSBs. However, they are concerned about increasing regulatory burdens on existing MSBs.<sup>170</sup> Mr. Iuso testified that he has heard from Quebec MSBs that some feel they are “put under a microscope” more than they need to be through, for example, mystery shoppers.<sup>171</sup> Mr. Cox noted that the Vancouver Bullion and Currency Exchange has decided not to operate in Quebec in part because of the licensing regime; however, he added that the extra regulatory burden could be lessened by aligning the provincial requirements with the *PCMLTFA* as much as possible.<sup>172</sup>

The consultation paper notes that FINTRAC provided seven “lessons learned” from working with the Quebec regime to address overlap:

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164 Ibid, s 12.1.

165 The regulations explain the circumstances in which MSBs must verify a customer's identity, which are very similar to the situations set out in the *PCMLTFA*: see *Regulation under the Money-Services Businesses Act*, c E-12.000001, r 1, ss 7–12.

166 *Money Services Businesses Act*, ss 28–31. The Act explicitly says that an MSB will not incur civil liability as a result of reporting a suspicious transaction: *ibid*, s 31.

167 *Ibid*, ss 37–38.

168 *Ibid*, s 39.

169 *Ibid*, ss 65.1, 66–69.

170 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 2; Evidence of J. Primeau, Transcript, December 1, 2020, p 137.

171 Evidence of J. Iuso, Transcript, January 18, 2021, pp 48–49.

172 Evidence of M. Cox, Transcript, January 18, 2021, pp 49–50.

1. Align a provincial MSB definition with FINTRAC’s definition to reduce confusion/complexity.
2. Have similar timelines for same business processes ([e.g.,] licensing renewals).
3. Align eligibility criteria ([e.g.,] criminal/police records).
4. Licensing costs – FINTRAC does not charge fees (keep this in mind).
5. Have [a memorandum of understanding] for sharing information (the existing FINTRAC-[Financial Services Authority memorandum of understanding] would need to be expanded to include MSBs).
6. Registry should be similar and publicly available/searchable.
7. Avoid duplication of compliance activities/timing.<sup>173</sup>

The consultation also heard from Revenu Québec, which administers the Quebec regulatory regime. Notably, Revenu Québec stated that the regime’s impact on the involvement of criminals in MSBs is likely small and that the identification and record-keeping requirements do not act as a disincentive to money laundering. Indeed, it has reason to suspect that MSBs continue to operate using nominees and the principal-agent model, despite the business relationship requirements. It has also found that the “good moral” principle is difficult to apply and can be challenged by MSBs. Further, obtaining a licence may actually facilitate money laundering or terrorist financing by giving MSBs an appearance of legitimacy. Revenu Québec also noted that the resources needed to investigate violations of the Act have so far been disproportionate to the results obtained, that ignorance of the law (for example, due to language barriers) has been an issue, and that law enforcement has so far made little use of the avenues available to it.<sup>174</sup>

CMSBA and mid-sized MSBs based in BC support the creation of a local specialized unit, possibly as part of the new regulator, that could effectively investigate, prosecute, and shut down unlicensed MSBs.<sup>175</sup> CMSBA noted during the consultation that MSBs that are newly registered with FINTRAC may operate for two years or more without a FINTRAC examination,<sup>176</sup> which is consistent with my discussion above. Accordingly, CMSBA strongly encouraged future provincial legislation to establish a way to confirm MSB compliance as soon as it becomes registered, noting that the Quebec regime has been successful in doing so.<sup>177</sup> Mr. Iuso has heard that although some MSBs have been displeased with random spot checks, “it seems like it’s working [in] the sense that it’s

173 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 3.

174 Ibid, p 4.

175 Ibid, p 3.

176 Ibid; see also Evidence of J. Primeau, Transcript, December 1, 2020, p 130.

177 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 4.

pushing them to be more available and ready for suspicious [customers] when they do come in.”<sup>178</sup>

Revenu Québec and FINTRAC have a memorandum of understanding, pursuant to which FINTRAC shares the same kind of information with Revenu Québec that it does with BCFSa (see Chapter 20). It also works to reduce duplication and administrative burden by, for example, not examining MSBs that Revenu Québec is in the process of examining.<sup>179</sup> Ms. Achimov testified that this agreement with Revenu Québec has given FINTRAC some insight into unregistered MSBs. It is “a reliable source; it feeds our risk score and it allows us to do a cross-reference in terms of making sure that we’re not missing any that are identified.”<sup>180</sup> She added that the Quebec regime has an anti-money laundering “checklist” that is “also very instructive for us”<sup>181</sup> and noted that the licensing regimes are different in the sense that Quebec’s licensing requirements have additional requirements beyond checking for criminal convictions.<sup>182</sup>

Joseph Primeau, acting executive director of the policy branch of the finance, real estate, and data analytics unit at the BC Ministry of Finance, testified that although the Ministry of Finance has not been able to measure or estimate the number of unregistered MSBs in this province, it has heard from law enforcement that unregistered activity presents risks.<sup>183</sup> He stated that a provincial regulatory regime would assist in understanding the size and composition of the sector.<sup>184</sup> The Ministry of Finance is considering the issue of MSBs operating out of locations such as private residences or post offices, which, Mr. Primeau noted, ties in to the difficulty of understanding the size and nature of the industry.<sup>185</sup> The Province would like to have a better understanding of the size and nature of the industry before imposing new requirements, in order to ensure that it understands the impact they will have on the industry.<sup>186</sup> The Province is also considering the potential for MSBs to be operating through nominees.<sup>187</sup>

In my view, the Province should regulate MSBs, and this regulation should be undertaken by BCFSa. This chapter has demonstrated that there are significant vulnerabilities associated with MSBs. Although MSBs are subject to the *PCMLTFA*, FINTRAC conducts relatively few compliance examinations in this sector. In my view, further scrutiny in this high-risk area is required. This is especially so with respect to new MSBs, given that FINTRAC conducts very few compliance examinations of

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178 Evidence of J. Iuso, Transcript, January 18, 2021, p 47.

179 Evidence of D. Achimov, Transcript, January 18, 2021, pp 170, 177–78.

180 Ibid, pp 169–70.

181 Ibid, p 170.

182 Ibid, pp 179–80.

183 Evidence of J. Primeau, Transcript, December 1, 2020, pp 124–25.

184 Ibid, p 126.

185 Ibid, pp 132–33.

186 Ibid, p 134.

187 Ibid, pp 139–41.

MSBs in their first two years of existence. This leads to a real vulnerability in which individuals or entities can use MSBs for criminal purposes and stop operating (or re-register with different information) before the two-year mark, thereby evading a compliance examination. Further, as FINTRAC has taken the view that it can only deny registration when an individual or entity has a prior *conviction*, it remains possible – and has occurred, as demonstrated by the situation of Silver International – that an applicant who is currently under investigation (or even charged) but not *convicted* of an offence related to financial crime can nonetheless be registered. This is not to say that such circumstances should lead to a denial as a matter of course, but it strikes me that denial should be possible where appropriate.

As I discuss in Chapter 20, BCFSa is responsible for regulating various provincial institutions, including credit unions, insurance and trust companies, mortgages, pensions, and the Credit Union Deposit Insurance. BCFSa's supervision over these various sectors demonstrates that it has broad expertise in financial matters and would be well suited to adding MSBs to its purview. Further, expanding BCFSa's mandate in this way avoids the necessity to create another regulator and leverages BCFSa's experience in regulating financial entities. I am, however, mindful of the significance of expanding BCFSa's mandate in this way: the authority has already undergone various changes in its organizational structure in the past few years, and it will need to grapple with a sector that includes various unregistered and unknown actors. For this reason, I have recommended in Chapter 20 that the Province provide BCFSa with sufficient resources to create or staff a group focused on anti-money laundering specifically. It will be crucial that BCFSa have capacity – in terms of both financial and staff resources – to fulfill this new aspect of its mandate.

In extending BCFSa's mandate to cover MSBs, the Province will need to continue its consultations with Revenu Québec and FINTRAC. Consultations with the former will ensure that the Province is aware of hurdles that Revenu Québec – the sole MSB regulator in Canada at the time of writing – has encountered and to learn from its experiences. It will be particularly important to learn from Revenu Québec's difficulties regarding the “good moral character” provision and the business relationships requirements. These requirements strike me as sound in principle and should be included in British Columbia's regime; however, it will be important for the Province to learn from the challenges that Revenu Québec has had in enforcing these requirements in order to avoid such difficulties in British Columbia. Meanwhile, consultations with FINTRAC will help minimize duplication and burden for MSBs, which will need to comply with both the *PCMLTFA* and rules set out by BCFSa. A memorandum of understanding with FINTRAC (similar to that in place between FINTRAC and Revenu Québec) will be essential in this regard and should, among other things, set out how and when the two agencies will conduct their respective compliance examinations.

While the Province is best placed to determine all the functions that BCFSa will need for its regulation of MSBs, the regulatory scheme should include, at minimum:

- a definition of “MSB” that aligns with the definition in the *PCMLTFA*, except that virtual asset service providers should not be included at this stage;
- a capacity to identify unregistered MSBs and sanction them;
- a registration process in which the suitability of applicants is assessed in a broader manner than is done under the *PCMLTFA* (in particular, there should be an ability to deny registration for reasons apart from a criminal *conviction* and to require disclosure of business relationships in the same way as the Quebec regime);
- a compliance examination process that applies in the early years of an MSB’s existence (that is, prior to the two-year mark);
- the ability to enter information-sharing arrangements with FINTRAC and other relevant entities; and
- administrative and monetary penalties.

As I explain in Chapter 35, I am not prepared to recommend, at this stage, that virtual asset service providers be brought under BCFSA’s regulatory authority. Although I consider it essential that virtual asset service providers be subject to provincial regulation, I have recommended in Chapter 35 that the Province engage with the AML Commissioner proposed in Chapter 8, BCFSA, the British Columbia Securities Commission, industry members, and other stakeholders to determine which regulatory authority would be best suited to become the regulator of virtual asset service providers. If the Province determines that BCFSA is the appropriate regulator, it should ensure that BCFSA has sufficient resources and education to regulate a sector whose activities likely differ significantly from the financial institutions it currently oversees.

The registry of MSBs should be publicly accessible and similarly designed to the FINTRAC registry to ensure ease of use by the public, MSBs, and other reporting entities. The registration process should also be aligned as much as possible with the *PCMLTFA* regime, although it will, as noted, be important that ineligibility not be limited to criminal convictions.

I do not recommend at this stage that the regulatory scheme involve customer due diligence, record-keeping, and reporting measures in the same way as the Quebec regime for two reasons. First, as noted above, it appears that Revenu Québec expressed doubts in the Province’s consultation on MSBs that these requirements were having any effect on deterring money laundering. Second, MSBs have these obligations already under the *PCMLTFA*, and I see no need to duplicate those measures at present. It may become apparent to BCFSA that such measures are desirable or necessary, in which case it should have a mechanism of communicating that view to the Province and obtaining the necessary regulatory authority.

**Recommendation 51:** I recommend that the Province expand the mandate of the British Columbia Financial Services Authority to encompass regulation of money services businesses. The regulatory scheme should include (but not be limited to) the following:

- a definition of “money services business” that aligns with the definition in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, except that virtual asset service providers should not be included at this stage;
- a capacity to identify unregistered money services businesses and sanction them;
- a registration process in which the suitability of applicants is assessed in a broader manner than is done under the *PCMLTFA* to include consideration of whether a money services business has been investigated or charged with criminal activity, whether or not this has resulted in a conviction, as well as a requirement to disclose business relationships in the same way as the Quebec regime;
- a compliance examination process that applies in the early years of a money services business’s existence;
- the ability to enter information-sharing arrangements with the Financial Transactions and Reports Analysis Centre of Canada and other relevant entities; and
- the availability of administrative and monetary penalties.

Mr. Primeau testified that the Province is considering the possibility of a whistle-blower line.<sup>188</sup> This is in response to suggestions by CMSBA and mid-sized MSBs during the Province’s consultation that there should be a dedicated “whistle-blower” line that could be used to anonymously report unregistered MSBs.<sup>189</sup> As these discussions appear to be in their early stages, I am not prepared to make a recommendation that such a line should be created at present. However, in the course of expanding BCFSAs’ mandate, the Province should consult with BCFSAs about how it can best become alerted to non-compliant MSBs.

## Conclusion

In this chapter, I have outlined the significant money laundering risks that arise in the MSB sector, while also noting that there are many legitimate uses and users of these

<sup>188</sup> Evidence of J. Primeau, Transcript, December 1, 2020, pp 139–41.

<sup>189</sup> Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 3.

services. In my view, the risks in this sector are such that the Province should regulate MSBs and that this responsibility should fall to BCFSA. It will be essential for BCFSA to have the resources it needs to engage in this activity, which will increase its workload substantially. It will also be important for the AML Commissioner to monitor the implementation and progress of this regulation.

## Chapter 22

# White-Label Automated Teller Machines

I have just discussed the risks inherent to banks and credit unions, and the well-known risks in the money services business sector. A lesser-known sector is that of white-label automated teller machines (white-label ATMs). Simply put, these are ATMs that are not owned by banks, and indeed are sometimes called “non-bank ATMs.”<sup>1</sup> They can be found in locations such as bars, restaurants, convenience stores, gas stations, and grocery stores.<sup>2</sup>

There was debate in the evidence before me on the question of whether white-label ATMs pose a money laundering risk. They are not subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) and therefore have no reporting or other obligations under that regime. However, white-label ATMs depend on accessing the Interac network to operate and are subject to Interac’s rules, many of which resemble obligations under the *PCMLTFA*. I heard from industry members that white-label ATMs are an ineffective method of laundering money and that the Interac rules are sufficient to guard against any risks. Conversely, I heard from RCMP witnesses that white-label ATMs pose significant money laundering risks.

In this chapter, I first discuss in more detail what white-label ATMs are and how they operate. I then describe the Interac network and how white-label ATMs use that network to conduct their business. I then turn to the more contentious aspect of this chapter: the question of whether white-label ATMs pose a money laundering risk. Finally, I consider whether additional regulation in this sector is desirable.

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1 Evidence of C. Chandler, Transcript, January 15, 2021, p 117.

2 Ibid, p 118.

## What Are White-Label ATMs?

White-label ATMs are cash machines that are not owned by traditional financial institutions. The industry started around 1996 following challenges before the federal Competition Bureau to the banks' use of the ATM network. In two decisions, the Competition Bureau found that major financial institutions' practices with respect to ATMs were monopolistic and exclusive, and allowed a surcharge to be made on ATM transactions.<sup>3</sup> Following those decisions, the number of ATMs in Canada grew significantly – from an estimated 18,426 in 1996 to 55,562 in 2007 (a 202 percent increase). Much of this growth was due to the new white-label ATM industry.<sup>4</sup>

Any individual can own or operate a white-label ATM. Christopher Chandler, president of the ATM Industry Association, testified that there are around 50,000 ATMs in Canada, of which approximately two-thirds are white-label ATMs.<sup>5</sup> He highlighted that whereas many bank ATMs are grouped together at a bank branch, white-label ATMs are often not; he estimates that there are approximately 34,000 white-label ATM cash access points compared to 7,000 bank access points. As a result, white-label ATMs make up around 80 percent of all cash access points in Canada.<sup>6</sup>

In 2020, there were 4,912 white-label ATMs in British Columbia on the Interac network. Mr. Chandler testified that we can safely assume that all or almost all of those white-label ATMs are connected to the Interac network, given that it is the leading ATM network in Canada.<sup>7</sup>

White-label ATMs are essentially products for merchants. Merchants can own their white-label ATMs or use the services of an independent sales organization to run the machines.<sup>8</sup> Depending on the arrangement, a white-label ATM can be loaded with cash by the merchant itself, by an independent sales organization, or by a cash-loading business.<sup>9</sup>

White-label ATMs can serve three purposes for a merchant:

- They can draw customers into the store.
- They can give cash in hand to customers while they are in the store, which they will hopefully spend.
- Merchants can generate revenue from the ATM because they typically receive a share of the fees charged to the customer.<sup>10</sup>

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3 Exhibit 429, RCMP Criminal Intelligence Project Scot, "An Assessment of Money Laundering Activities and Organized Crime Involvement Within the 'White Label' ATM Industry," November 10, 2008 [RCMP Project Scot Report], p 5.

4 Ibid.

5 Evidence of C. Chandler, Transcript, January 15, 2021, p 117.

6 Ibid, pp 117–18.

7 Ibid, pp 119, 121.

8 Exhibit 429, RCMP Project Scot Report, p 18.

9 Evidence of C. Chandler, Transcript, January 15, 2021, pp 133–34.

10 Ibid, pp 118–119.

Indeed, fees are the primary source of income for white-label ATM owners. Fees associated with these machines include regular transaction fees, which are charged by the customer's financial institution; network access fees, which are paid when accessing an ATM other than one owned by the customer's financial institution; and convenience fees, which are charged by the white-label ATM operator and can be charged by other financial institutions to non-customers.<sup>11</sup>

## The Interac Network

Interac is the organization responsible for the development and operation of “shared cash dispensing” at ATMs and for Interac Payment Direct, the leading debit service in Canada.<sup>12</sup> Interac’s “Inter-Member Network” links financial institutions and “direct” and “indirect connectors.”<sup>13</sup> Direct connectors – almost all of which are deposit-taking financial institutions – can connect directly to the network to provide ATM and debit services.<sup>14</sup> Indirect connectors access the network through a direct connector.<sup>15</sup>

White-label ATMs connect to the network through an “acquirer” (a third-party processor and/or indirect connector) and a financial institution (a direct connector).<sup>16</sup> Acquirers have direct relationships with Interac and maintain responsibility for satisfying Interac’s rules. Kirkland Morris, vice-president of enterprise initiatives and external affairs at Interac, testified that the idea is to “apply scrutiny up the chain.”<sup>17</sup> Settlement agents clear financial obligations of other members through the Canadian Payments Association’s Automated Clearing Settlement System.<sup>18</sup> Independent sales organizations have contractual relationships with acquirers to market or sell services on their behalf.<sup>19</sup> Finally, sub-independent sales organizations may be involved: they maintain contractual relationships with independent sales organizations to market or provide services on their behalf.<sup>20</sup>

To understand how a white-label ATM operates, it is useful to consider how a typical ATM transaction works (that is, a customer using an ATM belonging to the customer’s bank), and then to compare it to transactions using ATMs owned by other financial institutions and white-label ATMs.

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11 Exhibit 429, RCMP Project Scot Report, p 19.

12 Exhibit 430, WLTM Brief – Department of Finance (March 5, 2020), p 1.

13 Exhibit 429, RCMP Project Scot Report, p 6; Evidence of C. Chandler, Transcript, January 15, 2021, pp 123–24; Evidence of K. Morris, Transcript, January 15, 2021, p 125.

14 Exhibit 429, RCMP Project Scot Report, p 6; Evidence of K. Morris, Transcript, January 15, 2021, pp 125–26; Exhibit 430, WLTM Brief – Department of Finance (March 5, 2020), p 2.

15 Exhibit 429, RCMP Project Scot Report, p 6; Evidence of K. Morris, Transcript, January 15, 2021, pp 126–27.

16 Exhibit 430, WLTM Brief – Department of Finance (March 5, 2020), p 2.

17 Evidence of K. Morris, Transcript, January 15, 2021, pp 127–28.

18 Exhibit 429, RCMP Project Scot Report, p 7.

19 Ibid, p 16. Mr. Chandler explained that independent sales organizations find merchant locations, install the ATMs, service them, and gather information such as know-your-client information and source-of-funds declarations: Evidence of C. Chandler, Transcript, January 15, 2021, pp 128–29.

20 Exhibit 429, RCMP Project Scot Report, p 17.

Beginning with a typical ATM transaction, we can imagine a customer who banks with the Royal Bank of Canada (RBC) and uses an RBC ATM.<sup>21</sup> The customer places their card in the ATM and makes a request for withdrawal. RBC verifies that the funds requested are available in the customer's bank account. The transaction is validated and approved, and the approval is sent to the ATM. The cash is then dispensed.<sup>22</sup> In this scenario, Interac's Inter-Member Network has *not* come into the mix because the customer is using their own bank.<sup>23</sup> Depending on the account, there may be no fee or a small service fee to RBC in this example.

Let us assume now that the RBC customer uses an ATM owned by the National Bank of Canada (National Bank).<sup>24</sup> The customer places their card into a National Bank ATM and makes a request for withdrawal. A request for approval is made through Interac's Inter-Member Network to RBC, which then verifies that the funds are available in the customer's account. Once RBC verifies and approves the transaction, that approval is sent through the Inter-Member Network back to the ATM. The transaction is then settled through the Canadian Payment Association's Automated Clearing Settlement System, and the funds are credited to National Bank's account. A debit memo is then posted to the customer's account, and the customer receives the cash.<sup>25</sup> The customer often faces an additional charge for this sort of transaction on a different bank's ATM.

Finally, let us assume that the RBC customer uses a white-label ATM. The customer puts their card into the ATM. This time, the request for approval must go through an independent sales organization and the indirect connector to the Inter-Member Network. There may also be other actors involved, such as a sub-independent sales organization. Once the transaction enters the Inter-Member Network, the process proceeds as above: RBC approves the transaction and communicates the approval to the white-label ATM through the Inter-Member Network. The transaction is settled, debited to the customer's account, and credited to the white-label ATM owner's account.<sup>26</sup> The customer will pay a fee that goes to the white-label ATM operator for this transaction.

## **“Regulation” of White-Label ATMs**

Mr. Chandler testified that white-label ATMs are subject to two forms of “regulation”: they must settle to a single bank account, and they must comply with Interac's rules.<sup>27</sup> Indeed, witnesses before me frequently referred to the “regulation” done by Interac. In my view, it is more accurate to speak of Interac's *rules*, as Interac is not a regulator;

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21 See *ibid*, p 14, for a diagram of this scenario.

22 Exhibit 429, RCMP Project Scot Report, p 14.

23 *Ibid*, p 14.

24 See *ibid*, p 16, for a diagram of this scenario.

25 *Ibid*, p 15.

26 *Ibid*, pp 16–17.

27 Evidence of C. Chandler, Transcript, January 15, 2021, pp 132, 183.

rather, it is a private, for-profit (though highly regarded) body that services a network. In any event, Interac's rules are relevant and worth reviewing.

## Interac's Rules for White-Label ATMs

Interac's rules – called the “Requirements for White Label ABM Cash Owners”<sup>28</sup> – were adopted in March 2009 at the request of the federal Department of Finance. This in turn followed commentary in the Financial Action Task Force's third mutual evaluation of Canada in 2008, which identified the white-label ATM sector as a potential source of money laundering risk and recommended strengthening controls.<sup>29</sup> The mutual evaluation noted that white-label ATMs were a high-risk area not covered by the *PCMLTFA*, that the RCMP had observed their use by organized crime groups, and that a 2007 FINTRAC report had highlighted the vulnerability of these ATMs to money laundering.<sup>30</sup> The fourth mutual evaluation report similarly found that white-label ATMs were a high-risk area not covered by the regime and recommended that Canada “[s]trengthen policies and strategies to address emerging [money laundering] risks (in particular white-label ATMs and online casinos).”<sup>31</sup>

Mr. Morris testified that the federal government appeared to favour an industry-led solution rather than a public policy or regulatory response.<sup>32</sup> It appears, however, that the RCMP would have preferred white-label ATMs to be subject to the *PCMLTFA* and required to register as money services businesses.<sup>33</sup> The rules were finalized following discussions between Interac, Visa, Mastercard, the ATM Industry Association, the RCMP, the Ontario Provincial Police, the Department of Finance, FINTRAC, and industry.<sup>34</sup>

The rules address four areas:

- customer due diligence (know-your-client requirements);
- source of funds;
- criminal background checks; and
- annual reviews to monitor compliance.<sup>35</sup>

28 Exhibit 434, Interac – Overview WLCO Regs (2020). Note that white-label ATMs are sometimes referred to as white-label ABMs, short for “automated banking machines” rather than “automated teller machines.”

29 Evidence of K. Morris, Transcript, January 15, 2021, p 174; Exhibit 434, Interac – Overview WLCO Regs (2020), p 1; Exhibit 4, Overview Report: Financial Action Task Force, Appendix L, FATF, *Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism, Canada* (Paris: FATF, 2008), p 247, para 1379.

30 Exhibit 4, Overview Report: Financial Action Task Force, Appendix L, FATF, *Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism, Canada* (Paris: FATF, 2008), pp 5, 16, 115–16.

31 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), p 31.

32 Evidence of K. Morris, Transcript, January 15, 2021, p 174.

33 Exhibit 429, RCMP Project Scot Report, p 12.

34 Exhibit 434, Interac – Overview WLCO Regs (2020), p 3; Evidence of K. Morris, Transcript, January 15, 2021, pp 174–75.

35 Exhibit 434, Interac – Overview WLCO Regs (2020), p 3; Evidence of K. Morris, Transcript, January 15, 2021, p 175.

Acquirers are responsible for verifying the identity of white-label ATM cash owners and obtaining source-of-funds documents for any white-label ATM they connect to the network.<sup>36</sup> “Cash owners” are defined as those persons or entities that own or possess the cash that is loaded into the ATM or own the account through which the ATM funds are settled.<sup>37</sup> The source-of-funds declaration must be maintained with each white-label ATM cash owner’s documentation and must be updated when changes occur.<sup>38</sup> Interac verifies the identity of each prospective acquirer and conducts background checks on key personnel, including directors and officers.<sup>39</sup>

The rules classify cash owners as low risk or high risk. Cash owners are considered low risk if they:

- supply cash to a single ATM;
- supply cash to between two and four ATMs with a daily average settlement not exceeding \$5,000 in the aggregate;
- are a publicly traded company;
- have a provincial or federal gaming certificate; or
- are a public body.<sup>40</sup>

Cash owners that do not qualify as one of the above are considered high risk. Criminal record checks are required for all high-risk cash owners. If the cash owner is not an individual, a criminal record check must be obtained for all individuals who own or control over 25 percent of the entity, or for individuals with signing authority.<sup>41</sup> At the time of the Commission’s hearings, there were 84 high-risk cash owners in BC.<sup>42</sup>

Mr. Morris agreed that a cash owner could still be considered low risk even if they supply substantial amounts of cash to one ATM. Similarly, an entity or individual could have a combined settlement value of just under \$5,000 a day for up to four ATMs, totalling around \$1.8 million per year, and still be considered low risk.<sup>43</sup>

Acquirers are responsible for ensuring that reviews by a qualified auditor are conducted for each cash owner they connect to the Interac network.<sup>44</sup> The auditor ensures that the proper documentation is being collected and the rules are being followed. They must also report non-compliance or suspicions of criminal activity to Interac, so that the

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36 Exhibit 434, Interac – Overview WLCO Regs (2020), p 3.

37 Ibid, pp 3–4.

38 Evidence of K. Morris, Transcript, January 15, 2021, p 176.

39 Exhibit 434, Interac – Overview WLCO Regs (2020), p 3.

40 Evidence of K. Morris, Transcript, January 15, 2021, pp 176–77.

41 Ibid, pp 176–78.

42 Exhibit 435; Evidence of K. Morris, Transcript, January 15, 2021, p 181.

43 Ibid, p 182.

44 Exhibit 434, Interac – Overview WLCO Regs (2020), p 9.

latter can take steps to refer the matter to authorities where appropriate. Mr. Morris is not aware, however, of an auditor uncovering any criminal activity since Interac's rules have been in effect or of any referrals relating to money laundering.<sup>45</sup>

The most extreme "sanction" that Interac can impose for failure to comply with its rules is disconnecting the ATM from the network. Mr. Morris testified that Interac would disconnect a user if it was aware of any money laundering or suspected money laundering activity or other criminal activity. However, he is not aware of any white-label ATM being disconnected for non-compliance or of any referrals being made to law enforcement.<sup>46</sup>

## Interac's Investigation Unit

In addition to its rules, Interac has an investigation unit that deals with payment fraud and financial crime. This unit is meant to act as a liaison between Interac and stakeholders such as financial institutions and law enforcement.<sup>47</sup> It was implemented to enhance the flow of information between Interac and law enforcement and to provide a point of contact for the latter for assistance in its investigations.<sup>48</sup>

Mr. Morris believes that the unit has existed since approximately 2008.<sup>49</sup> Its primary activities relate to the prevention, detection, management, and ongoing investigation of payment card fraud.<sup>50</sup> It supports law enforcement directly and through the fulfillment of court orders, and also works with financial institutions and law enforcement to prevent, detect, and manage fraud and related activity.<sup>51</sup> Interac also provides education to the law enforcement community on the means of identifying and detecting criminal activity in the payment space and works with law enforcement on community messaging.<sup>52</sup>

To Mr. Morris's knowledge, the investigation unit has never received a request for information from Interac relating to potential money laundering or proceeds-of-crime investigations involving white-label ATMs.<sup>53</sup> It is unclear whether the lack of referrals by Interac, or inquiries from law enforcement, stems from a lack of money laundering activity through white-label ATMs or from other factors such as the generally low numbers of investigations into money laundering in this province and the difficulties in obtaining convictions (see Part XI). Whatever the reason for the low referral numbers, I elaborate on the *risks* in this sector below.

45 Evidence of K. Morris, Transcript, January 15, 2021, pp 178, 184.

46 Ibid, pp 184–85.

47 Ibid, p 186.

48 Exhibit 430, WLTM Brief – Department of Finance (March 5, 2020), p 2.

49 Evidence of K. Morris, Transcript, January 15, 2021, p 188.

50 Ibid, p 186.

51 Ibid, pp 186–87. Mr. Morris explained that Interac typically requires a production order to share information with law enforcement, though it has some participation agreements that address information sharing with law enforcement, government, and regulatory authorities: *ibid*, p 193.

52 Ibid, p 187.

53 Ibid, p 188.

## Other Codes and Standards

White-label ATMs are subject to other codes and standards apart from the Interac rules. The Standards Council of Canada has a voluntary code of standards applying to ATMs, which covers the construction and security performance and seeks to provide protection against the unauthorized removal of currency.<sup>54</sup> The Office of Consumer Affairs also has a voluntary code of practice for consumer debit card services, which outlines industry practices and consumer and industry responsibilities.<sup>55</sup> Finally, the Canadian Payments Association's rules address information protection and verification requirements during the encryption and decryption of PINs.<sup>56</sup> Although it is good that white-label ATMs are subject to these standards, I note that none of them appear to address anti-money laundering.

## Money Laundering Risks

There was dispute in the evidence before me on the question of whether white-label ATMs pose money laundering risks and, if so, how significant they are.

The RCMP takes the view that there are significant risks. An RCMP project known as “Criminal Intelligence Project Scot”<sup>57</sup> focused on white-label ATMs and resulted in a November 2008 intelligence report.<sup>58</sup> Melanie Paddon, a former sergeant at the RCMP and an investigator with the Joint Illegal Gaming Investigation Team, testified that this is the most recent RCMP report on white-label ATMs of which she is aware.<sup>59</sup> I note that this report precedes the adoption of Interac's rules in 2009.<sup>60</sup>

Some key conclusions from the report include the following:

- Lack of government regulation in the white-label ATM industry has “allowed it to grow at unprecedented levels and be used by organized crime to launder proceeds of crime and commit other crimes.”<sup>61</sup>
- Organized crime groups including the Hells Angels Motorcycle Club have infiltrated the white-label ATM industry at levels close to 5 percent of the sector (or possibly higher). This could grow to 20 percent of all white-label ATMs.<sup>62</sup>

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54 Exhibit 430, WLTM Brief – Department of Finance (March 5, 2020), p 1.

55 Ibid.

56 Ibid.

57 Project Scot was “intended to establish the nature and scope of the ‘white label’ ATM industry in Canada and to assess the current situation, demonstrate the potential vulnerabilities of criminal activities, specifically money laundering, and to identify criminal organizations operating within the industry”: Exhibit 429, p 4. Its name is inspired by the inventor of ATMs, Scot John Shepherd-Barron: *ibid*, p 4, footnote 3.

58 Exhibit 429, RCMP Project Scot Report.

59 Evidence of M. Paddon, Transcript, January 15, 2021, p 139.

60 The report is dated November 10, 2008, while the rules were adopted in March 2009: Evidence of K. Morris, Transcript, January 15, 2021, p 174.

61 Exhibit 429, RCMP Project Scot Report, p 1.

62 *Ibid*, pp 1, 3.

- Outlaw motorcycle gangs have laundered money through white-label ATMs since the late 1990s in several provinces, including British Columbia.<sup>63</sup>
- There are reports of proceeds of crime from drug trafficking, loan sharking, illegal gaming operations, prostitution, and other crimes being laundered through white-label ATMs.<sup>64</sup>
- “The potential amount that could be laundered through the ‘white label’ ATM industry is approximately \$315 million and could easily reach \$1 billion annually.”<sup>65</sup>

The report calls for a registry and monitoring system to address the fact that white-label ATMs are not subject to the *PCMLTFA*.<sup>66</sup> It also lists the following major concerns relating to white-label ATMs:

- Anyone can own or operate a white-label ATM.
- There are few due diligence requirements.
- Owners can load cash into the machine themselves.
- Owners are asked on a one-time basis to identify the source of their funds.
- White-label ATMs are not subject to any government regulation.<sup>67</sup>

The report further notes that white-label ATMs are not subject to the federal *Bank Act* and are therefore not regulated by the Office of the Superintendent of Financial Institutions.<sup>68</sup>

As I understand it, the concerns about money laundering through white-label ATMs are as follows. The white-label ATM can be loaded with illicit cash, in whole or in part. When customers withdraw cash from the white-label ATM, they may or may not be aware that some or all of the cash is illicit. As the white-label ATM facilitates a withdrawal from a financial institution, that transaction is later settled and the money that was withdrawn is ultimately sent to the bank account associated with the white-label ATM. In this way, the white-label ATM has provided illicit cash to customers and the cash owner receives “clean” money from the financial institution through the settling process.<sup>69</sup>

The RCMP’s 2008 report notes that using a white-label ATM can skip the “placement” stage of money laundering because money loaded into the machine is electronically

63 Ibid, pp 3, 30.

64 Ibid, p 1.

65 Ibid. These figures were arrived at by considering institutions known to be used by organized crime groups to launder money and assumes that they would be making monthly withdrawals of \$15,000 and monthly disbursements of \$60,000 to \$80,000: *ibid*, p 29.

66 Ibid, p 1.

67 Ibid, pp 2, 5.

68 Ibid, p 2.

69 Ibid, p 27.

deposited into the bank account associated with it.<sup>70</sup> Further, use of a white-label ATM avoids face-to-face contact with employees of the financial sector who could detect suspected activities and fulfill know-your-client requirements.<sup>71</sup> Sergeant Paddon explained that illicit and legitimate funds can be intermingled, thereby complicating police investigations. She added that, because of the lack of government regulation or oversight, criminal organizations can continue their activity without having to report to FINTRAC or elsewhere.<sup>72</sup> The RCMP report further notes that use of white-label ATMs can circumvent cross-border currency and electronic funds transfer requirements because:

- funds can be wired to offshore accounts and then sent back as a cheque, which can then be deposited in Canada;
- white-label ATMs can be linked to a foreign bank account and avoid the \$10,000 reporting threshold, given that the activity is usually less than that;
- use of a white-label ATM can avoid the involvement of cash couriers; and
- cash deposited in Canada can be accessed anywhere in the world through ATM networks, which essentially allows for international transfer of money into local currency and circumvention of currency import and export restrictions.<sup>73</sup>

Other issues involve the possibility of counterfeit bills being loaded into machines, skimming operations (in which a white-label ATM skims information from a credit card or a person's bank account information), tax evasion, and fraud.<sup>74</sup> Sergeant Paddon added that because white-label ATMs are not regulated, law enforcement relies on its partners (including FINTRAC and financial institutions) to flag issues for it.<sup>75</sup>

A briefing note from the federal Department of Finance dated March 5, 2020, discusses money laundering and terrorist financing risks relating to white-label ATMs.<sup>76</sup> It notes that some observed money laundering and terrorist financing risks include:

- that an ATM can be loaded with illicit cash without the owner's knowledge;
- that a business owner involved in criminal activity or with connections to organized crime can load an ATM with illicit cash; and
- that a company can be created that purportedly owns or operates white-label ATMs, but can be used as a cover for criminal activities, given that these are cash-based businesses.<sup>77</sup>

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70 Ibid, pp 2, 25; Evidence of M. Paddon, Transcript, January 15, 2021, pp 139–40.

71 Exhibit 429, RCMP Project Scot Report, pp 2, 25; Evidence of M. Paddon, Transcript, January 15, 2021, p 140.

72 Evidence of M. Paddon, Transcript, January 15, 2021, pp 140–41.

73 Exhibit 429, RCMP Project Scot Report, p 27.

74 Ibid, pp 5, 24–25; Evidence of M. Paddon, Transcript, January 15, 2021, pp 142–43.

75 Evidence of M. Paddon, Transcript, January 15, 2021, p 142.

76 Exhibit 430, WLTM Brief – Department of Finance (March 5, 2020).

77 Ibid, pp 2–3.

The briefing note concludes that there are money laundering vulnerabilities in the white-label ATM sector. It also expresses concerns about the ownership structure, in the sense that Interac may not be aware of owners and operators, who rely on and interface with direct and indirect connectors.<sup>78</sup> It emphasizes, however, that the risks do not relate to *withdrawals* by clients:

The money laundering vulnerability does not lie with the clients withdrawing funds from the WLATMs [white-label ATMs]. Authorized third parties, independent of the ATM cash owner, record and retain information about every dollar that passes through a WLATM in Canada. The information recorded by third parties includes a transaction record number, the amount withdrawn, the date and time of the withdrawal and the Canadian bank account to which the funds withdrawn are electronically settled. *There are no WLATM withdrawals and settlements of any amount, at any time, that are anonymous.* Independent third parties clearly record and retain the details of the money flow. *The WLATM vulnerability lies in the loading of the machines, which can be done anonymously.* Companies owning and loading WLATMs for themselves or other legitimate businesses may be criminally controlled. Criminals can offer ATM services within different legitimate businesses or set them up in their own businesses, and load those ATMs with illicit cash. [Emphasis added.]<sup>79</sup>

Like the RCMP report, the briefing note highlights the unregulated nature of the industry and the lack of oversight, which can “provide organized crime a favourable environment to use ATMs to conduct various illegal activities, including money laundering, fraud and distribution of counterfeit money.”<sup>80</sup>

I heard a very different account of the money laundering risks in this sector from industry witnesses. Mr. Chandler emphasized that there is no evidence that people are actually laundering money through white-label ATMs. He notes that there have been only a handful of cases since 1996, which does not line up with the RCMP report’s estimate of the activity reaching \$300 million to \$1 billion per year.<sup>81</sup> He added that white-label ATMs need to comply not only with Interac’s rules but also with BC Gaming Commission regulations (where the ATM is located in a casino).<sup>82</sup>

Mr. Chandler argues that there has been undue focus on white-label ATMs. He testified that business owners can get cash into a bank account by depositing it through:

- a bank deposit-taking ATM;
- a bank night depository;

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78 Ibid, p 3.

79 Ibid, p 4.

80 Ibid, p 4.

81 Evidence of C. Chandler, Transcript, January 15, 2021, pp 160–61.

82 Ibid, p 161.

- a bank teller; or
- a white-label ATM.<sup>83</sup>

In Mr. Chandler’s view, the first two options are just as anonymous as a white-label ATM.<sup>84</sup> Further, while the first three options accept any quality and denomination of cash, white-label ATMs accept only “ATM-quality” cash – flat, undamaged \$20 bills.<sup>85</sup> He added that the first three options could involve deposits into multiple bank accounts; in contrast, white-label ATMs can be associated with only one account and must satisfy that bank’s know-your-client requirements.<sup>86</sup> Another distinction is that the first three options require large cash transaction reports and source-of-funds declarations for transactions of \$10,000 or more; in contrast, white-label ATMs must fill out source-of-funds declarations for transactions of \$5,000 or more, as well as provide a background check if they operate multiple white-label ATMs.<sup>87</sup> Finally, Mr. Chandler pointed out that transactions through an ATM are tracked and recorded by third-party processors, whose records are provided to the Interac Association, audited annually, and made available to law enforcement upon request.<sup>88</sup>

A position paper prepared by the ATM Industry Association expresses the view that exaggerating the risks in the white-label ATM sector is harmful to small businesses and causes unnecessary doubts for customers about the safe, reliable, and convenient access to cash that white-label ATMs provide.<sup>89</sup> It opines that media stories about the risks associated with these ATMs are based on anecdotal evidence only, and notes that the one case where a conviction was obtained – the *Banayos* case, reviewed below – is the only one since 1996 that has involved a conviction.<sup>90</sup> On this point, Sergeant Paddon testified that she is aware of investigations involving white-label ATMs that have not resulted in a charge or conviction, noting that it is difficult to obtain money laundering convictions.<sup>91</sup> Mr. Chandler responded that this singles out the white-label ATM industry when other industries also involve investigations that do not result in charges.<sup>92</sup>

I was referred to one case in which the owner of a white-label ATM was found to be involved in money laundering: the *Banayos* case.<sup>93</sup> I note at the outset that my discussion of this case is reliant on the findings of the Manitoba courts, and I make no findings of my own. The case was the culmination of a Winnipeg Police Service

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83 Ibid, p 135.

84 Ibid, pp 163–64.

85 Ibid, pp 164–65.

86 Ibid, pp 164, 166.

87 Ibid, pp 165–67.

88 Ibid, p 167.

89 Exhibit 432, Actual versus Perceived Risks of Money Laundering at White-Label ATMs in Canada (2017), p 5.

90 Ibid, pp 7, 9.

91 Evidence of M. Paddon, Transcript, January 15, 2021, pp 169–70.

92 Evidence of C. Chandler, Transcript, January 15, 2021, pp 170–71.

93 *R v Banayos and Banayos*, 2017 MBQB 114, aff’d 2018 MBCA 86, leave to SCC denied 38296.

investigation called “Project Sideshow” that took place from early 2012 until February 2014.<sup>94</sup> It involved a sister and brother who were charged with money laundering (among other things). The trial judge found that Mr. Banayos was operating a drug trafficking business and an ATM business involving several ATMs.<sup>95</sup> Although Mr. Banayos operated the ATM business, Ms. Banayos was listed as the owner and operator because of the requirement to obtain a criminal record check.<sup>96</sup> She indicated on her source-of-funds declaration that the cash used to load the ATM would come from her RBC bank account. However, the trial judge determined that in at least two instances – when the sister’s account balance was \$0 and when the account was frozen – the cash could not have come from the RBC account.<sup>97</sup> Given those circumstances, as well as others, the trial judge concluded that the cash used to load the ATM had come from the brother’s drug trafficking business, which was done in furtherance of a money laundering scheme.

Mr. Chandler expressed the view that the *Banayos* case shows that money laundering through ATMs is not an effective method:

[T]his case kind of supports what we’ve been saying ... [M]y understanding of this case is they started money laundering and within six months and about \$100,000 if that recollection is correct, they were caught and the documentation was there to convict them. And that has been our premise from the beginning. This is not a smart place to money launder because you will get caught, likely quickly and you will certainly have a high chance of being convicted. So this [case] supported that.<sup>98</sup>

Conversely, Sergeant Paddon testified that she has come across a number of files that involved white-label ATMs. Although the ATM may not have been the main focus of the cases, “often organized crime groups would use white-label ATMs to launder their funds.”<sup>99</sup> She added that money laundering convictions are very difficult to obtain; therefore, while many cases involve white-label ATMs, they do not all result in charges.<sup>100</sup>

On the evidence before me, I am unable to arrive at conclusions on how frequently white-label ATMs are used to launder money. Clearly, it is possible to do so, as illustrated by the *Banayos* case. It also appears, from Sergeant Paddon’s testimony, that the potential for using white-label ATMs to launder money is on law enforcement’s radar, though it is less clear how often the ATMs are a main focus of such investigations. While I accept that there is a risk of white-label ATMs being used to launder money, I am unable to determine whether that risk is significant or greater

94 *R v Banayos and Banayos*, 2017 MBQB 114 at para 1.

95 *R v Banayos and Banayos*, 2018 MBCA 86 at para 10.

96 *Ibid*, para 17(b).

97 *Ibid*, paras 17(b), 35–37.

98 Evidence of C. Chandler, Transcript, January 15, 2021, p 213.

99 Evidence of M. Paddon, Transcript, January 15, 2021, p 158.

100 *Ibid*, pp 169–70.

than that attaching to various other forms of money laundering, or whether white-label ATMs have actually been exploited to a significant degree. In fact, the various rules applying to white-label ATMs – including that cash owners must settle with a single bank account, are subject to audits, are required to comply with various know-your-client obligations, and must load machines with ATM-quality cash – would seem to lessen the risks significantly. Indeed, the fact that cash owners are required to settle with a single bank account suggests that FINTRAC has at least some visibility into the activities of white-label ATMs, as financial institutions have obligations under the *PCMLTFA* in respect of those accounts.

It is also striking that despite the RCMP estimating, in 2008, that money laundering through white-label ATMs could “easily reach \$1 billion annually,”<sup>101</sup> it appears that only one case has resulted in convictions for money laundering. Moreover, given that law enforcement has never made use of Interac’s investigation unit in relation to potential money laundering or proceeds-of-crime investigations, it is impossible to know if inquiries by law enforcement would have established some suspicious activity, significant amounts, or none. I expect that, in future, law enforcement will make use of the unit when it has suspicions involving white-label ATMs.

The foregoing is *not* a conclusion that that no money laundering is occurring through white-label ATMs in this province. Rather, there has been insufficient use of investigative avenues to determine if such activity is occurring. In the absence of such investigative activity, I am unable to draw conclusions about the extent to which white-label ATMs have been used to launder money in British Columbia. Below, I discuss the role that the AML Commissioner recommended in Chapter 8 and new intelligence and investigation unit recommended in Chapter 41 might play in gaining further insight into money laundering risks and activity in this area.

## **Should White-Label ATMs Be Subject to Provincial Regulation?**

In line with the debate surrounding money laundering risks associated with white-label ATMs, I heard differing views about whether white-label ATMs should be subject to regulation under the *PCMLTFA*, a provincial scheme, or both. As I explained above, white-label ATMs are not currently subject to the *PCMLTFA*, nor are they caught by the federal *Bank Act*. As a result, the only “regulation” to which they are subject is Interac’s rules and the requirement that they be associated with only one bank account. They therefore have no reporting obligations, nor are cash owners required to implement a compliance program as they would be under the *PCMLTFA* regime. While the Interac regime does involve periodic audits of white-label ATM owners, it is not clear that these are equivalent to compliance exams conducted by FINTRAC, nor the kind of regulation that a provincial regulator could undertake. Further, the only “sanctions” to which white-label ATMs can be subject under the Interac regime

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101 Exhibit 429, RCMP Project Scot Report , p 1.

is a loss of their ability to access the network. This is in contrast to penalties available under regulatory regimes, which typically include fines and loss of a licence.

The exception in this country is Quebec. As I discuss in Chapter 21, white-label ATMs are deemed to be money services businesses in that province and are therefore captured by the Quebec *Money Services Businesses Act*, CLQR c E-12.000001. I will not repeat all the aspects of that regime here (discussed in detail in Chapter 21), except to note that it involves provincial licensing; police checks; and requirements relating to customer identification, record-keeping, and reporting. The scheme also provides for administrative monetary fines and penal provisions.

The Financial Action Task Force's third mutual evaluation of Canada in 2008 concluded that the measures in place at that time (which pre-dated the Interac rules) did not adequately address the risks in the white-label ATM sector. It suggested that Canada consider a registration and monitoring system for owners of white-label ATMs.<sup>102</sup> Similarly, the fourth mutual evaluation in 2016 noted that all high-risk areas were covered by the *PCMLTFA* regime "with the notable exception of ... white-label ATMs."<sup>103</sup> In the evaluators' opinion, white-label ATMs were vulnerable to money laundering and terrorist financing, referencing the RCMP's view that they are used by organized crime to launder proceeds of crime.<sup>104</sup> The report recommended that Canada "[s]trengthen policies and strategies to address emerging [money laundering] risks (in particular white label ATMs ... )."<sup>105</sup>

Canada's 2015 national risk assessment noted that although white-label ATMs were excluded from the *PCMLTFA*, Canada would continue to assess the money laundering and terrorist financing risks associated with them.<sup>106</sup> A 2018 report of the House of Commons Standing Committee on Finance recommended that the white-label ATM sector be included in the *PCMLTFA* regime.<sup>107</sup>

British Columbia is considering the possibility of regulating white-label ATMs.<sup>108</sup> Joseph Primeau, acting executive director of the policy branch of the finance, real estate, and data analytics unit at the BC Ministry of Finance, testified that the Province is considering engaging an external expert to assess the money laundering risk associated with white-label ATMs.<sup>109</sup> He hopes that such a consultation would shed some light on the question of whether it is efficient to launder money through white-label ATMs, and added that the Province would like to clarify what happens in networks other than Interac.<sup>110</sup>

102 Exhibit 4, Overview Report: Financial Action Task Force, Appendix L, FATF, *Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism, Canada* (Paris: FATF, 2008), p 245, para 1364.

103 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), p 5, para 16.

104 Ibid, p 16, para 53.

105 Ibid, p 31.

106 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada 2015* (Ottawa, 2015), p 32, Recommendation 7.

107 Exhibit 436, *Confronting Money Laundering and Terrorist Financing – Standing Committee Report*, p 30.

108 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), pp 5–6.

109 Evidence of J. Primeau, Transcript, December 1, 2020, pp 142–43.

110 Ibid, pp 144–45.

Sergeant Paddon testified that, in her view, a registry of white-label ATM owners would be helpful in gathering intelligence and uncovering beneficial owners, overseas corporations, real estate assets, and bank accounts. It would also be useful for sharing information with partners, such as FINTRAC and the Canada Revenue Agency. However, she opined that it would likely be more effective for FINTRAC to be the central monitoring system rather than a provincial regulator.<sup>111</sup> The BC Ministry of Finance consultation on money services businesses (see Chapter 21) noted that the RCMP considers white-label ATMs to be vulnerable to money laundering because of the little or no oversight; believes that reporting by banks about white-label ATMs can be avoided by cash owners; is aware of money laundering activities through white-label ATMs based on specific cases and intelligence research; and considers that a regulatory regime would assist with investigations, which are challenging.<sup>112</sup>

According to the consultation paper, Revenu Québec expressed the view that “it is unclear whether the regime is working, although it certainly makes it more difficult to launder money; however, [white-label ATM] regulation does pose [a] volume problem with sprawling investigations with complex structures.”<sup>113</sup>

The consultation paper equally notes, however, that the ATM Industry Association emphasized the rigour of Interac’s rules, that white-label ATMs are an inefficient way to launder money, and that Quebec’s regime is onerous on businesses.<sup>114</sup> Indeed, Mr. Chandler and the ATM Industry Association are strongly opposed to additional regulation. In Mr. Chandler’s view, the Quebec regime is “wholly redundant with the Interac regulations” and in some ways, Interac’s rules are more extensive than the *PCMLTFA*.<sup>115</sup> He testified that the Quebec regulator has had “extreme difficulties” implementing the legislation, noting that the regulator’s difficulties locating ATM operators have led to “scandalous headlines” accusing operators of being untoward when there was no wrongdoing.<sup>116</sup> Further, he considers that operators are “persecut[ed] by association” when they may be associated with bad actors but are not bad actors themselves.<sup>117</sup>

Mr. Chandler believes that white-label ATMs were brought into the Quebec regime based on the RCMP’s 2008 report, which he emphasized he had never seen before the Commission’s hearing despite making requests.<sup>118</sup> The ATM Industry Association has unsuccessfully tried to persuade the Quebec government to remove white-label ATMs from the regime.<sup>119</sup> Mr. Chandler opined that further regulation would lead to half of all white-label ATMs leaving the marketplace because of the increased burden.<sup>120</sup> Overall,

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111 Evidence of M. Paddon, Transcript, January 15, 2021, pp 206–9.

112 Exhibit 311, BC Ministry of Finance, Briefing Document: Money Services Businesses Consultation – Summary (June 8, 2020), p 6.

113 Ibid.

114 Ibid, p 5.

115 Evidence of C. Chandler, Transcript, January 15, 2021, pp 190, 199.

116 Ibid, pp 190–91.

117 Ibid, p 191.

118 Ibid, pp 194–95.

119 Ibid.

120 Ibid, pp 136–37.

he says that white-label ATMs are meeting a high standard through the Interac rules, that there is already a significant burden on small business owners, and that further regulation is not justified given the little evidence of money laundering in this sector.<sup>121</sup>

In my view, there are enough uncertainties with respect to white-label ATMs that the Province should not, as this time, subject them to regulation. Instead, the AML Commissioner proposed in Chapter 8 should study the money laundering risks attaching to white-label ATMs.

I arrive at this conclusion for several reasons. First, as I discussed above, the money laundering risks associated with white-label ATMs are not especially clear. While I accept that it can happen (and has, as demonstrated by the *Banayos* case), it is not obvious how widespread the problem is. Second, there are suggestions in the evidence that the Quebec regime is not seen as particularly effective as it relates to white-label ATMs. Before beginning what could be a costly process of identifying all white-label ATMs in the province and ensuring they are licensed, I believe it would be useful to first study the problem further. In this regard, the Province should continue to engage with Quebec to learn from its experiences. Third, it is striking that law enforcement has never made use of Interac's investigative unit to request documents or other information about suspected money laundering involving white-label ATMs. Before implementing a likely costly regulatory solution, the avenues that are currently available should be used. I would encourage the designated provincial money laundering intelligence and investigation unit recommended in Chapter 41 to explore and make use of information and intelligence available from Interac. Finally, it may be that regulation of white-label ATMs would be more appropriate at the federal level by subjecting them to the *PCMLTFA*, as Sergeant Paddon suggested. The Province should engage with the federal government to determine if this possibility is being explored.

## Conclusion

This chapter has examined the white-label ATM sector and the money laundering risks that arise within it. Although one can intuitively describe risks that arise with white-label ATMs, the state of the evidence and the level of investigation by law enforcement are such that I am unable to draw firm conclusions about the extent of money laundering that is actually occurring through white-label ATMs. It will be important for the AML Commissioner to study this area and report to the Province on his or her findings. I also encourage the designated provincial money laundering intelligence and investigation unit recommended in Chapter 41 to be alive to the money laundering risks associated with white-label ATMs and to leverage intelligence available through Interac to further investigations in this area where appropriate. While I do not propose, at this time, that white-label ATMs be subject to provincial regulation, it may be that the AML Commissioner's further study reveals that such regulation would be desirable.

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<sup>121</sup> Ibid, pp 199–201.

## Part VI

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# The Corporate Sector

Section 4(1)(iv) of my Terms of Reference requires me to make findings on the extent, growth, evolution, and methods of money laundering in the corporate sector, in particular, “the use of shell companies, trusts, securities and financial instruments for the purposes of money laundering.”

In Chapter 23, I review the well-known money laundering risks associated with corporate and other legal arrangements, as well as first steps that have been taken toward greater beneficial ownership transparency in Canada. As I discuss below, there is a near consensus that a beneficial ownership registry is needed in British Columbia; the question is no longer whether the Province should implement such a registry, but *how* it should be done. The federal government has recently given a strong push to a national beneficial ownership transparency registry, even committing to its speedy implementation. In light of this pan-Canadian approach, which I strongly support, my focus in Chapter 24 is to describe the federal initiative and identify how the Province can best support a national beneficial ownership transparency registry.

## Chapter 23

# Money Laundering Risks Associated with Corporate and Other Legal Arrangements

There are well-accepted money laundering risks associated with corporations and other legal arrangements. These risks stem principally from the anonymity that such arrangements provide, in that they allow individuals to conduct transactions under the guise of a legal person and make it difficult or impossible to trace the activity back to the individual(s) behind the legal person. This kind of anonymity has clear benefits to criminals seeking to conceal their ill-gotten gains and introduce them into the formal financial system.

In this chapter, I discuss how money launderers use corporate structures to facilitate their laundering activities, how they can hide their involvement through anonymous shell companies, and how anonymizing their ownership presents challenges for law enforcement. I note that there are parallels to be drawn with the problems of anonymity and the resultant trend towards transparency in the real estate sector, which I address in Part IV of this Report. Given the unique and critical role that corporations and other legal arrangements play in a vast number of money laundering schemes, I feel it important to address these issues separately in this chapter.

I am encouraged that many countries are moving toward beneficial ownership registries, in which the true identities of beneficial owners must be disclosed and made accessible to competent authorities and, in many cases, the public. As I expand later in this chapter, both the federal government and several provinces have taken steps toward developing a beneficial ownership regime. In Chapter 24, I focus on the new federal initiative, which will permit a national registry, and offer my suggestions on what steps British Columbia might take as part of a pan-Canadian effort to require transparent corporate ownership.

When it comes to the development of a beneficial ownership regime, any one province can only do so much. While these types of registries have the potential to make it easier for law enforcement to trace the movement of suspect funds across provinces and internationally, these efforts will be much more effective if there is coordination at federal, provincial, and territorial levels, as well as coordination with foreign countries. For this reason, the federal government’s announcement on March 22, 2022, that it would implement “a publicly accessible beneficial ownership registry by the end of 2023”<sup>1</sup> presents a real opportunity for the Province to participate in effective reform. While details of the federal registry remain to be determined, my emphasis in Part VI will be to position British Columbia to advocate for a pan-Canadian registry that is as effective as possible.

## **The Issue: Misuse of Legal Entities to Facilitate Money Laundering**

Over the course of the Commission’s hearings, I heard considerable evidence about how corporate and other legal arrangements are misused to facilitate criminal activity, including money laundering. It is important to recognize at the outset that corporate and other legal arrangements play an important and overwhelmingly legitimate role in the provincial and global economies. However, it is also important to recognize that such legal arrangements are essential to many money-laundering schemes. They are used to facilitate the movement of illicit proceeds into and out of the financial system, while concealing the owners of the proceeds and their criminal origins. They also serve to minimize the risk of detection, investigation, and prosecution for criminals. The fundamental policy challenge this presents is how to reduce the ease with which criminals exploit these legal structures and obtain benefit from them – which is largely a function of the anonymity they can afford – while safeguarding their legitimate functions and the rights of Canadians.

A key concept when considering the risks associated with corporations and other legal entities is that of “beneficial ownership.” Put simply, a beneficial owner refers to the natural person who ultimately owns or controls a legal entity.<sup>2</sup> A beneficial owner can be contrasted with a legal owner, which refers to the person – natural *or* legal – who holds legal title to an asset. The beneficial and legal owner *can* be the same person, but are not always. Indeed, as I elaborate below, the legal owner of an entity such as a corporation is frequently *not* a natural person, and the beneficial owner may be difficult to determine due to multiple layers of legal title, nominees,<sup>3</sup> or other legal artifices. It is

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1 Prime Minister of Canada, “Delivering for Canadians Now” (March 22, 2022), online: <https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now>.

2 Exhibit 4, Overview Report: Financial Action Task Force, Appendix U, FATF and Egmont Group, *Concealment of Beneficial Ownership* (Paris: FATF, 2018) [FATF/Egmont Beneficial Ownership Report], para 27.

3 A nominee shareholder is “the registered owner of shares held for the benefit of another person.” Legally, the nominee is responsible for the operation of the company and accepts legal obligations associated with the company directorship or ownership. However, nominees sometimes hold the position of a director or shareholder in name only, on behalf of someone else: Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, pp 36–37, para 84.

this very phenomenon that causes much of the money laundering concern in relation to corporations and legal entities – not knowing who is ultimately directing or controlling a legal entity. Corporations and other legal arrangements such as trusts can be used to facilitate money laundering in numerous ways that span the full gamut of money laundering schemes and economic sectors. As Professor Stephen Schneider explained, the range of money laundering techniques and methods that corporate and other legal arrangements are used to facilitate is “almost unlimited” and implicated in every phase of the money laundering process, from placement through to layering and extraction.<sup>4</sup> This sentiment is echoed in studies by international bodies such as the Financial Action Task Force (FATF), which has concluded that legal persons are a “key feature” in schemes by criminals to obscure their true ownership and control of illicitly obtained assets.<sup>5</sup>

During the placement phase of money laundering, criminally controlled corporations – which are often “shell” or “shelf” companies,” but may also involve otherwise legitimately operating “front businesses”<sup>6</sup> – can be used to claim illicit proceeds as legitimate revenue, sometimes commingled with legitimate income, which are then introduced into the financial system.<sup>7</sup> Robert Gilchrist, director general of Criminal Intelligence Service Canada, testified that, of 176 organized crime groups identified as being involved in money laundering in Canada, 28 percent were suspected of using private-sector businesses in this manner to hide and facilitate the laundering of their proceeds of crime – including by commingling legitimate and criminal proceeds, falsifying receipts and invoices, and using corporate accounts to purchase assets like real estate – and “further obscure the origin in ownership.”<sup>8</sup> Similarly, a study by the World Bank that reviewed over 200 cases of large-scale corruption and other crimes (such as tax evasion, sanctions-busting, terrorist financing, and money laundering) between 1980 and 2010 found that anonymous shell companies were used in 70 percent of such crimes.<sup>9</sup>

During the layering stage of money laundering, illicit funds can be cycled between different entities and accounts that, while appearing to be unrelated and legitimate, are all controlled by the same individual or criminal network. Beneficial ownership can be further obfuscated through the use of complex legal ownership structures,

4 Evidence of S. Schneider, Transcript, May 26, 2020, p 16; Exhibit 6, Stephen Schneider, *Money Laundering in British Columbia: A Review of the Literature* (May 11, 2020), p 94. See Chapter 2 for a discussion of critiques of the traditional “three-stage” conception of money laundering.

5 See Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report. See also FATF, *Guidance on Transparency and Beneficial Ownership* (Paris: FATF, 2014), available online: <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

6 A “shell company” is an incorporated company with “no independent operations, significant assets, or employees.” A “shelf company” is an incorporated company with inactive shareholders, directors, and secretary that is left dormant for a longer period, even if a customer relationship has already been established, to give the appearance of legitimacy. A “front company” is a fully functioning company with the characteristics of a legitimate business, serving to disguise and obscure illicit financial activity: Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 5.

7 See Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, pp 91–95.

8 Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 53–54.

9 Exhibit 283, Submissions of Mora Johnson, November 2020, p 4.

bearer shares,<sup>10</sup> nominees, trusts, financing and loans, or other legal arrangements. These complex structures can be contrived to span multiple jurisdictions, further adding to the challenge for law enforcement of tracing ownership and assets and connecting them back to the predicate offence and offender. Journalist Oliver Bullough described how, once these structures are in place, dirty money can be bounced through “multiple bank accounts in multiple jurisdictions, each of them owned by a different corporate structure or registered again in different jurisdictions,” thereby confusing “the picture so hugely that it becomes very, very hard to follow what’s going on.”<sup>11</sup> There is a fundamental asymmetry to this cat-and-mouse game, insofar as the cost to criminals to establish and maintain these legal contrivances is minimal, whereas the challenge to law enforcement in unravelling them is considerable.

This misuse of corporate and other legal arrangements is by no means a theoretical problem or one confined to other jurisdictions viewed as traditional secrecy havens. According to analysis by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC),<sup>12</sup> roughly 70 percent of all money laundering cases in Canada involved the misuse of corporate legal entities, both to channel foreign proceeds of crime into or through Canada, as well as to launder domestically generated proceeds.<sup>13</sup> Typologies identified in FINTRAC’s analysis included:

- foreign politically exposed persons<sup>14</sup> creating legal entities in Canada to facilitate the purchase of real estate and other assets with the proceeds of corruption;
- laundering criminal proceeds through shell companies in Canada and then wiring the funds to offshore jurisdictions; and
- using Canadian front companies to layer and legitimize unexplained sources of income and to commingle them with or mask them as profits of legitimate businesses.<sup>15</sup>

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10 Bearer shares are “company shares that exist in certificate form and are legally owned by the person that has physical possession of the bearer share certificate at any given time. Ownership and control of bearer shares can be exchanged anonymously between parties by way of physical exchange alone, as no record of the exchange needs to be documented or reported”: Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 36, para 81.

11 Evidence of O. Bullough, Transcript, June 1, 2020, p 56.

12 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (2016) [FATF Fourth Mutual Evaluation]. See Chapter 6 for a discussion of the mutual evaluation process. Mutual evaluations are essentially peer reviews in which FATF members evaluate other members’ anti-money laundering and counterterrorist financing measures against FATF’s 40 recommendations.

13 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, pp 102–3, para 281.

14 See Chapter 3 for a more detailed discussion of politically exposed persons. Briefly, the term refers to persons who are or have been entrusted with a prominent public function, including heads of state, senior politicians, senior government staff, judicial or military officials, senior executives of state-owned corporations, and important political officials. Due to the nature of their positions, they are considered to be at a higher risk of becoming involved in bribery and corruption offences, which in turn gives rise to the need to launder the unlawful profits they receive.

15 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 102.

Canada's 2015 national risk assessment<sup>16</sup> assessed the inherent money laundering vulnerability of legal entities in Canada (including corporations and trusts) to be “very high,” as a direct consequence of the ease with which they can be created and used to conceal beneficial ownership and thus facilitate the disguise and conversion of illicit proceeds.<sup>17</sup> Graham Barrow, a specialist in identifying corporate ownership structures used in laundromat schemes, testified that he was able to identify, using the UK's publicly accessible beneficial ownership registry, a considerable number of Canadian legal entities – alongside those from Dominica, Seychelles, Marshall Islands, Nevis, and other traditional “secrecy” jurisdictions – combining to form highly complex and opaque control structures directly associated with global money laundering schemes.<sup>18</sup>

In its own extensive studies of the issue, the Financial Action Task Force categorizes the techniques used by criminals to obscure beneficial ownership into three broad methods:

1. **generating complex ownership and control structures** through the use of legal persons and legal arrangements, particularly when established across multiple jurisdictions;
2. **using individuals and financial instruments to obscure the relationship between the beneficial owner and the asset**, including bearer shares, nominees, and professional intermediaries; and
3. **falsifying activities** through the use of false loans, false invoices, and misleading naming conventions.<sup>19</sup>

Despite the diversity of these methods and techniques, they are all enabled by and largely dependent on one thing: anonymity. It is the ease with which criminals can conceal their true ownership control behind a web of corporate and other legal contrivances – which otherwise exist in “plain sight” – that is the root of the problem. It is for this reason that the former deputy director of FINTRAC, Denis Meunier, has described corporate anonymity as the money launderer's “secret sauce.”<sup>20</sup> Were this anonymity removed, the façade of legitimacy could be peeled back to reveal the real-

16 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada 2015* (Ottawa: 2015).

17 Ibid, p 32.

18 Evidence of G. Barrow, Transcript, December 2, 2020, pp 68–69. See also Exhibit 314, Canadian Entities Involved in Global Laundromat Style Company Formations. A report released after the conclusion of the Commission's hearings similarly accessed the United Kingdom's publicly accessible beneficial ownership registry to identify Canadian legal entities used in suspicious corporate structures: Transparency International Canada, *Snow-washing, Inc: How Canada is Marketed Abroad as a Secrecy Jurisdiction* (2022), online: [https://www.taxfairness.ca/sites/default/files/resource/2022-03-16\\_report\\_-\\_snow-washing-inc.pdf](https://www.taxfairness.ca/sites/default/files/resource/2022-03-16_report_-_snow-washing-inc.pdf).

19 Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 25–26.

20 See Denis Meunier, *Hidden Beneficial Ownership and Control: Canada as a Pawn in the Global Game of Money Laundering* (Toronto: CD Howe Institute, 2018), cited in Exhibit 6, p 95, footnote 291, and available online: [https://www.cdhowe.org/sites/default/files/2021-12/Final%20for%20advance%20release%20Commentary\\_519\\_0.pdf](https://www.cdhowe.org/sites/default/files/2021-12/Final%20for%20advance%20release%20Commentary_519_0.pdf).

world criminal ownership and control present throughout the money laundering process. As it stands now, law enforcement is often frustrated in attempts to unravel the true identities behind corporate and other legal entities, particularly those that have complex, multilayered ownership and control structures spanning multiple jurisdictions.<sup>21</sup> The consequence is that vast, often impenetrable shadows are cast across our economies – shadows in which criminals are able to hide and thrive.

There has been some debate in the evidence and submissions before me as to whether anonymity is a legitimate feature of corporate personhood. For example, Mr. Bullough opined that corporations are essentially a form of insurance through which society communicates to businesspeople that if they make an investment that will grow the economy to the benefit of all, society will insure the risk through limited liability. For that reason, Mr. Bullough's view was that it was "absurd that a company can be anonymous."<sup>22</sup> Similarly, Mora Johnson, an Ottawa-based lawyer with expertise in responsible business practice, testified that there is no principled justification for the anonymity of companies; "it's a fundamental policy choice to displace risks and to alter risks in the free market."<sup>23</sup> Chris Taggart, executive director of Transparency International Canada, described the benefits that individuals receive from incorporation and the resultant anonymity as follows:

[W]hat's happening is when somebody creates one of these legal constructs, they create a legal person ... who can act on their behalf ... [T]hat person can hold assets; it can owe money; it can employ people; it can enter into contracts on their behalf; it can even break the law. So, the owners get the benefit from this proxy person, but they don't get any of the downsides ... [T]hey get the money, they get the activities, they get the influence, but they ... don't get hit by losses and they don't go to jail if the company has broken the law in most cases.

And so ... this proxy for the owner, which is ... almost like an avatar or someone they can control by remote control ... it doesn't just do this in the jurisdiction where the owner's based and where the company's incorporated. It can do this anywhere in the world. So you have this sort of ... remote-control person that can go off and do all sorts of things, can get the benefits and even if it's caught functionally, mostly ... the recourse is the assets of that local company and not to the people that are behind them.

And so this is a tremendously powerful thing ... [and you] can have companies controlling companies controlling companies. You can have them diverting their control. You can ... make this incredibly complex. ...

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21 Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 27.

22 Evidence of O. Bullough, Transcript, June 1, 2020, pp 59-60; see also Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020), p 7; Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 3.

23 Evidence of M. Johnson, Transcript, November 30, 2020, p 27.

[For example, a] Russian hacker or something controlling a computer in the Seychelles that controls a computer in the Cayman Islands that controls a computer in Nevada that controls a computer in British Columbia and then hacks somebody's bank account ... and they're using all of these to obfuscate it. And of course ... by the time ... that crime becomes visible, the network's gone or functionally it's gone. The money's gone. You can't get back at that person.<sup>24</sup>

On the other side, the British Columbia Civil Liberties Association highlighted the impact on privacy that abolishment of anonymity would entail. These privacy impacts would be felt by both the corporation itself and the individual beneficial owners. In respect of the latter, the impact would be felt on privacy interests in respect of financial information, and also in respect of sensitive personal information that might be made public such as names, aliases, birth dates, citizenship, addresses, and status as a politically exposed person. The BC Civil Liberties Association raised a further concern that making such information public gives rise to a risk of identity theft, fraud, and harassment.<sup>25</sup>

Having considered all of the evidence and submissions before me, I have concluded that there are strong and compelling reasons to require disclosure of corporate beneficial ownership, and little in the way of legitimate rationale for general corporate anonymity. I do accept that there are legitimate concerns about privacy that may flow from abolishing anonymity. However, as I explain in Chapter 24, these risks and impacts can and should be addressed by targeted exemptions from openness, rather than a general rule of anonymity.

For decades, there have been efforts internationally that focused on reducing the anonymity of corporate and other legal vehicles by identifying those behind them. Those efforts initially focused on the **disclosure** of beneficial ownership information, with the goal of making that information ultimately available to law enforcement and other authorities. More recently, there has been a growing view that such efforts have had limited success in preventing the misuse of legal entities and that something more is required – beneficial ownership **transparency** – through some form of government-maintained centralized registry. This shift is reflected in the increasing number of jurisdictions that either have adopted such transparency measures or are moving to do so.

I describe the evolution and current state of these efforts to tackle corporate anonymity, both internationally and in Canada, below. In light of these developments, I am of the opinion that there is no longer a credible question as to whether or not British Columbia should move forward toward implementing or participating in a beneficial ownership transparency registry. Instead, the key policy questions that I see as now front and centre are the following:

- Given the strong federal steps that are being developed now, how can the Province of British Columbia best facilitate and support an effective beneficial ownership registry?

<sup>24</sup> Evidence of C. Taggart, Transcript, November 30, 2020, pp 29–32.

<sup>25</sup> Closing submissions, BC Civil Liberties Association, paras 80–88.

The Province’s efforts must be coordinated and harmonized with the approach being taken federally, as well as by other provincial and territorial partners.

- What features should such a regime incorporate to be most effective, while balancing important privacy and other rights?

British Columbia, as a jurisdiction that is starting to address corporate ownership transparency later than some other jurisdictions globally, should learn and take guidance from the experiences of jurisdictions such as the United Kingdom, which were more proactive in this area. That said, the first question, which is focused on coordination within Canada, raises challenges that are largely unique to Canada’s federated system.

## **International Efforts to Improve Beneficial Ownership Disclosure**

In 1989, Canada joined the other members of the G7 in establishing the Financial Action Task Force, the international community’s response to the growing problems of money laundering and terrorist financing.<sup>26</sup> The next year, FATF published its 40 recommendations,<sup>27</sup> which laid out the measures that participating countries should implement.

The recommendations have been revised several times over the years, as more was learned about money laundering techniques and effective measures to combat money laundering. In 2003, FATF added two recommendations specifically directed at addressing the need for the disclosure of beneficial ownership information of corporations<sup>28</sup> and trusts,<sup>29</sup> and making that information available to law enforcement and other competent authorities.

Recommendation 24, which addressed corporations, read, in relevant part (from its introduction in 2003, until its revision in March 2022):

### **Transparency and beneficial ownership of legal persons**

... Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities ...

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<sup>26</sup> See Chapter 6 for a more detailed discussion of FATF and its recommendations.

<sup>27</sup> Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [FATF Recommendations]. The 40 recommendations are discussed in more detail in Chapter 6 of this Report.

<sup>28</sup> Corporations are referred to as “legal persons” by FATF. When first introduced in 2003, this was Recommendation 33: see FATF, *The Forty Recommendations* (Paris: FATF, 2003), p 9, online: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>.

<sup>29</sup> Trusts and similar arrangements are referred to as “legal arrangements” by the FATF. When first introduced in 2003, this was Recommendation 34: *ibid.*

Recommendation 25 created a parallel expectation for the “adequate, accurate, and timely” disclosure of beneficial ownership information relating to trusts. Other recommendations set out expectations that financial institutions and other regulated entities identify and take reasonable steps to verify the beneficial ownership of their corporate clients as part of their customer due diligence obligations.<sup>30</sup>

FATF defined a “beneficial owner” as follows:

Beneficial owners refers to the natural person(s) who ultimately own or controls a legal entity and/or the natural person on whose behalf a transaction is conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership control is exercised through a chain of ownership or by means of control other than direct control.<sup>31</sup>

Compliance with Recommendations 24 and 25 (collectively, the “FATF Standards”) is part of FATF’s peer-based mutual evaluation process. Starting in 2014, FATF added to these evaluations an assessment of the overall effectiveness of a country’s compliance with the recommendations (graded at either a “low,” “moderate,” or “substantial” level).<sup>32</sup>

Significantly, until the revisions to Recommendation 24 were approved in March 2022, the long-standing FATF Standards did not require beneficial ownership information to be stored or made accessible through any form of government-maintained registry, whether publicly accessible or otherwise. Instead, the FATF Standards could be satisfied in a variety of ways, including by companies collecting and holding up-to-date beneficial ownership information in their own records, which would then be theoretically accessible by law enforcement and other “competent authorities.”<sup>33</sup> This approach, which effectively requires authorities to attend at a corporation’s records office to access the information, is generally referred to as **beneficial ownership disclosure**. Such disclosure is to be contrasted with more recent efforts to require that beneficial ownership and control information be posted on a government-maintained registry, with varying degrees of public access – a model generally referred to as **beneficial ownership transparency**.<sup>34</sup>

<sup>30</sup> See FATF Recommendations 10 and 22.

<sup>31</sup> FATF, *Guidance on Transparency and Beneficial Ownership*, (Paris: FATF, 2014), p 8, online: <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

<sup>32</sup> Immediate outcome 5 states: “Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments”: Exhibit 4: Overview Report: Financial Action Task Force, Appendix F, FATF, *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (Paris: FATF, 2019), p 110.

<sup>33</sup> *Ibid.*

<sup>34</sup> Evidence of T. Law, Transcript, November 27, 2020, p 17.

The original FATF Standards served as a reference point for the establishment of other regional bodies’ standards and approaches, which have focused on disclosure as opposed to transparency. In 2014, the G20 added political impetus to beneficial ownership disclosure by incorporating the FATF Standards into a set of “High Level Principles on Beneficial Ownership Transparency” aimed at tackling international tax evasion and corruption.<sup>35</sup>

As the Financial Action Task Force has itself acknowledged, most jurisdictions have found it “challenging” to implement the FATF Standards to achieve a satisfactory level of transparency around the beneficial ownership of legal persons.<sup>36</sup> Further, even when a jurisdiction has technically complied with the standards, that has not guaranteed effectiveness in terms of actually preventing the misuse of legal structures and arrangements. As of January 2019, of the 68 countries that had been evaluated in FATF’s fourth-round mutual evaluations, only eight had achieved “substantial levels” of effectiveness, requiring moderate improvements; 32 had achieved “moderate levels,” requiring major improvements; and 28 – including Canada – were assessed to have “low levels” of effectiveness, requiring fundamental improvements. No country has yet received a “high level” rating.<sup>37</sup>

I heard considerable evidence about Canada’s poor record in relation to beneficial ownership transparency. Canada is one of those jurisdictions that has consistently struggled to achieve either technical compliance with the FATF Standards or a satisfactory level of effectiveness in preventing the misuse of legal persons and arrangements. As noted, in its most recent mutual evaluation of Canada in 2016, FATF assessed Canada as having only a “low level” of overall effectiveness in preventing the misuse of corporate vehicles, requiring fundamental improvements.<sup>38</sup> The evaluators also rated Canada as only “partially compliant” with Recommendation 24 and “non-compliant” with Recommendation 25.<sup>39</sup> Other key findings were that Canadian legal entities were at “high risk of misuse” for money laundering, that mitigating measures were “insufficient,” and that it was difficult for law enforcement to obtain beneficial ownership information on corporations and even more difficult with respect to trusts.<sup>40</sup> There was no improvement in any of the above assessments as of FATF’s most recent follow-up report in October 2021.<sup>41</sup>

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35 Exhibit 272, Justine Davila, Michael Barron, and Tim Law, *Towards a Global Norm of Beneficial Ownership – A Scoping Study on a Strategic Approach to Achieving a Global Norm* (UK: Adam Smith International, March 2019) [Beneficial Ownership Scoping Study], p 14.

36 Exhibit 274, FATF Best Practices on Beneficial Ownership for Legal Persons (October 2019), p 7.

37 Exhibit 272, Beneficial Ownership Scoping Study, p 12. See also FATF’s Consolidated Assessment Ratings for numbers updated to March 2022, online: <https://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf>. Of note, no country has yet received a “high level” rating, and Canada maintains a “low level” of effectiveness.

38 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 106, para 295.

39 Ibid, pp 168–70.

40 Ibid, p 101.

41 Exhibit 1061, FATF, *1st Regular Follow-Up Report & Technical Compliance Re-Rating: Canada* (October 2021), p 6.

As a result of two Transparency International Canada reviews in 2015 and 2017, James Cohen, executive director of Transparency International Canada, testified that “while some of our peers [i.e., other countries] had managed to move up the ladder to a better framework, Canada was left in the back as a laggard with South Korea, maintaining a weak framework for beneficial ownership transparency.”<sup>42</sup> He shared with me his view that the misuse of corporate legal structures is

a pretty serious problem in Canada, and I think this has come to a head through the term “snow-washing” ... Intermediaries overseas were essentially advertising Canada as an easy place to hide dirty money ... The really critical factor is our weak beneficial ownership regime in Canada ... Intermediaries would say to their clients, bring your dirty money to Canada; it will be cleaned like the pure white snow, hence “snow-washing.”<sup>43</sup>

He added that “[a]s we become the laggards internationally, we become the easy targets ... for the crooks who want to place their funds.”<sup>44</sup>

Despite this, I recognize that there have been important steps taken since 2016, both federally and provincially. I discuss those actions below, in the context of the current state of beneficial ownership transparency in Canada and British Columbia.

## The Global Shift Toward Corporate Transparency

There has been a global shift toward beneficial ownership transparency, driven by the recognition that mere technical compliance with the FATF Standards is ineffective. As if to underline that point, the FATF updated Recommendation 24 in early March 2022 to require some form of government-maintained registry or “alternative mechanism”.

Although the FATF Standards introduced in 2003 have set the global norm for beneficial ownership disclosure for almost two decades, I heard that recognition of the limited progress on effectiveness – and revelations including the Panama Papers, global laundromats, and other notable examples of financial wrongdoing facilitated by corporate secrecy – have driven a growing number of jurisdictions to move beyond those minimum standards and toward implementing beneficial ownership transparency systems.<sup>45</sup>

Michael Barron and Timothy Law, two UK-based consultants specializing in beneficial ownership transparency, and co-authors along with Justine Davila of a study on the topic for the United Kingdom government, testified about this growing global shift towards beneficial ownership transparency. In their testimony and written report, Messrs. Barron and Law detailed how an increasing cohort of countries and

<sup>42</sup> Evidence of J. Cohen, Transcript, November 30, 2020, p 11.

<sup>43</sup> Ibid, pp 9–10.

<sup>44</sup> Ibid, p 37; see also Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 7.

<sup>45</sup> Evidence of J. Cohen, Transcript, November 30, 2020, pp 9–10.

international bodies have been moving beyond beneficial ownership disclosure, and either establishing publicly accessible beneficial ownership registries or laying the groundwork to do so.<sup>46</sup>

While it is beyond the scope of this Report to summarize all of the jurisdictions and international bodies that have moved in this direction, I highlight some of the most significant developments below:

- **United Kingdom:** in 2016, the United Kingdom became the first country to establish a publicly accessible beneficial ownership transparency registry through the creation of its register of Persons of Significant Control (PSC), which is housed within the Companies House, the government agency in which all corporate records are maintained.<sup>47</sup> There is also a registry for partnerships,<sup>48</sup> and a new register for foreign beneficial ownership of real estate is planned.<sup>49</sup>
- **European Union:** the European Union’s Fifth Anti-Money Laundering Directive, which came into force in July 2018, introduced a requirement that all member states create publicly accessible and interconnected registries of corporate beneficial ownership by 2020. Although all European Union members have since established central registries, only a small number have satisfied their commitment to make those registries public.<sup>50</sup>
- **United States:** on January 1, 2021, the United States Congress passed the *Corporate Transparency Act*, creating beneficial ownership disclosure requirements for most corporate entities formed or operating in the United States, which is then reported to the Financial Crimes Enforcement Network (FinCEN) and accessible by government authorities (but not the public).<sup>51</sup>
- **Extractive Industries Transparency Initiative:** in 2016, the Extractive Industries Transparency Initiative adopted a standard requiring that its 51 implementing countries request, by 2020, that companies bidding for and operating licences in the extractive sector collect and publish beneficial ownership information through a central public registry.<sup>52</sup>

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46 Evidence of M. Barron and T. Law, Transcript, November 27, 2020; Exhibit 272, Beneficial Ownership Scoping Study.

47 Exhibit 277, Global Witness, *Learning the Lessons from the UK’s Public Beneficial Ownership Register* (October 2017), p 3, footnote 9.

48 Evidence of M. Barron, Transcript November 27 2020, p 135.

49 Ibid, pp 64, 126. It appears that this bill has been fast-tracked following the Russian invasion of Ukraine in 2022: Andy Bruce, Patrick Plant, and Tracey Kennedy, “New Register of Beneficial Owners of Overseas Entities Owning UK Property” (March 8, 2022), online: <https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2022/march/08/new-register-of-beneficial-owners-of-overseas-entities-owning-uk-property>.

50 Exhibit 272, Beneficial Ownership Scoping Study, pp 17–18.

51 Mayling C. Blanco and Robert J. Kovacev, “Corporate Transparency Act: New Beneficial Ownership Reporting Requirements for All Entities with US Operations” (January 2021), online: <https://www.nortonrosefulbright.com/en/knowledge/publications/f99c2d40/corporate-transparency-act>

52 Exhibit 272, Beneficial Ownership Scoping Study, p 14.

- **London Anti-Corruption Summit:** in 2016, eight countries (Afghanistan, France, Ghana, Kenya, the Netherlands, Nigeria, Tanzania, and Ukraine) made explicit commitments to establish public central beneficial ownership registries.<sup>53</sup>
- **Open Government Partnership:** as of March 2022, 45 countries have, through the Open Government Partnership (a multilateral initiative comprised of national and sub-national governments and civil society organizations), committed to implement or explore beneficial ownership transparency in their Open Government Partnership Action Plans.<sup>54</sup> As part of its own 2018–2020 Open Government Partnership Action Plan, Canada committed to requiring that federal corporations hold beneficial ownership information and to engaging with provincial, territorial, and other key stakeholders to improve access to beneficial ownership information.<sup>55</sup>

Messrs. Barron and Law observed, that by the time their report was published in 2019, even FATF officials had acknowledged that the “debate ha[d] moved on” and that the next periodic update to the FATF Standards in 2022 would provide “an important opportunity to align the ... Standards with emerging international practice on greater transparency.”<sup>56</sup>

Indeed, as Messrs. Barron and Law predicted, on March 4, 2022, following a two-year review and public consultation, FATF announced new amendments to Recommendation 24 and its accompanying interpretive note to “significantly strengthen the requirements for beneficial ownership transparency globally, while retaining a degree of flexibility for individual countries to go further in refining individual regimes.”<sup>57</sup> FATF adds that it expects “all countries to take concrete steps to implement these new standards promptly, and to determine the appropriate sequence and timeframe for implementation at national level.”<sup>58</sup>

The revised recommendation now states, in key part:

Countries should ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed *rapidly and efficiently* by competent authorities, *through either a register of beneficial ownership or an alternative mechanism.* [Emphasis added.]<sup>59</sup>

53 Exhibit 272, Beneficial Ownership Scoping Study, p 14.

54 Open Government Partnership, “Beneficial Ownership,” online: <https://www.opengovpartnership.org/policy-area/beneficial-ownership/>.

55 Exhibit 273, *Canada’s 2018–2020 National Action Plan on Open Government* (2018).

56 Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020).

57 FATF, Public Statement on Revisions to R. 24 (Paris: FATF, March 4, 2022), online: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/r24-statement-march-2022.html>.

58 Ibid.

59 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, March 2022), online: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>.

FATF has not elaborated on what “alternative mechanism” might meet the new standard of rapid and efficient access aside from a centrally maintained registry. I am not aware of any alternative models that have done so. In any event, it is clear to me that beneficial ownership *disclosure* has proven ineffective, and the goalposts have shifted to now require some form of beneficial ownership *transparency*.

I turn now to consider the current state of beneficial ownership transparency in Canada, including recent steps toward greater transparency.

## **Current State of Beneficial Ownership Transparency in Canada**

At present, there is little transparency in the ownership of corporations, trusts, and limited partnerships. In what follows, I describe the current measures in place, before turning to recent steps to improve this transparency.

### **Corporations**

Canada’s federated nature means that corporations can be created and regulated federally under the *Canada Business Corporations Act*, RSC 1985, c C-44, or in any one of Canada’s provinces or territories, each with its own corporate laws and registries.<sup>60</sup> All Canadian jurisdictions require that privately held companies be registered and that they record basic shareholder and director information in their own corporate records (some of which is generally available online or by request through that jurisdiction’s corporate registry); however, until very recently, no Canadian jurisdiction has required corporations to collect, maintain, or report their beneficial ownership information. Notwithstanding significant steps taken by the federal government and certain provinces to begin requiring companies to obtain and hold up-to-date beneficial ownership information in their own records, to which I return below, no jurisdiction in Canada has yet established a beneficial ownership registry, publicly accessible or otherwise.<sup>61</sup>

In the absence of either a central registry, or even an obligation for corporations to hold beneficial ownership information in their own records, Canada has generally relied on what FATF calls “existing information” to determine a legal entity’s beneficial ownership “if and as needed.”<sup>62</sup> “Existing information” is a reference to the information that is collected by financial institutions and other designated entities as a part of their know-your-client obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*), which include an obligation to collect and take steps to confirm the beneficial ownership information of their corporate and

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60 In British Columbia, the applicable statute is the *Business Corporations Act*, SBC 2002, c 57.

61 For a fuller discussion of how things currently operate in Canada, see the detailed discussion in Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, pp 162–168.

62 Ibid, p 164.

trust clients. Once collected, this information is then theoretically available to law enforcement through production orders. Prior to June 2021, these obligations applied only to specific regulated entities, including banks, securities dealers, and money services businesses; however, they have now been expanded to other designated non-financial services businesses and professions.<sup>63</sup> As I explain in Chapter 28, lawyers also collect this information in some cases, although they do so pursuant to regulation by the Law Society of British Columbia.

Even with the newly expanded scope of these know-your-customer obligations, each entity must attempt to obtain and verify the ownership information on its own, and the information is not verified, centrally reported, cross-referenced, or readily accessible.<sup>64</sup> This presents a challenge for law enforcement, which must first link a specific financial institution to an individual corporation under investigation, issue a production order, and then trust that the information that has been collected regarding the ultimate control or ownership of the entity is accurate.<sup>65</sup> This is a slow and inefficient process. Moreover, relying on such a system means there is no ability to search effectively for common ownership and control by the same beneficial owners across multiple corporations, identify the red flags often associated with criminally controlled corporate structures, or otherwise identify the complex webs of indirect ownership and control employed by even moderately sophisticated money launderers. As Mr. Barrow testified, it is often the corporate structures themselves revealed through interrogation of the registry that will lead to suspicion of particular entities rather than the reverse.<sup>66</sup>

As FATF evaluators concluded in their 2016 mutual evaluation of Canada, “deficiencies with regards to the collection and availability of full and updated beneficial ownership information remain and timely access by law enforcement authorities to such information is not guaranteed in all cases.”<sup>67</sup> The evaluators specifically noted the challenge this has posed to Canadian law enforcement agencies, which are either incapable of, or dissuaded from, unravelling complex ownership structures despite the significant risk they pose:

[Law enforcement agencies] have successfully identified the beneficial owners in limited instances only. Despite corporate vehicles and trusts posing a major [money laundering] and [terrorist financing] risk in Canada, [law enforcement agencies] do not investigate many cases in which legal entities or trusts played a prominent role or that involved complex corporate elements or foreign ownership or control aspects.<sup>68</sup>

63 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, s 138.

64 Evidence of P. Dent, Transcript, November 30, 2020, pp 47, 50–51.

65 Evidence of J. Primeau, Transcript, December 1, 2020, pp 76–77.

66 Evidence of G. Barrow, Transcript, December 2, 2020, p 77.

67 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 165.

68 *Ibid*, pp 8, 105.

Given what I understand to be the prevalence of complex ownership and control structures in money laundering schemes, I see the inability of law enforcement to effectively and efficiently investigate them to be a serious problem that must be remedied. This may be partly a problem of insufficient law enforcement capacity, discussed at greater length in Chapters 39 and 40.<sup>69</sup> However, it is also a consequence of the ease with which criminals are able to establish anonymity through legal contrivances when compared to the considerable challenge to law enforcement in unravelling them. That asymmetry can only be addressed by the sorts of systemic improvements that fundamentally address that imbalance.

## Trusts

In many ways, trusts in Canada are even more opaque than corporations.<sup>70</sup> There is no general requirement for trusts to be registered in Canada, although certain trusts are required to be registered in Quebec, and Canadian resident trusts and certain foreign-resident trusts are required to file information with the Canada Revenue Agency (CRA). Canadian trusts also have “global reach,” in that both Canadians and non-residents can establish Canadian trusts from within Canada or abroad.<sup>71</sup>

There are only two mechanisms by which information about non-registered trusts is available. First, there is the information obtained by financial institutions and other reporting entities when providing services to trust clients, which is collected pursuant to the same know-your-customer obligations under the *PCMLTFA* that apply when dealing with corporations. However, the adequacy and availability of that information suffers from flaws. It is not comprehensive, independently verified, or centrally collected, and – according to FATF evaluators – it is even *more* difficult to obtain for law enforcement than in the case of corporations.<sup>72</sup>

Second, there is the information that is collected by CRA about certain trusts. However, that information has limited coverage. As noted by FATF, the total number of trusts in Canada is “estimated in the millions,” but at least as of 2007, only 210,000 trusts filed tax returns with CRA.<sup>73</sup>

Trusts are useful to criminals for many of the same reasons as corporations. They are another means to separate legal and beneficial ownership, creating an additional layer of complexity that can prevent law enforcement from “exerting authority to unravel the true

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69 This is supported by the feedback from police forces and prosecutors that was in Canada’s fourth-round mutual evaluation, that “legal persons are hardly ever prosecuted for [money laundering] offenses, *mainly because of a shortage of adequate resources and expertise* (emphasis added)”: see Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation Report, p 53.

70 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 8. For a complete definition of trusts in Canada, see Canada Revenue Agency, “Trust Types and Codes,” online: <https://www.canada.ca/en/revenue-agency/services/tax/trust-administrators/types-trusts.html>.

71 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 16.

72 Ibid, p 8.

73 Ibid, p 28.

ownership structure.”<sup>74</sup> However, because trusts are generally more expensive and complex to set up and maintain than corporations, they may be less attractive in less sophisticated and profitable laundering operations.<sup>75</sup> In one study, FATF identified trusts being used in approximately one-quarter of the money laundering cases it examined, most often in combination with corporate structures.<sup>76</sup> However, the authors note the true prevalence of schemes involving trusts may be higher, as the use of trusts increases the difficulty in identifying beneficial owners to the point where they may remain undetected.<sup>77</sup>

The 2018 federal budget proposed significantly expanding trust reporting requirements to require all non-resident trusts that are currently required to file tax returns, as well as all express trusts resident in Canada (with some limited exceptions), to report beneficial ownership information to CRA on an annual basis, including the identity of all trustees, beneficiaries, and settlors of the trust, as well as individuals with the ability to exert control over trustee decisions. Although these new rules were expected to come into force in December 2021, CRA announced in January 2022 that implementation would be delayed pending the supporting legislation receiving Royal Assent.<sup>78</sup> Similarly, Quebec had intended to introduce its own requirements for trusts to report beneficial ownership information to Revenu Québec, but announced that it would delay those new rules until the parallel federal requirements came into force.<sup>79</sup> Notably, Quebec already required trusts created in that province to register if “operating a commercial enterprise,” which means carrying on some form of economic activity in order to make a profit.<sup>80</sup>

## Limited Partnerships

Limited partnerships do not seem to be a significant focus for FATF. However, I heard evidence that they have been involved in laundromat schemes<sup>81</sup> in the United

<sup>74</sup> See Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 34.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid, pp 33–34.

<sup>77</sup> Ibid, p 34.

<sup>78</sup> See Canada Revenue Agency, “Reporting Requirements for Trusts” (last updated February 14, 2022), online: <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/budget-2018-equality-growth-strong-middle-class/reporting-requirements-trusts.html>.

<sup>79</sup> See KPMG, “Quebec Also Delays Beneficial Ownership Reporting for Trusts” (February 2, 2022), online: <https://home.kpmg/ca/en/home/insights/2022/02/quebec-also-delays-beneficial-ownership-reporting.html>. See also Matias Milet, Mark Brender, and Ilana Ludwin, “Trust Beneficiary Reporting Deferred for One Year” (January 17, 2022), online: <https://www.osler.com/en/resources/regulations/2022/trust-beneficiary-reporting-deferred-for-one-year>.

<sup>80</sup> Revenu Québec, Definitions, “Trust Operating a Commercial Enterprise”, online: <https://www.revenuquebec.ca/en/definitions/trust-operating-a-commercial-enterprise/?refrq=businesses>.

<sup>81</sup> A laundromat in this context is “effectively a collection of entities that are utilized to clean money.” A laundromat scheme uses “potentially thousands of these entities that are highly multi-jurisdictional that are operated normally by the same people or very few number of persons to enable the obfuscation of the sources of the money so that when eventually it emerges back into the real economy, it is impossible to connect that money to its origins. And the reason why it’s a laundromat and not just not entity is that part of that process is ... commingling ... the mixing together of funds from lots of different sources so it’s impossible to tell where each came from through that process, so that when it comes out the other side, there is no direct line of sight back to its source”: Evidence of G. Barrow, Transcript, December 2, 2020, pp 12–13.

Kingdom.<sup>82</sup> In a report prepared for the Commission, Mr. Barrow notes that limited liability partnerships involved in such schemes had the following characteristics:

- Large numbers registered at the same, virtual address
- The use of corporate “designated members”<sup>83</sup> resident in offshore or secrecy locations
- Failing to declare a “person with significant control” or, when they do, it is either another legal entity or an anonymous individual, based often in a Central or Eastern European jurisdiction with no obvious internet presence and no previous experience of owning and running a business
- Filing either dormant accounts or very low levels of activity utilising templates that are consistent across a wide variety of similar [limited liability partnerships] and with commonalities of account signatories
- Little or no corporate internet presence<sup>84</sup>

Indeed, Mr. Barrow observed the use of *Canadian* limited partnerships in UK laundromat schemes. His report notes that with the introduction of the UK’s “person of significant control” registry, corporate service providers “had to become more creative in circumventing the transparency requirements whilst maintaining the use of UK entities which were, clearly, seen as being advantageous to money laundering operations” and turned to limited partnerships in Canada (and elsewhere).<sup>85</sup>

Transparency International similarly considers limited partnerships to pose risks in Canada:

[Limited partnerships (LPs)] have fewer reporting and disclosure requirements than most other entities in Canada, and unless they do business in Canada they need not engage with the tax authorities. They can also be established cheaply without any need for their owners or administrators to set foot in Canada or be represented by a Canadian. And crucially, although LPs are not considered legal persons in Canada, they can nevertheless be used to open bank accounts and conduct business transactions. These characteristics, and the cover of Canada’s international reputation, might present “unique business opportunities,” to anyone engaging in such jurisdictional arbitrage, as the advertisement

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82 Ibid, pp 74–75.

83 A “designated member” is the UK equivalent of a director: *ibid*, p 23.

84 Exhibit 314, Graham Barrow, “Canadian Entities Involved in Global Laundromat Style Formations 2020,” p 1.

85 *Ibid*, pp 2–3; Evidence of Graham Barrow, Transcript, December 2, 2020, pp 60–61.

below ambiguously suggests, but it also makes Canadian LPs particularly vulnerable to exploitation for transnational financial crime.<sup>86</sup>

Based on the foregoing, I am satisfied that limited partnerships are useful to criminals for many of the same reasons as corporations.

## **The Need for Transparency for Trusts and Limited Partnerships**

Although much of the recent attention and initiatives have focused on improving beneficial ownership transparency for corporations, it is important not to lose sight of the largely unmitigated money laundering risks associated with trusts and limited partnerships. This is particularly so given the tendency of money launderers to respond to increased vigilance in one area by shifting to another that is less guarded. I expect that if Canada and the provinces and territories focus their efforts only on improving the transparency of corporations, without eventually addressing the opacity of trusts and limited partnerships, there is a risk we will see their criminal exploitation expand.

With that in mind, I am in favour of the Province's approach, which involves obtaining public feedback on a potential government-maintained registry of trusts and limited partnerships,<sup>87</sup> drawing lessons from the Quebec experience and looking ahead to a future registry for trusts and limited partnerships (though I have not recommended that this step be taken immediately). If such a registry is implemented in British Columbia, it will require adequate consequences for non-compliance as well as careful consideration of appropriate exceptions for trusts that may pose little risk for misuse and involve greater expectations of privacy. Because of the unique privacy considerations associated with trusts in particular – especially those with a personal (often family) as opposed to commercial purpose – it may be preferable that any registry of trusts not be made publicly accessible; this question will require study and consultation.

## **First Steps Toward Greater Transparency In Canada**

After a long period in which it is fair to say Canada earned a deserved reputation as a laggard in beneficial ownership transparency, a number of significant steps have been undertaken over the past five years that, taken together, suggest a shared commitment on the part of federal, provincial, and territorial governments to begin to catch up on this issue.

In September 2016, shortly after the release of FATF's fourth mutual evaluation of Canada, the federal government convened the first meeting of the Federal, Provincial, Territorial Working Group on Improving Beneficial Ownership Transparency in

<sup>86</sup> Transparency International Canada, Snow-washing, Inc.: *How Canada is Marketed Abroad as a Secrecy Jurisdiction* (2022), p 12, online: [https://www.taxfairness.ca/sites/default/files/resource/2022-03-16\\_report\\_-\\_snow-washing-inc.pdf](https://www.taxfairness.ca/sites/default/files/resource/2022-03-16_report_-_snow-washing-inc.pdf).

<sup>87</sup> Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020), p 19.

Canada (FPT Working Group). In December 2017, the FPT Working Group produced its Agreement to Strengthen Beneficial Ownership Transparency,<sup>88</sup> which expressed the agreement in principle of all of the federal, provincial, and territorial ministers of finance to:

- seek to amend their respective corporate statutes to require corporations to hold up-to-date beneficial ownership information; and
- eliminate the use of bearer shares, with the aim to bring the necessary laws into force by July 1, 2019.<sup>89</sup>

Ministers also agreed to “continue existing work assessing potential mechanisms to enhance timely access by competent authorities to beneficial ownership information.”<sup>90</sup>

The federal discussion paper that accompanied the Agreement to Strengthen Beneficial Ownership Transparency proposed that action to improve beneficial ownership transparency in Canada be taken through a “phased approach.”<sup>91</sup> The first of these phases would involve “short term” actions by provinces, territories, and the federal government to require corporations to maintain beneficial ownership information in their own records, as well as the prohibition of bearer shares. If implemented, these first-phase measures would establish a minimum standard more consistent with FATF Recommendation 24 (at least as it stood before March 2022) but were acknowledged to fall significantly short of the beneficial *transparency* measures implemented by leading jurisdictions (and now effectively required by Recommendation 24).<sup>92</sup> Longer term, the FPT Working Group proposed to explore more robust options, such as the centralized collection and potential publication of beneficial ownership information in corporate registries.

## Action by the Federal Government

At the federal level, Bill C-25, which received Royal Assent on May 1, 2018, amended the *Canada Business Corporations Act* to prohibit the issuance of new bearer shares, warrants, options, or rights, and required corporations presented with bearer instruments to convert them into registered form.<sup>93</sup>

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88 Exhibit 304, Department of Finance Canada, Agreement to Strengthen Beneficial Ownership Transparency (July 2019).

89 Ibid.

90 See Exhibit 303, BC Ministry of Finance Briefing Document re Federal Proposal for Improving Beneficial Ownership Transparency in Canada (November 2017), pp 6–14.

91 I note that Exhibit 303, BC Ministry of Finance Briefing Document re Federal Proposal for Improving Beneficial Ownership Transparency in Canada (November 2017), indicates the “phased approach” was proposed in response to concerns raised by more reluctant provinces, which illustrates some of the challenge Canada faces in taking strong, concerted action in areas of shared jurisdiction.

92 Exhibit 303, BC Ministry of Finance Briefing Document re Federal Proposal for Improving Beneficial Ownership Transparency in Canada (November 2017).

93 Exhibit 414, Government Response to the 24th Report of the House of Commons Standing Committee on Finance, tabled November 8, 2018.

In fall 2018, the federal government passed Bill C-86, which amended the *Canada Business Corporations Act*, effective June 13, 2019, to require almost all federally incorporated companies – which make up roughly 10 percent of all Canadian companies – to obtain and hold beneficial ownership information of “individuals with significant control” in their own records, available on request by relevant authorities.<sup>94</sup> I discuss the requirements of the federal regime in greater length in Chapter 24.

In November 2018, the House of Commons Standing Committee on Finance recommended that Canada work with the provinces and territories to create a pan-Canadian beneficial ownership registry for all legal persons and entities.<sup>95</sup> By 2019, the federal government had taken preliminary steps to examine a potential beneficial ownership transparency regime. Mandate letters to the minister of finance and several other ministers directed them to look into a potential beneficial ownership registry, and in 2020, the federal government held public consultations to examine a publicly accessible registry and the need for harmonization across Canada.<sup>96</sup> Notably, the report on the feedback from the consultation stated that public access was “*not* considered by the majority of stakeholders as essential to achieving the policy objectives of combatting the misuse of corporations [emphasis added].”<sup>97</sup> However, as indicated below, despite that feedback, the federal government did commit to a publicly accessible registry.

On June 14, 2019, following a meeting in Vancouver to consider a national response to money laundering and terrorist financing, federal, provincial, and territorial governments issued a joint statement that reaffirmed their commitment to improving beneficial ownership transparency. The joint statement included an agreement “to cooperate on initiating consultations on making beneficial ownership information more transparent through initiatives such as aligning access through public registries, while respecting jurisdictional responsibilities with respect to corporations.”<sup>98</sup>

In April 2021, the federal government’s budget included an announcement of \$2.1 million over two years to build and implement a publicly accessible beneficial ownership registry by 2025 in order to better “catch those who attempt

94 Exhibit 414, Government Response to the 24th Report of the House of Commons Standing Committee on Finance, tabled November 8, 2018.

95 Exhibit 436, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward, Report of the Standing Committee on Finance* (November 2018), pp 1, 28–29.

96 Evidence of J. Cohen, Transcript, November 30, 2020, pp 38–40. See also the consultation paper prepared by the federal government: Canada, *Consultation Paper: Strengthening Corporate Beneficial Ownership in Canada* (February 2020), online: [https://www.ic.gc.ca/eic/site/142.nsf/eng/h\\_00000.html](https://www.ic.gc.ca/eic/site/142.nsf/eng/h_00000.html). The feedback from that consultation is summarized in *Public Consultations on Strengthening Corporate Beneficial Ownership Transparency in Canada: What We Heard* (April 2021), online: <https://www.ic.gc.ca/eic/site/142.nsf/eng/00002.html>.

97 *Public Consultations on Strengthening Corporate Beneficial Ownership Transparency in Canada: What We Heard* (April 2021), online: <https://www.ic.gc.ca/eic/site/142.nsf/eng/00002.html>.

98 Joint Statement – Federal, Provincial and Territorial Governments Working Together to Combat Money Laundering and Terrorist Financing in Canada (June 2019), online: <https://www.canada.ca/en/departement-finance/news/2019/06/joint-statement-federal-provincial-and-territorial-governments-working-together-to-combat-money-laundering-and-terrorist-financing-in-canada.html>.

to launder money, evade taxes, or commit other complex financial crimes.”<sup>99</sup> This was the first specific commitment to a publicly accessible registry made by any Canadian jurisdiction.

Regulatory amendments that came into force on June 1, 2021, expanded the application of beneficial ownership measures to cover all *PCMLTFA* reporting entities, including casinos, real estate professionals, and other non-financial businesses and professions.<sup>100</sup> Bill C-97, which received Royal Assent on June 21, 2019, requires a corporation to provide a copy of its Significant Control Register to investigative bodies, if the investigative body can establish reasonable grounds to suspect that certain offences have been committed by the corporation, by individuals with significant control over the corporation, or by related entities.<sup>101</sup>

On March 22, 2022, the federal government announced that it would implement “a publicly accessible beneficial ownership registry by the end of 2023,”<sup>102</sup> accelerating its original timeline by two years.

In combination with the expansion of know-your-customer obligations under the *PCMLTFA* to require all regulated entities to obtain and take steps to confirm beneficial ownership information, these steps toward transparency indicate an encouraging level of commitment and action on the part of the federal government to meaningfully address the issue of corporate anonymity. However, in order for these efforts to be ultimately effective, federal action must be sustained and, critically, matched by and harmonized with similar actions on the part of provincial and territorial counterparts.

## Action in British Columbia

In May 2019, two months before the deadline agreed to in the joint statement by the federal, provincial, and territorial governments, the Government of British Columbia delivered on its commitment under the Agreement to Strengthen Beneficial Ownership Transparency by passing Bill 24, the *Business Corporations Amendment Act, 2019*. In doing so, it became the first province to require corporations to keep records of their beneficial owners in their corporate records office, to be accessible by law enforcement, tax authorities, and designated regulators. (The amendments also fully eliminated bearer shares.)

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99 See Federal Budget 2021, online: <https://www.budget.gc.ca/2021/report-rapport/p4-en.html?wbdisable=true>.

100 *PCMLTF Regulations*, s 138, as amended by *Regulations Amending the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2019*, SOR/2020-112, s 5.

101 Budget Implementation Act 2019, No 1, SC 2019, c 29, s 103; *Canada Business Corporations Act*, RSC 1985, c C-44, s 21.31, Schedule, ss 1(z.052)–1(z.054) and 1(z.095).

102 Prime Minister of Canada, “Delivering for Canadians Now” (March 22, 2022), online: <https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now>.

The amendments make companies liable for knowingly authorizing, permitting, or acquiescing to:

- identifying an individual as a significant individual when they are not;
- excluding an individual who is a significant individual; and
- including or omitting information about a significant individual that makes the information provided false or misleading of any material fact.<sup>103</sup>

It is also offence for a company to:

- fail to maintain and update the register, and
- fail to notify individuals who have been added or removed from the register.<sup>104</sup>

Any director or officer of a corporation who authorizes, permits, or acquiesces to the commission of such offences or any shareholder who provides false or misleading information to a corporation may be held personally liable. Companies may be fined up to \$100,000 and individuals up to \$50,000.<sup>105</sup>

In the same year, the British Columbia Legislature passed the *Land Owner Transparency Act*, which the minister of finance described would be “the world’s first public registry of beneficial ownership in real estate.”<sup>106</sup> To date, the new Land Owner Transparency Registry has been created, but not yet populated with historic information (meaning that it shows beneficial ownership of real property for *new* transactions, but not for purchases or transactions before the registry was created). I note that legislating on beneficial ownership transparency in real estate matters was simpler than in corporate matters because registration of real estate is, constitutionally, a matter within exclusive provincial jurisdiction. Developing a transparency regime for corporations is more complex because of the need for interprovincial, national, and international consistency.

In early 2020, the Province initiated public consultations on beneficial ownership transparency supported by a consultation paper,<sup>107</sup> which generated the following feedback:

- overall support for a government registry of company beneficial ownership;
- low support for giving the public access to the registry;
- a desire by financial institution stakeholders to be able to access the registry to assist them in meeting their due diligence obligations under the *PCMTLFA*;

<sup>103</sup> *Business Corporations Act*, ss 426(4.1), 427.

<sup>104</sup> *Ibid*, s 426(4.1).

<sup>105</sup> *Ibid*, s 428(2.1).

<sup>106</sup> Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020), p 2.

<sup>107</sup> *Ibid*.

- opposition to imposing a filing fee for the beneficial ownership information, as yet another cost of compliance;
- support for the integration of beneficial ownership filings with the current corporate registry filings such as annual reports;
- support for harmonizing all registries across Canada with one-stop shopping;
- support for providing comprehensive guidance for filers in gathering required information; and
- acknowledgment that government has a responsibility to ensure that the beneficial ownership information in the registry is accurate and that, of all the groups involved in anti-money laundering activities, government is in the best position to ensure accuracy.<sup>108</sup>

## Action by Other Provinces

The majority of other Canadian jurisdictions have likewise amended their provincial corporations legislation and implemented requirements that corporations maintain a register of individuals with significant control over the corporation.<sup>109</sup> In January 2022, Ontario passed similar amendments, although these will not come into force until 2023.<sup>110</sup> Likewise, in March 2022, the New Brunswick government introduced a bill that, if passed, will introduce similar amendments.<sup>111</sup> I discuss these various legislative schemes in greater detail in Chapter 24. For now, I observe that Quebec's legislation is notable for going beyond its commitments under the 2017 *Agreement to Strengthen Beneficial Ownership Transparency* and going further than any other province towards transparency. Conversely, Alberta is notable for lack of action in furtherance of beneficial ownership transparency. If anything, Alberta appears to be moving in the opposite direction.<sup>112</sup>

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108 Exhibit 275, BC Ministry of Finance, Briefing Document – Company Beneficial Ownership Consultation – Summary (May 26, 2020).

109 *The Corporations Act*, CCSM c C225, ss 2.1, 21.1; *The Business Corporations Amendment Act*, 2020, SS 2020, c 1; *Corporations Act*, RSNL 1990, c C-36, ss 45.1-45.5; Bill No. 226, *Companies Act* (Amended), 2nd Sess, 63rd Assembly, 2020, online: [https://nslslegislature.ca/legc/bills/63rd\\_2nd/3rd\\_read/b226.htm](https://nslslegislature.ca/legc/bills/63rd_2nd/3rd_read/b226.htm); *Business Corporations Act*, RSPEI 1988, c B-6.01, ss 2.1, 28.1; Ontario has passed similar amendments although these will not come into force until 2023: *Business Corporations Act*, RSO 1990, c B.16, ss 140.2–140.4.

110 *Business Corporations Act*, RSO 1990, c B.16, ss 140.2–140.4.

111 Karissa Donkin, “Province Moves to Force Corporations to Reveal Who Controls Them,” *CBC News* (March 30, 2022), online: <https://www.cbc.ca/news/canada/new-brunswick/beneficial-ownership-legislation-nb-1.6401597>.

112 See, for example, Jenine Urquhart “New Anti-Money Laundering Legislation: Why Is Alberta So Slow on the Uptake?” *Law Society of Saskatchewan* (November 18, 2020), online: <https://www.lawsociety.sk.ca/saskatchewan-law-review-articles/new-anti-money-laundering-legislation-why-is-alberta-so-slow-on-the-uptake/>.

## Conclusion

The global trend away from disclosure and towards transparency is reflected most clearly by FATF's March 2022 revision to its standards, making a central beneficial ownership registry all but mandatory. Furthermore, five years ago, this Province – along with all of its federal, provincial, and territorial counterparts – committed to moving toward greater corporate transparency. Action has commenced on that commitment by the Province, the federal government, and some (but not all) provincial partners. The federal government and Quebec have signalled an intention to make their beneficial ownership registries public, which may result in other jurisdictions doing the same.

There is encouraging progress underway. There is support for beneficial corporate ownership transparency – both in this province and federally. I applaud and encourage this ongoing work. The key question for *this* province, in my view, is how it can best support the new national registry. In the next chapter, I draw on the evidence led before me and offer my views on key features the Province should advocate for in the new regime.

## Chapter 24

# Developing a Corporate Beneficial Ownership Registry

In this chapter I discuss a reform that holds great promise in the fight against money laundering, not just in British Columbia, but across Canada. The federal government has very recently taken encouraging steps toward a national and publicly accessible registry of corporate beneficial ownership. I urge the Province to do all it can to support this step and ensure the registry is designed and launched without delay.

The federal initiative offers the Province a unique opportunity to take the strong work it has already started, and transpose it to a national level. In light of the federal registry that is being created soon – by the end of 2023<sup>1</sup> – the key question for British Columbia is how best to support and promote an effective national beneficial ownership registry. To succeed, this registry should include corporate ownership information for federally incorporated companies *and* for those incorporated at the provincial or territorial level. Although British Columbia has already implemented and commenced consultations on a provincial registry,<sup>2</sup> given the recent federal commitment to launch a federal registry in a timely way, it now makes sense to dedicate energy to the federal initiative. The Province should not focus on a separate provincial registry; it should work with the federal government, and with other provinces and territories, to ensure that a truly effective registry is created. Such a registry will draw on research on best practices, and ultimately become a federally led (but pan-Canadian) database. Drawing on the evidence before me, I emphasize particular features that I believe should figure prominently in the design of the new registry, and that the Province should promote.

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1 Prime Minister of Canada, “Delivering for Canadians Now” (March 22, 2022), online: <https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now>.

2 Exhibit 55, BC Consultation on a Public Beneficial Ownership Registry, pp 1-2, 21.

## The Need for the National Corporate Beneficial Ownership Registry

In Chapter 23, I discussed the rationale for corporate beneficial ownership transparency, and I outlined the federal government’s commitment, announced in Ottawa’s 2021 budget, to establish a publicly accessible registry that would disclose the beneficial owners of companies. That initiative was initially on a longer timeline; Budget 2021 indicated it was to be in place by the end of 2025. But recently – in the context of public concern about the misuse of nominee and corporate ownership by Russian oligarchs amidst the Russian invasion of Ukraine<sup>3</sup> – the federal government has accelerated its commitment. It announced in March 2022 that the federal registry will now be in place before the end of 2023.<sup>4</sup>

At this point, the details as to the design of the federally led registry are not yet settled. They are under development. My expectation is that the registry will be pan-Canadian – meaning that it will be federally led, but will incorporate and include information about companies from across the nation. The Province of British Columbia should assert itself as an early and active proponent of the pan-Canadian registry. It can lead by example and inspire other provinces and territories to follow suit.

There is a growing international consensus among nations, and experts who focus on money laundering, in support of corporate beneficial ownership transparency. As I outlined in Chapter 23, the reasons for this are clear and compelling. Corporations have become a tool for obscurity, permitting criminals to hide behind corporate secrecy. The original historic *raison d’être* for companies was to limit liability, so that entrepreneurs could take business risks without wiping out their entire savings; instead the company would assume the risk and would be treated as a “legal person.” This “limited liability” rationale for companies remains a valid and legitimate principle. Canada (as with most countries) has made a policy choice that companies can engage in business, sign contracts, raise funds through investors and the stock market, hire people, and sell things. Equally, they can merge with other companies, get taken over, or go bankrupt. This is the nature of the legal personhood and limited liability that companies enjoy.

But in modern times, corporations and other legal persons have come to be widely used not merely to transact and limit liability, but for a very different purpose: to hide the real owners. Shielded from visibility – both to the public and to law enforcement and regulators – shady people can and do conduct shady transactions in anonymity. They can carry on in secrecy, using company names rather than the actual names of the people involved.

3 B. Shecter, “Hunt for Oligarch Assets Adds New Urgency to Canada’s Plan for Beneficial Ownership Registry,” *National Post* (April 4, 2022), online: <https://financialpost.com/fp-finance/hunt-for-oligarch-assets-adds-new-urgency-to-canadas-plan-for-beneficial-ownership-registry>; M.C. Oved, “Federal Government Promises Public Registry to Reveal Who’s Really Behind Canadian Companies,” *Toronto Star* (March 23, 2022), online: <https://www.thestar.com/news/canada/2022/03/23/federal-government-promises-public-registry-to-reveal-whos-really-behind-canadian-companies.html>.

4 Prime Minister of Canada, “Delivering for Canadians Now” (March 22, 2022), online: <https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now>.

This feature of companies has proven itself open to exploitation and misuse, as I noted in Chapter 23. Revelations have emerged through various leaks – such as the Panama Papers, Paradise Papers, and Pandora Papers – that illustrate how corporate vehicles have been employed to hold property and wealth, and conduct transactions, while obscuring who really owns or controls the company. The academic literature and the evidence before me establish in an unambiguous way, that this feature of companies and corporate legal vehicles is present in innumerable money laundering typologies.

To combat money laundering, it is vital that criminals, and those facilitating their conduct, cannot be permitted to exploit corporate vehicles to hide their identities. The time for corporate beneficial ownership transparency has come.

That being the case, the federal government’s announcement of a publicly accessible beneficial ownership registry is very good news. It signals an important development of particular relevance to the fight against money laundering.

In Chapter 23, I outlined steps being taken in this province to achieve openness with respect to beneficial ownership, most obviously in the Land Owner Transparency Registry, but also to work toward a provincial corporate beneficial ownership registry. Those efforts are to be commended, and indeed they have shown British Columbia to be a leader (within Canada) in this area.

Given the accelerated timeline of the federal initiative (and its endorsement of a public registry), it is my view that the best course for the Province at this stage is to focus its efforts on the pan-Canadian registry. I recommend that the Province do all it can to ensure that, before the end of 2023, a publicly accessible corporate beneficial ownership registry is in place. The Province should share its expertise and work co-operatively with the federal, provincial, and territorial governments to that end. The registry should be publicly accessible.

**Recommendation 52:** I recommend that the Province work with its federal, provincial, and territorial partners to ensure that, before the end of 2023, a publicly accessible pan-Canadian corporate beneficial ownership registry is in place.

I say this because, although there remains some logic behind a provincial registry (on its own), there is much greater logic in ensuring that the pan-Canadian registry is harmonized, effective, and national.

The Province of British Columbia has already put work into a corporate beneficial ownership registry. As noted, the Province has implemented a requirement that a BC private company must provide information about its beneficial owners, with that information held at the company’s records office (rather than a central registry).<sup>5</sup> It has

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5 Exhibit 55, BC Consultation on a Public Beneficial Ownership Registry, pp 1-2, 21.

developed expertise and experience – especially with respect to real estate ownership, with the Land Owner Transparency Registry (even though that initiative remains at a nascent stage). The Province has been a leader within Canada. As such, it can and should play a leadership role in the development of the national corporate beneficial ownership registry. The Province can draw on that expertise, and may rely on the analysis in this Report to advocate for the best design features for the registry.

## **The Need for Coordination**

I have emphasized the need for a strong, nationwide registry. Although there are different ways to accomplish it, in my view the registry should encompass beneficial ownership information from Canada, British Columbia, and ultimately all the provinces and territories. As is often the case in our confederation, compromise will be necessary. No province should get so hung up on a particular feature that it loses sight of the big picture: an operational pan-Canadian registry will be far more effective. Such a registry will permit users and the public a “one-stop shop” to obtain comprehensive information about who really owns or controls particular corporate vehicles.

There is a strong case for coordination as between the federal, provincial, and territorial governments. Canada’s federated system presents challenges to addressing beneficial ownership transparency for corporate and other legal structures. Each of the federal government, the provinces, and the territories has jurisdiction to regulate legal entities. Uniformity in such regulation is not constitutionally required. These challenges must be overcome. If any jurisdiction lags behind the others in its transparency efforts, it may be perceived as the weak link and become a target for criminality.

The Province will need to undertake additional work in order to support and improve the implementation of the new pan-Canadian registry. There will be an ongoing need for the Province to address details, design, and issues that arise as the federal initiative comes into being.

I turn now to the particular design features that the Province should advocate for in support of the federal registry.

## **Key Design Features for a Corporate Beneficial Ownership Registry**

From the evidence before me, I consider that there are certain components of an effective beneficial ownership registry that are vital to its success. In the remainder of this chapter, I examine design features for a public corporate beneficial ownership registry, in this sequence:

- what information the registry should contain;
- ensuring accurate and updated information;

- accuracy through strong enforcement and compliance;
- how much information is collected, and how much is shared;
- what types of entities should be included in the registry;
- what level of control or ownership is needed to be on the registry;
- the architecture of the new registry;
- costs and fees for the registry; and
- a commitment to ongoing review and improvement of the regime.

Of these features, I would emphasize the need for a strong compliance and enforcement regime to ensure the accuracy and comprehensiveness of the information in the registry.

## What Information Should the Registry Hold?

There is enormous variability when it comes to the kinds of information that can be held in the registry. Does it simply list names of people, or does it contain much more information about the person, his or her or their interest, their identifying information, and the like?

The federal statute, the *Canada Business Corporations Act*, RSC 1985, c C-44, requires that a federal company's records are to be held at its registered office (or another designated place) "a register of individuals with significant control over the corporation" (section 21.1(1)). The Act mandates the collection of information for each "individual with significant control" (the meaning of which I discuss below), such as:<sup>6</sup>

- their name, date of birth, and last known address;
- their jurisdiction of residence for tax purposes;
- when they became or stopped being an individual with significant control; and
- how it is that they are an individual with significant control (i.e., a description of their interests and rights in relation to the corporation);

The Act also requires the corporation to update this information to ensure accuracy and completeness, once a year (section 21.1(2)).

This sort of approach has been used in a number of provincial legislative schemes.<sup>7</sup>

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<sup>6</sup> *Canada Business Corporations Act*, s 21.1(1).

<sup>7</sup> See, for example, *The Business Corporations Act*, 2021, SS 2021, c 6, s 4-4; *The Corporations Act*, CCSM c C225, s 21.1; *Corporations Act*, RSNL 1990, c C-36, s 45.2; *Business Corporations Act*, RSPEI 1988, c B-6.01, s 28.1; see also *Business Corporations Act*, RSO 1990, c B.16, s 140.2 (not yet in force).

The British Columbia *Business Corporations Act*, SBC 2002, c 57, is worded slightly differently. Instead of recording the “the jurisdiction of residence for tax purposes of each individual with significant control,” the BC Act requires corporations to record whether they are a Canadian citizen or permanent resident (and if not, where they hold citizenship), and whether or not the person is considered “resident in Canada” for the purpose of Canadian tax law.<sup>8</sup>

These categories of information are all highly useful. A number of witnesses offered views as to other types of information that should be included in the register:

- a **unique personal identifier**: a randomly issued number, not based on any other identification number, to be publicly disclosed, in order to allow searchers to know quickly if they are dealing with the same person;<sup>9</sup>
- **occupation**;
- **politically exposed person status** (and/or head of international organization standard);<sup>10</sup> and
- nominee shareholders and directors must be required to **identify their nominators**.<sup>11</sup>

In my view there is an important distinction between the information that the registry *collects*, and what it *makes publicly available*. There is a need to constrain what can be made public. But as for the collection of information, it is my view that the registry should contain as much of the information noted above as it can, to ensure maximum effectiveness.

## Ensuring Accurate and Updated Information

A beneficial ownership registry is only as good as the quality of the information it contains. But some corporate registries, and even some beneficial ownership registries, accept the information the applicant offers, without any vetting or verification. For example, the United Kingdom’s People with Significant Control registry has been criticized for relying on self-reporting and not verifying the information submitted by companies. To illustrate how a lack of vetting can undermine the integrity of a beneficial ownership registry scheme, in February 2017

<sup>8</sup> *Business Corporations Act*, s 119.2(2).

<sup>9</sup> Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 13. The merits of this sort of unique identifier avoid the problem of familiar names (e.g., John Smith, Ryan Li) and also overcome different usages of the same name (Jon Smith, Jonathan Smith, J.E. Smith, etc.).

<sup>10</sup> Exhibit 272, Justine Davila, Michael Barron, and Tim Law, *Towards a Global Norm of Beneficial Ownership – A Scoping Study on a Strategic Approach to Achieving a Global Norm* (UK: Adam Smith International, March 2019) [Beneficial Ownership Scoping Study], p 29; Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 13.

<sup>11</sup> Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 7.

the United Kingdom’s Companies House identified 4,500 companies that had reported a company located in a tax haven as their beneficial owner.<sup>12</sup>

The UK Companies House registry has also achieved some notoriety for the lack of verification of the information submitted. Oliver Bullough emphasized this, pointing to directors such as “Xxx Stalin ... Kwan Xxx ... Xxx Raven ... Tracy Dean Xxx ... Jet Xxx; and finally Mr. Xxxx Xxx.”<sup>13</sup>

As noted, the *Canada Business Corporations Act* requires that the information be updated at least once during each financial year of the corporation and that the corporation take “reasonable steps” to ensure “the information in the register is accurate, complete, and up-to-date.”<sup>14</sup> Most jurisdictions in Canada have followed suit.<sup>15</sup>

Conventional corporate registries typically require corporations to file annual reports and to ensure accuracy at that time. But for those who regularly use public beneficial ownership registries (such as law enforcement, anti-money laundering agencies, businesses, and investigative journalists), they will need much more than an annual updating if the database is to be current. Most legislation in Canada requires that if the corporation becomes aware of any information that it is required to maintain in the register, it must record that information in the register within 15 days of becoming aware of it.<sup>16</sup> British Columbia’s legislation allows for 30 days to update the register.<sup>17</sup>

Most Canadian jurisdictions require that when the corporation requests the information to complete the register, the shareholders have an obligation to provide accurate and complete information and to respond as soon as possible.<sup>18</sup> Ontario’s legislation – which is yet to be brought into force – similarly requires that shareholders “shall, promptly and to the best of their knowledge, reply accurately and completely.”<sup>19</sup> Again, British Columbia’s legislation is worded slightly differently, requiring the shareholder to take “reasonable steps to compile the requested information” and to “promptly send to the private company the information that the shareholder was able to

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12 Exhibit 277, Global Witness, *Learning the Lessons from the UK’s Public Beneficial Ownership Register* (October 2017), pp 8–9.

13 Exhibit 14, Leon Edler, “How Britain Can Help You Get Away with Stealing Millions: A Five-Step Guide,” *The Guardian*, July 5, 2019, p 8; Evidence of O. Bullough, Transcript, June 1, 2020, pp 93–94.

14 *Canada Business Corporations Act*, s 21.1(2).

15 See, for example, *Business Corporations Act*, SBC 2002, c 57, s 119.3; *The Business Corporations Act*, 2021, SS 2021, c 6, s 4-4(2); *The Corporations Act*, CCSM c C225, s 21.1(2); *Corporations Act*, RSNL 1990, c C-36, s 45.2(2); *Business Corporations Act*, RSPEI 1988, c B-6.01, s 28.1(2); *Business Corporations Act*, RSO 1990, c B.16, s 140.2(3) (not yet in force).

16 See, for example, *Canada Business Corporations Act*, s 21.1(3); *The Business Corporations Act*, 2021, SS 2021, c 6, s 4-4(3); *The Corporations Act*, CCSM c C225, s 21.1(3); *Corporations Act*, RSNL 1990, c C-36, s 45.2(3); *Business Corporations Act*, RSPEI 1988, c B-6.01, s 28.1(3); *Business Corporations Act*, RSO 1990, c B.16, s 140.2(4) (not yet in force).

17 *Business Corporations Act*, SBC 2002, c 57, s 119.31(1).

18 See, for example, *Canada Business Corporations Act*, s 21.1(4); *The Corporations Act*, CCSM c C225, s 21.1(4); *Corporations Act*, RSNL 1990, c C-36, s 45.2(4); *Business Corporations Act*, RSPEI 1988, c B-6.01, s 28.1(4).

19 *Business Corporations Act*, RSO 1990, c B.16, s 140.2(5) (not yet in force).

compile.”<sup>20</sup> Likewise, Saskatchewan requires only that the shareholder “shall, to the best of the shareholder’s knowledge, provide that information to the corporation.”<sup>21</sup>

As I look ahead to a new pan-Canadian registry, it seems evident that these differences in approach as to the updating of information will need to be reconciled, either by being harmonized on a single standard or accounting for different rules for the provision of accurate and timely information about those who have significant control over the corporate vehicle.

But there are important steps that the registry would do well to emphasize in order to ensure the accuracy of beneficial ownership information. In the evidence before me, they were often discussed under two different but related concepts: validation and verification.

**Validation** of data refers to measures that prevent obvious errors, such as birthdates in 1668 or 40 different spellings for one citizenship (UK, English, Cornish, Breton, etc.). Equally, listing another company as the beneficial owner would not be possible with validated data. There are design features that go a good distance to permitting validation, and any person familiar with internet transactions will recognize them: drop-down menus for categories of information such as birth dates, addresses, countries, and the like.<sup>22</sup>

**Verification** of data refers to the kinds of measures that ensure the real-life accuracy of information in the database. There are several measures that a registry can adopt in order to identify potential inaccuracies or irregularities in the data, such as:

- making it easy for users to report suspected inaccurate data in registry;
- requiring employees of the beneficial ownership registry to follow up on every report; and
- requiring “reporting entities” that have due diligence obligations under Canada’s FINTRAC scheme to report to the beneficial ownership registry discrepancies between what is shown on the registry and what they have learned about their customers. This is a requirement under the European Union scheme.<sup>23</sup>

Meanwhile, **authentication** of information is a further important feature. This describes the kinds of steps that the new beneficial ownership registry may take to ensure that the information disclosed by the corporation is accurate:

- requiring that the person making the disclosure provide documentary proof of the facts disclosed (for instance, government photographic identification or proof of their ownership or control); and
- imposing a duty on the registry itself to vet the information disclosed by, for example, cross-checking the data against other government databases.

<sup>20</sup> *Business Corporations Act*, SBC 2002, c 57, s 119.21(2).

<sup>21</sup> *The Business Corporations Act*, 2021, SS 2021, c 6, s 4-4(4).

<sup>22</sup> Exhibit 277, Global Witness, *Learning the Lessons from the UK’s Public Beneficial Ownership Register* (October 2017), p 8.

<sup>23</sup> *Ibid*, pp 8–9.

As the Province supports the federal corporate beneficial ownership registry, there are important resources that provide insights on the best practices. In particular, the United Kingdom has devoted much attention to this.<sup>24</sup>

## Ensuring Accuracy: Strong Enforcement and Compliance

Having emphasized the need for accurate information in terms of validation, verification and authentication, I turn to a closely related issue. How can the registry ensure that it does not become a “garbage in, garbage out” database? If criminals or bad actors are dishonest, what can be done to stop them from simply lying in the information they submit to the registry? In my view, the answer lies in having powerful sanctions and a rigorous approach to ensuring that beneficial ownership information is correct.

As noted earlier, the great majority of beneficial owners and directors are law-abiding; they will do their best to comply with disclosure requirements. To the extent there are minor failures in their submission of information, and no deliberate intent to deceive, the approach should be a corrective and supportive one. But when it comes to unscrupulous individuals exploiting (indeed, choosing) corporate entities to facilitate crime and money laundering, a very different approach is required. Such bad actors will be reluctant participants in this new registry scheme. They may well deliberately try to misrepresent the true state of affairs. As with many public registries, the innocent majority are inconvenienced in order to catch the dishonest minority.

There must be sanctions to compel compliance, and those sanctions must be effective, proportionate, and dissuasive.

The federal legislation presently contains offences for contraventions of the duty to maintain an accurate register of beneficial owners.<sup>25</sup> The penalties available may, in more serious cases, go up to fines of \$200,000 or imprisonment of up to six months in duration.<sup>26</sup> Most Canadian jurisdictions have analogous offences and penalties,<sup>27</sup> though there is some variation in BC,<sup>28</sup> Saskatchewan,<sup>29</sup> and Quebec.<sup>30</sup>

24 Exhibit 289, UK Department for Business, Energy and Industry Strategy, Review of the Implementation of the PSC Register (March 2019); Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020).

25 *Canada Business Corporations Act*, ss 21.1(6), 21.31(5), 21.4(2), 21.4(3), 21.4(4).

26 *Canada Business Corporations Act*, s 21.4(5).

27 See, for example, *The Business Corporations Act*, 2021, SS 2021, c 6, ss 4-9(2)-(4); *Business Corporations Act*, RSO 1990, c B.16, ss 140.4(4)-(7); *The Corporations Act*, CCSM c C225, ss 21.4(2)-(5); *Corporations Act*, RSNL 1990, c C-36, ss 503.1(2)-(5); *Business Corporations Act*, RSPEI 1988, c B-6.01, ss 28.5(2)-(5).

28 British Columbia has analogous offences but larger penalties for corporations (a fine of not more than \$100,000) and lesser penalties for individuals (fines of between \$10,000 and \$50,000): *Business Corporations Act*, SBC 2002, c 57, ss 427, 427.1(2)-(6), 428(2)-(2.1).

29 Analogous offences but lesser penalties (a fine of \$10,000, a term of imprisonment of not more than 6 months, or both): *The Business Corporations Act*, 2021, SS 2021, c 6, ss 22-21(1).

30 A lesser penalty of \$25,000, and also the potential for companies to lose their ability to claim assets if their structures are inaccurately reported. *Business Corporations Act*, SQ c S-31.

As the federal government builds the new pan-Canadian registry, it will need to account for differences in the penalties for non-compliance. There is no constitutional requirement that each province adopt the same penalties as the others, although this seems advisable. In addition the federal government, in creating the registry, may wish to consider whether a penalty provision that applies nationally is viable. To the extent that the new registry is launched with different penalties in different provinces, and if British Columbia proves to have lesser penalties, this is a problem. Lower penalties would make a jurisdiction more appealing to criminal operators. In my opinion, it would be desirable for British Columbia to bring its penalties in line with its federal and provincial counterparts. As British Columbia supports the new pan-Canadian corporate beneficial ownership registry, it should ensure it has a strong compliance regime with effective enforcement and serious, dissuasive penalties for those who provide inaccurate information to the registry.

## How Much Information Is Collected, and How Much Is Shared?

I adverted earlier to the fact that while the new pan-Canadian registry will *collect* significant personal information about those individuals who are beneficial owners, that does not mean it should all be *published*. On any view of it, there will be categories of information that are not made public. This is sometimes referred to as tiered access, because there are different people or bodies that can access different levels of information.<sup>31</sup>

As I have discussed, initial steps taken toward beneficial ownership *disclosure* involved the records maintained by the companies themselves and held by corporate records offices, with access restricted to law enforcement and government agencies. Under the federal legislation, this approach changed to one that required that information as to the individual of significant control (beneficial owner) would be made available to shareholders and creditors of the corporation or their personal representatives for particular uses, and on request to investigative bodies including police and taxation authorities.<sup>32</sup> A number of beneficial owner schemes implemented by provinces have substantially similar categories of access.<sup>33</sup> Access to full beneficial ownership information under the BC scheme is more limited; it extends only to directors of the company, or inspecting officials for tax, law enforcement, or regulatory purposes.<sup>34</sup> Ontario's scheme, when brought into force, will be limited to prescribed members of a police force and prescribed government officials requesting disclosure for law enforcement, tax, or regulatory purposes.<sup>35</sup> Under Manitoba's scheme, access to beneficial ownership information is limited to the director and shareholders and creditors for prescribed uses.<sup>36</sup>

31 A useful illustration of this appears at p 13 of the Province's consultation paper on corporate beneficial ownership: Exhibit 55, BC Consultation on a Public Beneficial Ownership Registry.

32 *Canada Business Corporations Act*, RSC 1985, c C-44, ss 21.3–21.31.

33 *The Business Corporations Act*, 2021, SS 2021, c 6, ss 4–6–4-7; *Corporations Act*, RSNL 1990, c C-36, ss 45.4–45.5; *Business Corporations Act*, RSPEI 1988, c B-6.01, ss 28.3–28.4.

34 *Business Corporations Act*, SBC 2002, c 57, ss 119.61–119.81.

35 *Business Corporations Act*, RSO 1990, c B.16, s 140.3.

36 *The Corporations Act*, CCSM c C225, s 21.3.

The more recent shift internationally to beneficial ownership *transparency* has prioritized much wider access to civil society; it has involved access well beyond merely law enforcement–type bodies. This has led to the need to balance public access with privacy interests, as I will discuss later in this section. Quebec’s provincial budget for 2020–21 included a specific proposal for a public beneficial ownership registry.<sup>37</sup> On June 8, 2021, the National Assembly of Quebec passed *An Act Mainly to Improve the Transparency of Enterprises*, providing for a publicly accessible registry of beneficial ownership within its existing corporate registry.<sup>38</sup> And of course, there is the federal government’s 2022 commitment to “a publicly accessible beneficial ownership registry by the end of 2023.”<sup>39</sup>

In examining these competing interests, a good place to begin is with a consideration of the value of beneficial ownership registries. Although the impetus for such registries grew out of the frustration experienced by law enforcement and anti–money laundering agencies in breaking through the ambiguous ownership of shell companies, there are numerous other sectors of society that can benefit from widely accessible registries.

### ***Beneficiaries and Benefits of Access***

There are many potential beneficiaries of registry information, such as:

- law enforcement agencies investigating revenue-generating criminal offences;
- law enforcement and anti–money laundering agencies tracing the proceeds of crime;
- tax authorities, who need access to beneficial ownership in order to cross-check tax declarations against corporate disclosures of beneficial ownership;
- regulatory authorities that administer and enforce other laws;
- civil forfeiture authorities that trace the movement of funds and assets;
- financial “reporting entities” under Canada’s FINTRAC scheme that have statutory due diligence obligations to collect beneficial ownership information under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, s 138 (currently, it is difficult and expensive for banks to get this information);
- other designated non-financial business sectors such as accountants, notaries, and realtors;
- corporate registries that need access to beneficial ownership in order to implement and enforce corporate law statutes;

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37 Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 4.

38 *An Act Mainly to Improve the Transparency of Enterprises*, SLQ 2021, c 19.

39 “Delivering for Canadians Now” (March 22, 2022), available online: <https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now>.

- civil society (e.g., journalists, non-governmental organizations, etc.) who may examine publicly accessible data in order to research alleged incidents of corruption and government patronage, assist law enforcement and company registries in identifying data anomalies, and thereby contribute to preserving trust in the integrity of business transactions and of the financial system;<sup>40</sup>
- companies, creditors, and professionals – all of whom do know-your-customer research, and/or may evaluate competitors or companies with whom they may do business. This is a point that was raised in the submissions of BMW and the CPA Canada.<sup>41</sup>

Some additional benefits of increased transparency include:

- Visibility into the actual ownership or control of a company removes a significant hurdle to the investigation and enforcement of money laundering and other offences. At a basic level, this reform means the end of the notion that companies can be used as a convenient smokescreen behind which nobody can peer.
- Allowing anyone across Canada and worldwide to have easy access to the registry allows law enforcement, taxation, and regulatory authorities in other jurisdictions to enforce the laws entrusted to them.
- In government procurement, transparency may prevent individuals who have been banned from bidding on government contracts from disguising a disbarred corporation and/or beneficial owners and bidding again.
- Where political campaign financing laws restrict totals that individuals and corporations can donate to a political party, beneficial ownership information would help in determining whether individuals are breaking laws by donating through multiple legal entities.
- Increased transparency improves the business environment and benefits economic growth.<sup>42</sup>
- When “many eyes” see disclosed information on a registry, it increases feedback about inaccurate filings, which ultimately yields more reliable information.

### **Privacy Concerns**

I accept that, as a general principle, the more beneficial ownership registries fulfill these goals, the greater the public access to them.

40 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, pp 92–93; Exhibit 272, Beneficial Ownership Scoping Study, p 18.

41 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, pp 98–101; Closing submissions, BMW Canada and BMW Financial Services, p 8; Closing submissions, CPA Canada, pp 27–29.

42 Closing submissions, BC Civil Liberties Association, pp 33–35; Evidence of M. Barron, Transcript, November 27, 2020, p 101–4.

Having said that, I also accept that corporate shareholders may have privacy interests and that putting more information about a company's principals or its beneficial owners into the public sphere impacts the privacy interests of those individuals. In its closing submissions, the BC Civil Liberties Association adverted to concerns about identity theft, scams, solicitation, and risks to personal safety.<sup>43</sup>

One scoping study placed before me in evidence suggested that three questions should be asked in balancing the benefits and risks of transparency:

- Is it **lawful** to disclose the personal details of the beneficial owner?
- If so, is disclosing beneficial ownership data **necessary** to achieve a legitimate aim?
- If so, how can a registry be structured so that benefits are **balanced** against potential harms?<sup>44</sup>

In supporting the development of the new pan-Canadian registry, the Province will have important insights to offer, and experience to draw on (in particular with its Land Owner Transparency Registry). There may be sensitivities and even prohibitions over certain personal information, the publication of which could unduly interfere with individual privacy interests. That would be the case, I expect, were a registry to publish full names, dates of birth, and social insurance numbers. On the other hand, a registry publishing names, cities or regions of residence, and unique identifiers may be an example of a balancing that achieves both the need for an effective database and respect for personal privacy.

There are two different ways that the design of the corporate beneficial ownership registry can ensure that the right balance is struck between effectiveness and privacy. They are not “either/or” and indeed, both should be engaged in order to have the right balance.

First, **tiered access** is a method of structuring who gets access to what information. Realistically, it is not tenable that every piece of information obtained (or obtainable) by the registry would simply be published on an online database. On the other hand, it need not be that, other than the public information, *no* information is available to law enforcement and government agencies, absent some form of court order requiring the registry to hand it over. By using tiered access, the registry can establish gradations of transparency. At a general level, this would involve a spectrum of access, under which some groups would get broad access, others a mid-level of access, and the public would get the least (but still a meaningful amount) of access to beneficial ownership information. Under that approach, the tiers may be along these lines:

- law enforcement only;
- law enforcement and authorized government agencies;

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43 Closing submissions, BC Civil Liberties Association, p 3; Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 105.

44 Exhibit 272, Beneficial Ownership Scoping Study, p 61.

- law enforcement, authorized government agencies, and “reporting entities” under the FINTRAC scheme that have due diligence obligations; and
- anyone.<sup>45</sup>

Second, **exemptions** allow for information that the registry obtains, which would otherwise be publicly available, to *not* to be made public in a particular instance, upon application or request by the affected individual. The premise for exemptions is a presumption that a person’s name and some limited personal information (such as city of residence) will be available on the public registry. However, this presumption of openness can be overcome where a person establishes that if they are identified, there is a meaningful prospect of unfair consequences or risks for them. In the United Kingdom’s scheme, beneficial owners can request the redaction of some information in order to prevent a threat to personal safety or intimidation; this sort of exemption could be especially relevant for people such as celebrities and defence contractors.<sup>46</sup> In the UK, the test for exemption has been interpreted restrictively. A Global Witness report found that, of 270 applications for exemptions, only five were granted.<sup>47</sup>

Having considered all of the evidence and submissions before me, the question for British Columbia is how to engage in and support the new pan-Canadian registry by advocating for the best design features. Both tiered access and exemptions should be employed in the registry, in my view. Making use of both permits an optimal balance between effectiveness and individual privacy. This sort of approach ensures that serious and well-founded risks to individuals are accounted for in order to safeguard against unacceptable harassment, targeting, identity theft, or extortion-type conduct. On the other hand, the default of public access brings to an end the traditional opacity that is automatically available by incorporating. I would add that, although the United Kingdom’s registry has faced criticism, its model provides a sound, real-world example of how exemptions can be used.<sup>48</sup> While it may not lend itself to wholesale adoption in British Columbia and Canada, no doubt the experiences in that jurisdiction will provide valuable insights in crafting solutions in this one. The approach taken here will, of course, need to be sensitive to the unique constitutional and legislative frameworks that apply, including the constitutional and legislative protection of privacy rights.

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45 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 18; Evidence of M. Barron, Transcript, November 27, 2020, p 104–10; Evidence of M. Johnson and P. Dent, Transcript, November 30, 2020, pp 95–97.

46 Evidence of M. Barron, Transcript, November 27, 2020, p 107.

47 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 125.

48 Exhibit 289, UK Department for Business, Energy and Industry Strategy, Review of the Implementation of the PSC Register (March 2019), pp 41–44; Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020), pp 12–13.

## What Types of Entities Should Be Included in the Registry?

The question of what entities should be included in a beneficial ownership registry is complicated, as I have described in Chapter 23. In the present context, the decision falls to be made both federally and provincially. I view it is problematic if, at the very start of the new registry, one jurisdiction is counting apples and another is trying to include all fruit. It is, in my view, preferable that there be a harmonized and consistent approach to the entities included in the beneficial ownership registry, as it gets underway. I take it as a given that companies will be included at the outset, as the very premise is to focus on corporate entities. Over time, however, the registry should be designed in a manner that allows for it to be expanded to other “legal persons” that present significant money laundering vulnerabilities – such as trusts and partnerships.

When the expansion of the registry is considered, after it is up and on its feet, in my view, two guiding principles should drive the Province’s approach:

- identifying which corporate structures money launderers find most attractive for their criminal purposes; and
- where possible, erring on the side of including more types of corporate structures than fewer and including an ability to add new structures easily, so that money launderers will be left with fewer unregulated corporate structures to choose from and, as new risks emerge, government will have the ability to keep pace.

Various “legal persons” could, conceivably, be included in a beneficial ownership registry:

- **Private companies:** witnesses universally told me that this is the most important category to include in the registry.<sup>49</sup> My understanding of the federal initiative is that it is focused on private companies. This is the right focus as the pan-Canadian registry is commenced.
- **Public companies:** reputable stock exchanges already have their own reporting requirements, and public companies fall under the supervision of securities commissions and other regulatory bodies. There are certainly money laundering risks in this area, but they are of a character that does not point to the use of a beneficial ownership registry as the key solution, because such a registry will have a minimal ownership requirement (likely 25 percent, as discussed below) that will be inapplicable to most public companies. Moreover, beneficial ownership information is already generally available about public companies.<sup>50</sup>
- **State-owned companies:** the entire population are shareholders in such companies. While state-owned companies may be included in the registry, no shareholders

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49 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 7.

50 See, for instance, the System for Electronic Document Analysis and Retrieval (SEDAR), a filing system developed for the Canadian Securities Administrators, online: <http://www.sedar.com/>.

will hold substantial ownership or control, so the Province will need to focus on transparency of directors, with a clear understanding of who appoints directors.<sup>51</sup> Having said this, based on the evidence before me, I do not understand state-owned companies to be associated to appreciable money laundering risks, and their inclusion does not seem integral to the registry.

- **Partnerships:** in a widely held partnership, it is unlikely that any partner's interest would exceed even a 10 percent ownership threshold such that these are less important to include in the registry.<sup>52</sup> However, smaller partnerships give rise to bigger risks. Based on the discussion of partnerships in Chapter 23, I do not recommend, at this stage, that the registry must include partnerships. But I encourage the Province and other participants in the pan-Canadian registry to keep their eye on this and to move toward adding partnerships into the registry, if and when that is viable.
- **Limited partnerships:** the United Kingdom recently added a new registry for limited partnerships.<sup>53</sup> Companies House had found that, after including Scottish limited partnerships in the beneficial ownership register, new registrations in Scottish limited partnerships decreased by 80 percent in the first year, suggesting that money launderers found these types of partnerships suitable for their criminal purposes.<sup>54</sup> Although limited partnerships have not been a significant focus for the Financial Action Task Force, they are useful to criminals for many of the same reasons as corporations and have been involved in laundromat schemes. I would include limited partnerships in the same category as partnerships as discussed above: not necessarily included in the new registry at the outset, but under consideration for inclusion in the registry once it is up and running properly.
- **Trusts:** as noted, the Financial Action Task Force has created, with amendments to Recommendation 25, an expectation for adequate, accurate, and timely disclosure of beneficial ownership information relating to trusts. Trusts are useful to criminals for many of the same reasons as corporations are and have been identified as being used in laundromat schemes. Nevertheless, trusts give rise to unique privacy considerations. I encourage the Province to study the inclusion of trusts in a beneficial ownership registry and whether additional limits on access to information are needed for this particular type of legal person. There is reason to believe that at least some categories of trusts will soon be required to report beneficial ownership information to federal and Quebec tax authorities. The Province should, first and foremost, aim for consistency in what types of structures are required to report beneficial ownership information and in who can access that information through the registry.

51 Evidence of M. Barron, Transcript, November 27, 2020, pp 77–78.

52 Evidence of P. Dent, Transcript, November 30, 2020, p 185.

53 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 79.

54 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 6.

- **Unlimited liability companies and charities:** several witnesses made passing reference to these two types of corporate structures that money launderers may find attractive, but told me that both require more analysis.

In respect of partnerships, limited partnerships, and trusts, I do not recommend that these be included at the outset as the pan-Canadian registry commences. I encourage the Province to study and to consult with federal, provincial, and territorial partners as to the viability of including these three types of legal persons in the registry.

I would add that I take it as obvious that, as a starting point, all federally incorporated private companies – as well as private companies from participating provinces and territories – will be included in the registry.

## **What Level of Control or Ownership Is Needed To Be on the Register?**

A registry of beneficial ownership does not mean that the true identity of all shareholders must be disclosed. Instead, the idea is to identify who is actually directing or owning the company, in substance. The United Kingdom articulately captured the focus of its scheme through the name “Persons of Significant Control Registry.”

To date, as noted above, most of the legislative amendments in Canada have likewise coalesced around the idea of “significance.” For example, the *Canada Business Corporations Act* uses the concept of an “individual with significant control,”<sup>55</sup> and various provinces have replicated this approach.<sup>56</sup> In simple terms, the federal legislation defines, an “individual with significant control” as being (a) the registered holder, beneficial owner, or person controlling 25 percent or more of the company’s shares; or (b) someone who can, in fact, control the company.<sup>57</sup>

The BC *Business Corporations Act* is worded slightly differently but largely tracks the same legal concepts.<sup>58</sup>

The benefits of these definitions are that they capture a variety of owners and controllers. They are also flexible in that the legislation includes the ability to prescribe additional individuals to whom the definition applies. The definitions capture both shareholder ownership and indirect control.

Although the legislative definitions in Canada capture individuals who hold 25 percent or more of voting rights attached to a corporation’s outstanding voting shares, or 25 percent or more of all of the corporations outstanding shares measured by fair market value, various commentators argue for different thresholds.

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55 *Canada Business Corporations Act*, SC 1985, c C-44, s 2.1.

56 See, for example, *The Business Corporations Act*, 2021, SS 2021, c 6, ss 1–3; *The Corporations Act*, CCSM c C225, s 2.1; *Corporations Act*, RSNL 1990, c C-36, s 45.1; *Business Corporations Act*, RSPEI 1988, c B-6.01, s 2.1; *Business Corporations Act*, RSO 1990, c B.16, s 1.1 (not yet in force).

57 *Canada Business Corporations Act*, SC 1985, c C-44, s 2.1.

58 *Business Corporations Act*, SBC 2002, c 57, s 119.1.

In the United Kingdom, corporations are required to disclose the level of shareholder ownership in “bands”; for example, 25–50 percent, 50–75 percent, or more than 75 percent. Some commentators argue that this is too imprecise, and it would be no additional burden to require the corporation to report exact percentage ownership, as is required in Sweden.<sup>59</sup> Others argue that the shareholder ownership threshold should be reduced to 10 percent,<sup>60</sup> or even lower thresholds for higher-risk business sectors.<sup>61</sup> Those in favour of a lower threshold argue that shareholder ownership between 11 and 24 percent could still allow control by a criminal element, and that there will be few or no negative consequences with a lower threshold. I was told that it is a very small percentage of corporations in which the number of beneficial owners is a concern. A UK study found that in 80 percent of corporations there were only one or two beneficial owners, and that in only 2 percent there more than five beneficial owners.<sup>62</sup>

Differing thresholds and reporting requirements will be a valid subject of consultation and debate moving forward. My concern with a 25 percent threshold is that those seeking to avoid the obligation to divulge beneficial ownership information may be able to do so merely by having five, rather than four, owners. A 10 percent threshold makes this much harder. However, to echo a point made earlier, what I view as most critical is that the pan-Canadian registry be initiated with a consistent and harmonized scheme. The Province will need to determine if it should advocate for a 10 percent threshold, or to hold to the existing 25 percent standard that appears in the provincial transparency registry and the current federal legislation (as well as in many provinces).

## The Architecture of the New Registry

The Province (and Canada) would do well to analyze and build upon the work done by Transparency International Canada, setting out two alternative models for a pan-Canadian beneficial ownership registry scheme.<sup>63</sup> I acknowledge with thanks the considerable thought and effort that went into preparation of its report.

The first model involves a **federated, distributed architecture**. Under this model, provinces and territories would independently collect beneficial ownership data, and then provide that data to a central Canadian repository. Each jurisdiction would use an open and international data standard. There would be a centralized beneficial ownership registry database and portal for access and compliance management,

59 Evidence of M. Johnson, Transcript, November 30, 2020, pp 84–88; Exhibit 277, Global Witness, *Learning the Lessons from the UK’s Public Beneficial Ownership Register* (October 2017), p 7.

60 Evidence of M. Barron, Transcript, November 27, 2020, p 69.

61 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 70.

62 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 9.

63 Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020); Canada, “Public Consultations on Strengthening Corporate Beneficial Ownership Transparency in Canada: What We Heard” (April 6, 2021), online: <https://ised-isde.canada.ca/site/consultation-strengthening-corporate-beneficial-ownership-transparency-canada/en/public-consultations-strengthening-corporate-beneficial-ownership-transparency-canada-what-we-heard>.

enabling authorized federal, provincial, and territorial public servants to manage their data. An application programming interface (API) would enable provinces and territories to upload beneficial ownership data to a central repository.

The second model is a **centralized architecture**, under which businesses in all jurisdictions would directly report beneficial ownership data to a central registry through a single portal. Each jurisdiction would be able to control their level of participation and data sharing. Provinces and territories would be able to access beneficial ownership data via a cloud-based central registry, to add this information to their own registries using an API.

Key considerations in choosing the model for the new registry will include:

- who controls what data goes into the registry;
- who decides *when* beneficial ownership information is collected (i.e., during incorporation or annual filings);
- uniform data quality;
- the developmental and data infrastructure costs;
- the potential for what is termed “legislative arbitrage,” in which some corporations would shop around for the jurisdiction with the least onerous disclosure requirements; and
- security and cyber threats.

I do not purport to wade into the minutiae of design questions, which fall to be resolved by way of co-operative hard work involving the Province, the federal government, and others joining the new registry from the outset. What is key, to my mind, is that interoperability across provinces is an important objective that should be built into the architecture of any registry.<sup>64</sup>

Data users need to be able to trace corporate ownership across all participating provincial and territorial governments, and the federal government. This means that a user should be able to search all jurisdictions’ beneficial ownership registries at once, which also means that all Canadian registries (if there are multiple) must “speak the same language.”

Maximum interoperability of data is also important among law enforcement, tax officials, financial intelligence officers, and other regulators locally, and across provincial and international boundaries.<sup>65</sup> For example, I heard that the United Kingdom is putting in place legislative gateways to permit cross-referencing registry

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64 Evidence of T. Law and M. Barron, Transcript, November 27, 2020, pp 44, 45.

65 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 13.

data against other data sets.<sup>66</sup> If this same approach were adopted in British Columbia, this could include, for example, the Land Owner Transparency Registry, tax authorities, and others.

A great deal of work has been done internationally on the issue of data standards. Open Ownership has developed the **Beneficial Ownership Data Standard**, which enables the publication of structured, linkable beneficial ownership data.<sup>67</sup> It will be important to ensure that data standards are selected that plan for the future, and allow for linked data with other countries.<sup>68</sup>

If a **federated, distributed architecture** is adopted, then each jurisdiction will need to establish its own beneficial ownership registry, into which corporations that are registered in that jurisdiction must make their beneficial ownership disclosures.

Each jurisdiction would have to decide whether to roll the new beneficial ownership registry into the existing corporate registry or to establish a stand-alone new registry. Since the existing corporate registry already holds data about every corporate entity registered in that jurisdiction, there is some logic to rolling the two registries together, effectively generating a more complete and current record of the corporation and its ownership and control.

If it is accepted that the new beneficial ownership registry will be in an open data standard, then rolling the two registries together will require that the corporate records of all existing corporations be converted to a compatible open data standard. Although this would be a major undertaking, it would achieve a valuable modernization of the corporate registry with much wider public accessibility than exists today.

In a report entitled *Towards a Global Norm of Beneficial Ownership Transparency: A Scoping Study on a Strategic Approach to Achieving a Global Norm*, the point is made succinctly:

Where countries have existing corporate registers, they may require substantial modernisation to change their roles, for example to provide new responsibilities for data collection, manage the collection and/or publication of beneficial ownership data, oversee any verification and sanctions regime and ensure compliance with legislation and international standards such as those set by [the Financial Action Task Force]. These roles require specific technical expertise, human and financial resourcing.<sup>69</sup>

<sup>66</sup> Exhibit 313, Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020), para 38.

<sup>67</sup> See: <https://standard.openownership.org/en/0.2.0/>; Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 13; see also Exhibit 287, Opencorporates, *EU Company Data: State of the Union 2020 – How Poor Access to Company Data is Undermining the EU* (2020); Exhibit 288, Opencorporates, *US Company Data: State of the Union 2020 – How Accessible Is Official Company Register Data in the US* (2020); Evidence of C, Taggart, Transcript, November 30, 2020.

<sup>68</sup> Evidence of M. Barron, Transcript, November 27, 2020, p 41; Exhibit 272, Beneficial Ownership Scoping Study, p 57.

<sup>69</sup> Exhibit 272, Beneficial Ownership Scoping Study, p 55.

If a **centralized architecture** is adopted, in which BC-based corporations make their beneficial ownership disclosures directly to a central registry operated either by the federal government or by participating jurisdictions collectively, then the BC government and public and private users of the new registry could access it directly, and British Columbia would not need to establish its own beneficial ownership registry. It would presumably want to ensure that it retains control over the data disclosed by BC-based corporations.

The result would be that BC's existing corporate registry and the new beneficial ownership records applicable to BC-registered corporations would be found in separate registries, requiring separate searches. Although the new beneficial ownership information would be available in an open data standard, British Columbia could, but would not be required to, modernize its existing corporate registry or improve public and private accessibility to it.

In my view, given the imminent arrival of the new registry, a centralized architecture appears preferable and I would encourage the Province to advocate for this approach. It maximizes interoperability between provinces, which will be of critical importance to the effectiveness of the registry nationally. It also minimizes development and maintenance costs and may deter forum shopping as an enforcement avoidance technique.

## **Costs and Fees for the Registry**

I turn now to the costs involved in creating and then running the pan-Canadian registry of beneficial ownership.

### ***Development and Ongoing Operational Costs***

It is only after the federal government, and participating provinces and territories, settle on the architecture for the pan-Canadian scheme that precise costing will be possible. However, even at this stage, some general observations can be made.

There will be cost consequences involved with a beneficial ownership registry, in terms of development and maintenance, increased costs of verification and monitoring, and potentially the loss of search revenue to the provincial registry, to name only a few.

Some provinces and territories that want to participate may not have the financial resources or expertise to develop or operate their registries, let alone enforce compliance.<sup>70</sup> I was told that there is little publicly available data on the costs associated with establishing and operating a beneficial ownership registry. Legal costs for producing definitions, reviewing existing legislation, and drafting legislation to establish the registry can be significant. Then there is the need to design the mechanisms for collecting, verifying, and publishing the information, including the scope of information to be collected, plus the cost of implementing the information technology solutions, and public consultations.<sup>71</sup>

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<sup>70</sup> Evidence of J. Cohen, Transcript, November 30, 2020, p 143.

<sup>71</sup> Exhibit 272, Beneficial Ownership Scoping Study, p 56.

Currently, the cost of determining beneficial ownership is borne by the private sector. That is, a bank or a regulated entity under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, must take steps to determine beneficial ownership each time it commences a new client relationship. This is inefficient and unnecessarily costly, because numerous companies devote vast resources to research the same companies,<sup>72</sup> and because the same inquiries can be repeated many times but with the costs borne separately each time, by the private sector.

A U4 report claims that the UK Treasury Department found that implementing beneficial ownership registries resulted in significant savings internal to the government. In particular, it claims that cost in police time saved was twice as large as the combined cost to the public sector of running the database and the cost to the private sector of submitting the data.<sup>73</sup>

On the issue of costing, it is important to take into account offsetting increased tax revenue, reduced Canada Revenue Agency and police costs, FINTRAC investigations, and business due diligence costs.<sup>74</sup>

In my view, beneficial ownership registries should be seen as an integral part of Canada's anti-money laundering regime. If my view is accepted that a centralized architecture is preferable, and more importantly, given that Canada is leading the new pan-Canadian registry initiative, it follows that that the costs arising will primarily be a federal responsibility, with provinces and territories playing supportive roles within their jurisdiction. Nevertheless, and as I discuss in greater detail below, I agree with witnesses like Mr. Barrow and others that, ultimately, those who incorporate companies and benefit from corporate structures, as opposed to users of the registry, should pay costs associated with the beneficial ownership registry. In the United Kingdom, this cost is recovered through higher incorporation fees. That model would not work as easily in Canada due to the federated nature of incorporation statutes. A topic that will need to be resolved through federal, territorial, and provincial negotiation is whether and how to recoup the costs of running the beneficial ownership registry from those who incorporate companies and benefit from corporate structures.

### ***Access Fees for the Registry***

Having discussed the costs involved in developing and operating the pan-Canadian registry, I turn finally to the question of whether users of the registry should bear some of the costs involved.

In my view, the top priority should be maximum usage of the beneficial ownership registry. Any user fee will deter usage. As I noted earlier, the United Kingdom's experience is instructive. During the time period when it charged users of the registry

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<sup>72</sup> Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 21.

<sup>73</sup> Ibid.

<sup>74</sup> Evidence of J. Cohen, P. Dent, and C. Taggart, Transcript, November 30, 2020, pp 105–13.

an access fee, there were 6 million searches annually, but when the user fee was abolished, usage increased to 2 billion per year, and there are currently more than 9 billion searches annually. The lesson to be learned is clear: the fewer impediments to usage, the more use will be made of the registry.

To the extent that some suggest that a paywall is justified as an indirect privacy protection,<sup>75</sup> I disagree with such an approach. In my view privacy should be protected *directly*, through tiered access and UK-style exemptions, as I have outlined above. It should not be accomplished indirectly, and unevenly, by relying on fees to dissuade use.

I agree with witness Graham Barrow, who convincingly explained why even a nominal user fee will fundamentally diminish the utility and effectiveness of a registry.<sup>76</sup>

## Ongoing Review and Improvement of the Regime

The nature of the registry is such that it cannot be designed and built and then left alone. It will benefit from ongoing scrutiny and review over time, to assess how the registry is operating, what the weaknesses and problems are, and how it can be improved. The United Kingdom experience is one to draw from, as it has engaged in a serious review process that has afforded important insights to permit the improvement of the registry model.<sup>77</sup> The Province would do well to revisit and examine how the pan-Canadian registry is being implemented and how it operates, in order to address any weaknesses that are being exploited.

## Conclusion

In this chapter, I have taken time to draw on the evidence as to the optimal features that a beneficial ownership registry should have. I have also taken pains to emphasize that rather than fixating on any one design feature, the Province should be flexible and embrace the opportunity presented by the federal government's strong initiative to launch a publicly accessible pan-Canadian registry.

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75 Evidence of G. Barrow, Transcript, December 2, 2020, pp 91–92.

76 Evidence of G. Barrow, Transcript, December 2, 2020, pp 25–28, 91–93.

77 Exhibit 289, UK Department for Business, Energy and Industry Strategy, Review of the Implementation of the PSC Register (March 2019); Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020).

## Part VII

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# Lawyers and Notaries

Section 4(1)(a)(vi) of my Terms of Reference requires me to make findings of fact in relation to the “extent, growth, evolution and methods of money laundering” with respect to professional services, including the legal and accounting sectors.

This Part discusses the money laundering risks faced by legal professionals – lawyers and notaries. The first four chapters focus on lawyers and set out the legal and regulatory framework applicable to them, the money laundering risks they face, the feasibility of a reporting regime for lawyers, and anti-money laundering measures in place by the Law Society of British Columbia. The fifth chapter discusses British Columbia notaries, whose profession is related to but distinct from that of lawyers in British Columbia and notaries in other provinces.

## Chapter 25

# Legal and Regulatory Framework

Lawyers are often described as “gatekeepers” in money laundering schemes. They possess the necessary knowledge and skills to carry out many tasks that are useful to money launderers. These tasks include facilitating financial and real estate transactions, incorporating companies, establishing trusts and other legal entities, and providing advice on these matters. Some of the tasks that money launderers require can be carried out only by lawyers. Also appealing to money launderers are the perceived advantages that come with a lawyer-client relationship, including the overall façade of legitimacy, the secrecy provided by solicitor-client privilege, and the ability to use a lawyer’s trust account in the hope of cloaking transactions with that privilege.

While it is easy to identify the benefits, in the eyes of criminals, of making use of a lawyer’s services, the nature of the lawyer-client relationship leads to significant and unique challenges in crafting the appropriate regulatory and law enforcement response in this sector. Unlike other professionals, lawyers owe duties to their clients that have received constitutional protection. This protection has been afforded in recognition of the fact that lawyers are instrumental in ensuring that every person can understand their legal rights and obligations, obtain legal advice and representation that furthers their interests, and have access to the courts. Lawyers are not simply functionaries or agents who conduct transactions for others, and the courts have gone to considerable lengths to protect the confidentiality and trust that are inherent in the lawyer-client relationship.

The constitutional dimension to the lawyer-client relationship means that anti-money laundering regulation in this sector must account for the client’s rights and the lawyer’s duties under the Canadian Constitution. I emphasize the *Canadian* Constitution to make the point that some anti-money laundering measures in other countries may be unworkable here, given differing constitutional frameworks.

This is not to say that lawyers must not or cannot be regulated for anti-money laundering purposes. Anti-money laundering regulation in this sector *is* crucial, and it occurs already. There is, however, room for improvement. My point is that particular considerations and constraints arise when considering the regulation of lawyers that do not arise in other sectors. I elaborate on these points throughout the following chapters.

My discussion of the legal profession is structured as follows. In this chapter, I review the legal and regulatory framework applicable to lawyers in British Columbia. In particular, I consider the role of the Law Society of British Columbia (Law Society) as the regulator and the harmonizing role played by the Federation of Law Societies of Canada (Federation). I also review some key ethical duties owed by lawyers that pose challenges when considering anti-money laundering measures.

In Chapter 26, I discuss the main areas of risk inherent in lawyers' work. Given the nature of lawyers' practice, significant risks arise in this sector. It is crucial that the provincial anti-money laundering regime guard against these risks.

In Chapter 27, I consider a 2015 decision of the Supreme Court of Canada<sup>1</sup> (*Federation* decision) that concluded that the application of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) (as it then stood) to lawyers was unconstitutional. Concerns relating to the *Federation* decision – and the resultant effect that lawyers are not subject to the *PCMLTFA* regime – have figured prominently in reports by the Financial Action Task Force (FATF), expert reports commissioned by the Province, and in testimony before me. I therefore dedicate a chapter to that decision, its aftermath, and the question of whether provincial measures are needed to address the exclusion of lawyers from the *PCMLTFA* framework.

As I explain further in that chapter, there are significant constitutional difficulties associated with crafting a reporting regime for lawyers. This Report is not the proper forum in which to make findings on the constitutionality of such a regime. However, given the significant challenges that would be involved in designing a reporting regime for lawyers, I am of the view that the province should not attempt to do so. Instead, the approach to the anti-money laundering regulation of lawyers in British Columbia should be focused on five points:

- continuing to revisit and expand existing anti-money laundering regulation by the Law Society, including a particular focus on limiting the circumstances in which a client's funds can enter a trust account;
- strengthening and making better use of information-sharing arrangements between the Law Society and other stakeholders;
- increasing use by the Law Society of its ability to refer matters to law enforcement when there is evidence of a potential offence;

1 *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 [*Federation*].

- encouraging law enforcement to make better use of existing mechanisms by which it can access the information it needs from lawyers during investigations; and
- increasing public awareness about these measures to counter any perception that transactions conducted through a lawyer in furtherance of an unlawful aim are immune from detection.

Finally, Chapter 28 expands on this preferred approach. I review measures currently in place by the Law Society and the Federation and recommend improvements. I also discuss information sharing and other pathways by which the Law Society, law enforcement, and other stakeholders can work together to investigate money laundering in the legal sector effectively.

## Self-Regulation of Lawyers

Lawyers in Canada have a long history of self-regulation. Under our Constitution, legislative authority over the “licensing and regulation of lawyers, including reviews of alleged breaches of ethics,” falls to the provinces and territories rather than the federal government.<sup>2</sup> Consequently, each province and territory has its own law society that is responsible, among other things, for setting standards for admission into the profession, providing education and support, auditing and monitoring the use of trust accounts, investigating complaints about its members, and disciplining members who violate standards of conduct.

As the Supreme Court of Canada has explained, the tradition of allowing lawyers to regulate themselves is meant to maintain the independence of the bar:

An independent bar composed of lawyers who are free of influence by public authorities is an important component of the fundamental legal framework of Canadian society. In Canada, our tradition of allowing the legal profession to regulate itself can largely be attributed to a concern for protecting that independence and to lawyers’ own staunch defence of their autonomy.<sup>3</sup>

In exchange for this autonomy, law societies are obliged to ensure that their members deal with the public competently and honestly.<sup>4</sup> Importantly, however, self-regulation is a privilege rather than a right, and the legal profession must exercise this privilege in the public interest.<sup>5</sup>

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2 *Krieger v Law Society of Alberta*, 2002 SCC 65 at para 33.

3 *Finney v Barreau du Québec*, 2004 SCC 36 at para 1.

4 *Ibid.*

5 *Ryan v Law Society (New Brunswick)*, 2003 SCC 20 at para 36. In *Federation*, the Supreme Court of Canada noted that “self-regulation is certainly *the means* by which legislatures have chosen in this country to protect the independence of the bar ... But we do not have to decide here whether that legislative choice is in any respect constitutionally required”: para 86 [emphasis in original].

## The Law Society of British Columbia

The practice of law in British Columbia is largely governed by the *Legal Profession Act*.<sup>6</sup> The Law Society is empowered by that statute to “uphold and protect the public interest in the administration of justice.”<sup>7</sup> Craig Ferris, president of the Law Society, described this responsibility in his testimony:

[T]he motto of the [Law Society] is that everything we do is about the public interest. Our section 3 jurisdiction, our mandate is all about protecting the public interest and the administration of justice and that informs every decision that we make, and the Benchers are reminded of it every time we meet. And we actually make an oath at the bencher table to uphold the public interest in what we do. And so, when you look at that strictly with respect to AML [anti-money laundering] ... you sometimes read that we are here to protect lawyers or we are here to do something other than that, and that is just completely and utterly false. Our sole goal is to ensure that we have protection of the public interest in everything we do, including AML.<sup>8</sup>

The Law Society’s board of governors, known as the Benchers, has broad statutory authority including, but not limited to:

- setting standards of practice for lawyers and permitting an investigation into a lawyer’s competence to practise law;<sup>9</sup>
- rule making over various matters such as admission, standing of members, regulation of trust accounts, and discipline;<sup>10</sup> and
- establishing and maintaining legal education programs.<sup>11</sup>

The Law Society’s funding comes mainly from annual levies on its members, as well as other fees charged to lawyers. The Law Society receives no government funding.<sup>12</sup> In 2020, there were approximately 13,000 practising lawyers in British Columbia, with most practising in larger urban centres such as Metro Vancouver, Greater Victoria, and Kelowna.<sup>13</sup>

In recent years, the Law Society has increased its spending with respect to regulation of the profession. Don Avison, the Law Society’s executive director and chief executive

6 *Legal Profession Act*, SBC 1998, c 9.

7 *Ibid*, s 3.

8 Transcript, November 19, 2020, pp 144–45; see also Evidence of D. Avison, G. Bains, J. McPhee, Transcript, November 19, 2020, pp 145–46.

9 *Legal Profession Act*, s 27.

10 *Ibid*, ss 20–21, 27, 33, 36.

11 *Ibid*, s 28.

12 Evidence of D. Avison, Transcript, November 18, 2020, p 11; Exhibit 222, Law Society of British Columbia, *Introduction to the Law Society*, paras 10–11.

13 Exhibit 192, Overview Report on the Regulation of Legal Professionals in British Columbia, para 7.

officer, testified that some of these increases have been associated with anti-money laundering initiatives – increases in the budgets for the Law Society’s investigations program and discipline group, for example, as well as for the operation of the Trust Assurance Program.<sup>14</sup> I return to this subject in Chapter 28.

## **Law Society Rules and Standards of Conduct**

The Benchers are empowered to make rules governing lawyers, law firms, articulated students, and applicants for membership.<sup>15</sup> The resulting rules are known as the *Law Society Rules* (Rules).<sup>16</sup> These rules are binding on legal professionals,<sup>17</sup> and a breach of them amounts to a discipline violation.<sup>18</sup>

In addition to adhering to the Rules, lawyers must also maintain the standards of conduct set out in the *Code of Professional Conduct for British Columbia* (BC Code).<sup>19</sup> The BC Code is not part of the Rules; rather, it is an expression of the Benchers’ views on the standards of conduct lawyers must meet in fulfilling their professional obligations.<sup>20</sup> It contains rules, commentaries, and appendices, each of which has mandatory and advisory statements. It covers ethical questions on a range of topics, including competence, integrity, confidentiality, and conflicts of interest. In contrast to the Rules, however, a breach of the BC Code may or may not form the basis of disciplinary action.<sup>21</sup>

As I discuss further below, the Law Society is a member of the Federation – the overarching body that aims to foster consistency among law societies across Canada. The Federation has produced model rules of professional conduct<sup>22</sup> (the Model Rules) that individual law societies can use as inspiration in developing their own rules. The Law Society has been actively involved in developing these model rules and has adopted many of them. However, through committees, it also develops rules on its own, particularly those that are specific to British Columbia.<sup>23</sup>

In Chapter 28, I review the provisions of the Rules, the BC Code, and the Federation’s Model Rules that relate specifically to anti-money laundering.

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14 Evidence of D. Avison, Transcript, November 18, 2020, pp 11–12.

15 *Legal Profession Act*, s 11(1).

16 The Rules are included in full in Exhibit 192, Overview Report on the Regulation of Legal Professionals in British Columbia, Appendix F, and can be accessed online at <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules/>.

17 *Legal Profession Act*, s 11(3).

18 Exhibit 224, Law Society of British Columbia, Regulation of the Practice of Law, para 4.

19 The BC Code is included in full in Exhibit 192, Overview Report on the Regulation of Legal Professionals in British Columbia, Appendix E, and can be accessed online at <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/>.

20 BC Code, Introduction, para 3.

21 *Ibid*, para 5.

22 Federation of Law Societies of Canada, *Model Code of Professional Conduct*, amended October 19, 2019, online: <https://flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>.

23 Evidence of D. Avison, Transcript, November 18, 2020, pp 18–19.

## The Law Society's Powers to Investigate and Discipline Members

The Law Society has significant powers to regulate its members. In my view, some of the critiques that have been levelled at the Canadian anti-money laundering regime with respect to lawyers (discussed in Chapter 28) have failed to fully appreciate the extent of these powers and the degree to which the Law Society engages in anti-money laundering regulation and oversight.

The Law Society can initiate investigations into its members based on complaints, referrals from internal departments, as well as on its own initiative.<sup>24</sup> When investigating its members, the Law Society has many powerful tools at its disposal, including the ability to:

- require production of, and review, documents and information that are otherwise confidential or privileged, without destroying solicitor-client privilege;<sup>25</sup>
- compel lawyers to answer questions on oath and to produce records, and suspend them if they refuse;<sup>26</sup>
- require lawyers to make their staff (such as paralegals, non-lawyers, and bookkeepers) available to speak to the Law Society;<sup>27</sup>
- attend a law office to conduct its investigation;<sup>28</sup>
- impose interim measures on lawyers while they are under investigation;<sup>29</sup> and
- require any person to produce information or answer questions that are necessary for an investigation and, if the person refuses, apply to a court to direct compliance or find the person in contempt.<sup>30</sup>

<sup>24</sup> *Legal Profession Act*, s 26(1); Rule 3-2.

<sup>25</sup> *Legal Profession Act*, s 88. In *Skogstad v Law Society of British Columbia*, 2007 BCCA 310, the Court of Appeal confirmed that, as a result of section 88 of the *Legal Profession Act*, a lawyer does not violate solicitor-client privilege by disclosing privileged documents to the Law Society.

<sup>26</sup> *Legal Profession Act*, s 26(4); Rules 3-5, 3-6.

<sup>27</sup> Rule 3-5.

<sup>28</sup> *Ibid.*

<sup>29</sup> These measures can include voluntary or imposed restrictions on a lawyer's practice, such as a requirement that a lawyer no longer operate a trust account or practise only under the direct supervision of another lawyer. In extreme cases, the Law Society may suspend a lawyer pending the outcome of the investigation: Exhibit 223, Law Society of British Columbia, Investigations and Discipline Programs Summary, paras 22–23. See also Evidence of G. Bains, Transcript, November 19, 2020, pp 106–8. These undertakings are posted on the Law Society website and are linked to the lawyer's profile on the directory, unless they involve medical issues: Evidence of G. Bains, Transcript, November 19, 2020, pp 107–8. If a lawyer is not prepared to give a voluntary undertaking, but the Law Society is concerned that the public is at risk, it can seek approval from a panel to impose extraordinary measures, such as a suspension or limitations on a lawyer's practice: Evidence of G. Bains, Transcript, November 19, 2020, p 108.

<sup>30</sup> *Legal Profession Act*, ss 26(4)–(6).

It can readily be seen that the Law Society has the power to see everything in a lawyer's practice. Its ability to view otherwise privileged information is particularly significant because others, such as law enforcement, are generally unable to do so. As Gurprit Bains, the Law Society's deputy chief legal officer, explained:

There is a requirement to produce documents that are in the lawyer's possession or control, and this extends to client files, accounting records, [and] email communications that might be relevant to the investigation. Now with text messaging and WeChat messages and all these different forms of communication, it extends to all of that. Lawyers cannot refuse to produce documents to us on the basis of privilege. We have and are entitled to review everything in the lawyer's file. And I think that is a significant point because it means that we have full visibility to not only the accounting side of the practice, but to the client communication, so that we can really understand what was happening on these transactions and make an assessment on the conduct issues that are before us.<sup>31</sup>

In a similar vein, the Law Society has been able to obtain information from financial institutions, corporate entities, and others through its ability, under section 26 of the *Legal Profession Act*, to require any person to produce information or documents relevant to an investigation.<sup>32</sup> Rule 4-55 also authorizes investigators to conduct a forensic investigation of a lawyer's books, records, and accounts. It also allows the Law Society to mirror image the lawyer's hard drives and other electronic storage devices, such as tablets or cell phones.<sup>33</sup> Such investigations are usually done without notice to the subject lawyer, and the lawyer can be suspended for failing to co-operate.<sup>34</sup>

When an investigation leads to a discipline hearing, a committee can find that the lawyer committed professional misconduct,<sup>35</sup> conduct unbecoming to the profession,<sup>36</sup> a breach of the *Legal Profession Act* or the Rules, or incompetent performance of duties undertaken in the capacity of a lawyer. The committee can impose a range of disciplinary actions, including a reprimand, a fine, conditions or limitations on a lawyer's practice, a requirement to take remedial programs or steps, suspension from the practice of law or from a particular practice area, and disbarment.<sup>37</sup>

As I discuss further in Chapter 28, the Law Society conducts investigations into various matters, including:

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31 Transcript, November 19, 2020, pp 103–4.

32 Exhibit 223, Law Society of British Columbia, Investigations and Discipline Programs Summary, para 28.

33 Evidence of G. Bains, Transcript, November 19, 2020, pp 105–6.

34 Ibid.

35 Professional misconduct refers to a “marked departure from that conduct the Law Society expects of its members”: *The Law Society of British Columbia v Martin*, 2005 LSBC 16 at para 171.

36 “Conduct unbecoming the profession” is defined as conduct that is considered (a) contrary to the best interest of the public or legal profession, or (b) to harm the standing of the legal profession: *Legal Profession Act*, s 1.

37 *Legal Profession Act*, s 38(5).

- contraventions of trust accounting rules;
- engaging in activity that the lawyer knew or ought to have known assisted in or encouraged any dishonesty, crime, or fraud;
- failing to make reasonable inquiries before conducting a transaction where suspicious circumstances are present;<sup>38</sup> and
- failing to comply with the cash transactions rule, and client identification and verification rules.

## Ethical Obligations

As officers of the court, lawyers owe legal and ethical obligations to the state, courts and tribunals, clients, and other lawyers.<sup>39</sup> Breaches of these ethical obligations can lead to serious consequences. A few ethical obligations are worth highlighting here.

First, lawyers owe a duty of confidentiality to their clients. Subject to limited exceptions,<sup>40</sup> they must hold in strict confidence, at all times, all information concerning the affairs of a client acquired during the professional relationship. This duty applies to every client without exception and indefinitely.<sup>41</sup>

A second key ethical principle is solicitor-client privilege.<sup>42</sup> It arises from “communication between a lawyer and the client where the latter seeks lawful legal advice.”<sup>43</sup> Importantly, the privilege belongs to the *client*, not the lawyer.<sup>44</sup> As a result, privileged information cannot be disclosed to anyone unless the client consents (known as “waiving” the privilege) or an exception to privilege applies.

Exceptions to privilege are rare. The Supreme Court of Canada has explained that privilege must remain “as close to absolute as possible to ensure public confidence and retain relevance.”<sup>45</sup> Accordingly, exceptions must be limited, and any disclosure must be as limited as possible.<sup>46</sup> Privilege will be set aside where a client communicates with a

38 “Where the circumstances of a proposed transaction are such that a member should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the member on an objective test that the transaction is legitimate”: *The Law Society of British Columbia v Gurney*, 2017 LSBC 15 at para 79.

39 *Federation* at paras 1, 82–84, 96.

40 For example, a lawyer may disclose confidential information where there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent it: BC Code, s 3.3-3.

41 *Ibid*, s 3.3-1.

42 *Lavallee, Rackel & Heintz v Canada (Attorney General)*, 2002 SCC 61 [*Lavallee*] at para 49; *Canada (Attorney General) v Chambre des notaires du Québec*, 2016 SCC 20 [*Chambre*] at para 28.

43 *R v McClure*, 2001 SCC 14 [*McClure*] at para 36.

44 *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 [*University of Calgary*] at para 35.

45 *McClure* at para 35.

46 *Chambre* at para 82.

lawyer for the purpose of facilitating a crime (the “crime exception”)<sup>47</sup> (discussed further in Chapter 28); where it prevents an accused person from establishing their innocence (the “innocence at stake exception”);<sup>48</sup> and in circumstances where there is an imminent risk of serious bodily harm or death to an identifiable person or group, and disclosure of privileged information could prevent the harm (the “future harm or public safety exception”).<sup>49</sup>

Solicitor-client privilege is a constitutionally protected right.<sup>50</sup> The Supreme Court of Canada has repeatedly emphasized the importance of this privilege and the need for it to be stringently protected. Solicitor-client privilege dates back at least to the reign of Elizabeth I, “stemm[ing] from the respect for the ‘oath and honour’ of the lawyer, dutybound to guard closely the secrets of his client.”<sup>51</sup> It exists to facilitate the administration of justice by encouraging clients to speak freely; ensuring that lawyers know *all* the facts of a client’s case means they can advise the client to the best of their ability.<sup>52</sup>

The stringent protections for solicitor-client privilege are often raised as a concern in the context of money laundering. Privilege also poses particular challenges when contemplating a reporting regime by lawyers. I discuss these points in Chapters 26 and 27, respectively.

Another key ethical obligation is the duty of loyalty. Lawyers and law firms owe a duty of loyalty to their clients, which has three dimensions: a duty to avoid conflicting interests, a duty of commitment to the client’s cause, and a duty of candour.<sup>53</sup> As the Supreme Court of Canada has explained, “[u]nless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system, which may appear to them to be a hostile and hideously complicated environment, is a reliable and trustworthy means of resolving their disputes and controversies.”<sup>54</sup>

As I elaborate in Chapter 27, the duty of commitment to the client’s cause was a key reason that the application of the *PCMLTFA* to lawyers was found to be unconstitutional in the *Federation* decision.

## Paralegals and Notaries

Lawyers are not the only professionals who provide legal services in British Columbia. Paralegals and notaries are authorized to provide certain services. The Law Society

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47 *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para 10. I discuss this exception further in Chapter 28.

48 *R v Brown*, 2002 SCC 32 at paras 1, 3.

49 *Smith v Jones*, [1999] 1 SCR 455 at para 78.

50 *Lavallee* at para 49; *Chambre* at para 28.

51 *Solosky v The Queen*, [1980] 1 SCR 821 at 834.

52 *McClure* at para 33.

53 *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39 at para 19.

54 *R v Neil*, 2002 SCC 70 at para 12.

defines “paralegal” as a “non-lawyer employee who is competent to carry out legal work that, in the paralegal’s absence, would need to be done by the lawyer” and as a “non-lawyer who is a trained professional working under the supervision of a lawyer.”<sup>55</sup>

The Law Society regulates the supervising lawyer in the event of misconduct or a breach of the *Legal Profession Act* or the Rules committed by the paralegal.<sup>56</sup>

This approach contrasts with that taken in Ontario, where paralegals are regulated by the Law Society of Ontario.<sup>57</sup> As paralegals in British Columbia work under the supervision of lawyers who maintain ultimate responsibility for their work, my focus in the chapters that follow is on lawyers, and I will not discuss paralegals in any detail.

Notaries in British Columbia are a unique profession in Canada, distinct from notaries in other common law provinces and in Quebec. They handle many residential property transactions and small commercial transactions. I discuss this profession and the risks facing it in Chapter 29.

## Federation of Law Societies of Canada

The Federation is an “umbrella” organization that brings together the provincial and territorial law societies across Canada.<sup>58</sup> While membership is voluntary, each of the provincial and territorial law societies is a member. As noted above, the Federation develops model rules and practices with the goal of ensuring a consistent level of competence and ethical standards by lawyers across Canada.

Importantly, the Federation is not a regulator. Law societies are the regulators of the professions in their respective provinces, and they remain free to implement their own rules and initiatives as they see fit.<sup>59</sup> That said, each law society has adopted the Model Rules in substance, resulting in significant consistency nationwide.<sup>60</sup>

In testimony before me, Mr. Avison emphasized the close association between the Federation and the law societies:

I’ve had the benefit of working on a number of pan-Canadian initiatives in other contexts in education and healthcare. I have not seen them operating as effectively as the pan-Canadian approach that’s utilized by the Federation. So I think it’s important for the Commission to understand that the effectiveness of the relationship that operates between law societies

55 Exhibit 192, Overview Report on the Regulation of Legal Professionals in British Columbia, Appendix D: Report to Benchers on Delegation and Qualification of Paralegals [Paralegal Report], pp 4, 12–13; BC Code, s 6.1-2.

56 Exhibit 192, Appendix D, Paralegal Report, p 5.

57 See *Law Society Act*, RSO 1990, c L.8.

58 Evidence of F. Wilson, Transcript, November 16, 2020, p 107; Evidence of G. Ngo, Transcript, November 16, 2020, p 15.

59 Evidence of F. Wilson, Transcript, November 16, 2020, p 111.

60 Ibid, p 152.

and the Federation is very high. In fact, they are us. The Federation – the council members – the 14 council members are selected from each of the law societies from across the country.<sup>61</sup>

In developing its Model Rules, the Federation generally forms working groups or committees to address specific issues through research and consultation with law societies.<sup>62</sup> It also commonly looks to practices in other common law jurisdictions and by international regulators.<sup>63</sup> I discuss the Federation’s Model Rules and associated BC Rules relating to anti–money laundering in Chapter 28.

## **FATF Recommendations Relating to Lawyers**

As I explained in Chapter 6, FATF maintains a list of 40 recommendations for member countries with respect to anti–money laundering and counter-terrorism financing initiatives. These recommendations have evolved over the years from a focus on financial institutions to one that encompasses other businesses and professionals, including lawyers. Recommendations 22 and 23 urge the imposition of customer due diligence and reporting requirements on lawyers.

Dr. Katie Benson, a professor of criminology at the University of Lancaster who specializes in the involvement of lawyers in money laundering, explains that “[t]he role of legal professionals in the laundering of criminal proceeds generated by others has become a priority concern for intergovernmental bodies, law enforcement authorities and policy makers at both the national and international level.”<sup>64</sup>

Despite being framed as a priority, the inclusion of legal professionals in the FATF regime has not been without criticism. Early on, academics expressed concerns about what that would mean for privacy and confidentiality, the right to a legal defence and due process, and potential risks to professionals who come into contact with “dirty” money.<sup>65</sup> More significantly, legal professionals in several jurisdictions had serious concerns about the impact it would have on the independence of lawyers, solicitor-client privilege, and the duties of confidentiality and loyalty.<sup>66</sup>

It was these very concerns that led the Federation and the Law Society to challenge the *PCMLTFA* provisions that purported to apply to lawyers. I discuss that challenge, which proved to be successful, and its implications in Chapter 27.

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61 Transcript, November 18, 2020, pp 23–24.

62 Evidence of F. Wilson, Transcript, November 16, 2020, pp 107–8.

63 Ibid, pp 112–13.

64 Exhibit 220, Katie Benson, *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and Its Control* (London and New York: Routledge, 2020), p 2.

65 Exhibit 219, Katie Benson, “Money Laundering, Anti–Money Laundering and the Legal Profession” in Colin King, Clive Walker, and Jimmy Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Cham, Switzerland: Palgrave Macmillan, 2018), p 116.

66 Ibid, pp 116–17.

## Chapter 26

# Money Laundering Risks in the Legal Profession

There is little doubt that lawyers, owing to the nature of their work, face an inherent risk of being used, knowingly or unwittingly, to facilitate money laundering. The evidence before me demonstrated a consensus on this point. Given the strategies employed by sophisticated money launderers, including the use of shell companies and real estate transactions, the need for such actors to involve lawyers at some level seems inevitable.

As I elaborate below, there is, unfortunately, a lack of evidence on which to draw firm conclusions about the precise nature and extent of lawyer involvement in money laundering in British Columbia. This deficiency is problematic and leaves government, regulators, and law enforcement without firm data to inform their decisions. However, this lack of data should not be equated with an absence of risk. As I discuss below, there is substantial inherent risk of lawyers in this province being used to facilitate money laundering. The provincial anti-money laundering regime must recognize this risk and put in place sufficient oversight and safeguards to protect against it.

### **A “Common Sense” Approach to Risk**

At one level, the money laundering risks faced by lawyers seem to be common sense: if a goal of money laundering is to make criminally derived property appear legitimate, a lawyer will be needed at some point to move funds, assist in a real estate purchase, or create a corporate structure. Frederica Wilson, executive director of policy and public affairs and deputy chief executive officer of the Federation, explained in her testimony:

I think it's obvious that the nature of legal practice, all of the various things that lawyers do, assisting in real estate transactions, assisting in incorporations, assisting in all kinds of transactions, mergers and

acquisitions, et cetera ... means that there is a possibility that ... the criminally minded in the public might seek to launder money through those types of services, through those types of things. The purchase of real estate, the acquisition of businesses, et cetera. And that in that sense yes, members of the legal profession are exposed to those risks.<sup>1</sup>

Similarly, Professor Michael Levi of Cardiff University summarizes the “utility” of lawyers in money laundering as follows:

Lawyers’ involvement arises from their utility (a) as legitimators of schemes by enhancing their credibility, (b) as the sole persons licensed to transfer property in some jurisdictions, (c) as persons able to establish corporations and other vehicles of ownership concealment and funds transfer, and (d) as assistants to launderers by introducing criminals to financial institutions as their clients and by lending their accounts to criminals for cash deposits that otherwise would be regarded as suspicious (or over the reporting threshold in those jurisdictions that have such roles).<sup>2</sup>

Dr. Benson explains that the fundamental difficulty in detecting lawyers’ involvement in money laundering is that the transactions lawyers may do to facilitate money laundering can be identical in appearance to “normal” transactions done for clients with legitimate funds. As such, the non-legitimate transactions are mixed in with legitimate ones, making it difficult, if not impossible, to identify which is which.<sup>3</sup>

Underlying these views is the idea that lawyers lend an appearance of legitimacy to the services they provide. And that respectability is often exactly what criminals are looking for.

## Limitations on Data

Given the inherent risk in the legal sector, it is unfortunate and somewhat surprising that there is a lack of data on the extent to which lawyers are involved in money laundering. In Dr. Benson’s view, this lack of data is problematic and has led to an unquestioning acceptance of what she terms the “official discourse” or “official narrative”:

[T]he construction of professional facilitation of money laundering in official discourse and much of the academic literature – which sees professionals as playing a critical, and increasing, role in the laundering of criminal proceeds – has weak empirical foundations. Despite this, far-reaching legislative and

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1 Transcript, November 16, 2020, pp 137–38.

2 Exhibit 244, Michael Levi, *Lawyers, Their AML Regulation and Suspicious Transaction Reporting* (2020), p 2; see also Transcript, November 20, 2020, pp 15–16.

3 Exhibit 220, Katie Benson, *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and Its Control* (London and New York: Routledge, 2020), pp 71–73.

policy measures aimed at preventing professionals becoming involved in money laundering have been implemented ...<sup>4</sup>

Dr. Benson's study, which I review below, seeks to address a void she saw in the literature on the involvement of professionals in money laundering. Having reviewed the existing work in the United Kingdom and elsewhere, she concludes that it largely deals with professionals' involvement in organized crime more generally or on lawyer wrongdoing in various forms, rather than with money laundering specifically. Furthermore, Dr. Benson asserts the work that does focus on money laundering – including Professor Stephen Schneider's study, reviewed below – is largely quantitative and “provide[s] little analysis of the nature of this involvement, consideration of the contexts in which it occurs, or engagement with theory.”<sup>5</sup> She concludes that the existing literature shows “there is little understanding of the nature of the involvement of professionals in money laundering, and limited empirical evidence to support or challenge the official narrative.”<sup>6</sup>

On a more practical level, Dr. Benson notes that data with respect to the involvement of professionals in money laundering “is not routinely collected in a systematic way by either law enforcement, the criminal justice system, or the professional or regulatory bodies” in the United Kingdom.<sup>7</sup> It appears that a similar situation may be happening in Canada: as I elaborate in Chapter 27, Ms. Wilson acknowledged that the Federation of Law Societies of Canada has difficulties in collecting data in a systematic way from law societies.

The scarcity of data on the involvement of lawyers and other professionals in money laundering is problematic. Given the lack of recent money laundering investigations and prosecutions in British Columbia, little meaningful insight into the involvement of lawyers can be gleaned from law enforcement or criminal justice sources. In the absence of strong evidence that accurately depicts the problem, policy makers and regulators are left in the dark and must use their best judgment in determining how to respond.

Elsewhere in this Report, I recommend the creation of an AML Commissioner whose mandate would include the ability to conduct research on issues relating to anti-money laundering. It is my hope that the creation of such an office, alongside further research by academics and others, will shed further light on the involvement of professionals in money laundering and assist government, regulators, and law enforcement in crafting the appropriate responses. Moreover, increased enforcement should provide further data sources for analysis and consideration.

4 Exhibit 219, Katie Benson, “Money Laundering, Anti-Money Laundering and the Legal Profession” in Colin King, Clive Walker, and Jimmy Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Cham, Switzerland: Palgrave Macmillan, 2018), p 115.

5 Exhibit 218, Katie Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response” (DPhil, University of Manchester, School of Law, 2016), [unpublished], p 48.

6 Ibid.

7 Exhibit 219, K. Benson, “Money Laundering, Anti-Money Laundering and the Legal Profession,” p 124.

## Differentiating Among Lawyers' Roles

When considering the risks faced by lawyers, it is important to distinguish between them acting as private citizens versus in their professional capacities. To that end, Professor Levi describes three types of risk facing lawyers:

- **lawyers as primary offenders:** lawyers can commit fraud or money laundering on their own or with co-offenders;
- **lawyers as crime facilitators:** lawyers can provide legal services that, with varying degrees of awareness of purpose, assist a criminal scheme; and
- **lawyers as victims or neutral intermediaries who are hacked:** scammers may imitate lawyers to attempt, for example, to have funds for a house purchase fraudulently directed to them.<sup>8</sup>

This division highlights that the capacity in which a lawyer is acting will dictate the required response. For instance, if a lawyer is a primary offender and acts unlawfully without engaging in the provision of legal services, the lawyer is acting like any other citizen, and the primary “responder” would be law enforcement (though law societies would also have an interest in addressing the unethical conduct). Meanwhile, lawyers who use aspects of the lawyer-client relationship (including solicitor-client privilege and trust accounts) to engage in or facilitate money laundering are properly subject to regulation by law societies, as well as to possible criminal sanctions. Finally, regulators can use tools such as education to help minimize the risk of lawyers being unwittingly used to facilitate money laundering, and can also use their audit and oversight functions to identify such involvement if it does occur.

## Studies on the Involvement of Lawyers in Money Laundering

Having set the above caveats, I now turn to some studies on the involvement of lawyers in money laundering. I heard evidence about four studies, three of which took a quantitative approach, and one a qualitative approach. After describing the studies in general terms below, I consider their findings along with guidance documents and other evidence in a thematic discussion of money laundering risks.

### Professor Schneider's 2004 Study

In 2004, Stephen Schneider, a professor of criminology at St. Mary's University in Halifax, conducted a study with the objective of “analyz[ing] how the financial

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<sup>8</sup> Exhibit 244, M. Levi, *Lawyers, Their AML Regulation and Suspicious Transaction Reporting*, p 1; see also Transcript, November 20, 2020, pp 10–12.

proceeds of criminal activity are ‘laundered’ through Canada’s legitimate economy.”<sup>9</sup> In it, he examines 149 cases based on RCMP proceeds-of-crime case files. Although his research yields some interesting results, I note that the cases he examined were concluded predominantly between 1993 and 1998<sup>10</sup> and therefore pre-date the specific rules implemented by the Law Society relating to anti-money laundering. As such, it is important to tread carefully before applying his findings to the present day.

Professor Schneider’s study concludes that an overwhelming majority (92.6%) of the cases he examined involved the use of at least one sector of the legitimate economy, thus making it inevitable that the accused came in contact with a professional, such as a lawyer, insurance broker, or real estate agent.<sup>11</sup> He identifies lawyers as being involved in almost half of the cases,<sup>12</sup> but goes on to explain:

[T]he nature of the transactions they conducted suggest ... they were not expressly sought out by offenders to facilitate money laundering. Instead, most lawyers came into contact with illegally-generated funds because the transaction conducted by the offender – most notably, the purchase or sale of real estate – commonly requires the service of a lawyer.<sup>13</sup>

Indeed, in most of the cases he examined, lawyers were innocently implicated; in other words, they appeared to have no knowledge of the source of funds and there were no overtly suspicious circumstances.<sup>14</sup> In a small number of cases, however, the transactions were clearly suspicious. For example, they involved using large amounts of cash to buy big-ticket items, purchasing bank drafts from multiple banks, having lawyers purchase assets on behalf of a client through trust accounts, or incorporating numerous companies with no legitimate businesses but significant amounts of cash.<sup>15</sup>

I discuss more specific findings from Professor Schneider’s study below.

## **FINTRAC 2015 Study**

I also heard evidence from Gabriel Ngo, a senior advisor on financial crimes policy at the Department of Finance, about a 2015 study conducted by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) entitled “Review of Money Laundering Court Cases in Canada.”<sup>16</sup> This study was undertaken with the goal of “look[ing] at the extent to which [FINTRAC] could identify any patterns or trends

<sup>9</sup> Exhibit 7, Stephen Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases* (March 2004), p 1.

<sup>10</sup> *Ibid*, p 8.

<sup>11</sup> *Ibid*, p 3.

<sup>12</sup> *Ibid*, p 65.

<sup>13</sup> *Ibid*, pp 3–4. However, see also p 67, where Professor Schneider notes that, in some cases, the lawyer was aware of the source of funds and was explicitly sought out, sometimes repeatedly. This association occurred most frequently with large-scale organized crime.

<sup>14</sup> *Ibid*, p 66.

<sup>15</sup> *Ibid*.

<sup>16</sup> Exhibit 194.

in terms of the charges that have been brought forward under the *Criminal Code* with regard to money laundering.”<sup>17</sup>

The study analyzes 40 sample cases between 2000 and 2014 relating to the *Criminal Code* provisions on money laundering. Of the 40 sample cases, 33 resulted in convictions (the “convicted cases”).<sup>18</sup> Unfortunately, there is no evidence before me on the overall number of cases from which the samples were drawn.<sup>19</sup>

The study revealed that proceeds of crime in the convicted cases were generated almost entirely from drug-related and fraud offences.<sup>20</sup> Mr. Ngo testified that this is consistent with the general patterns and trends FINTRAC continues to see.<sup>21</sup> The report further identifies the most frequently used methods for money laundering as electronic funds transfers, companies, and foreign exchange transactions. Although Mr. Ngo was unable to say definitively whether these trends continue today, he said electronic funds transfers and foreign exchange transactions continue to figure prominently in the information FINTRAC receives.<sup>22</sup>

Of the convicted cases examined, five came from British Columbia. Those five cases appear to represent almost half of the total laundered funds, accounting for \$200 million. However, the bulk of that sum came from one case related to currency exchange.<sup>23</sup>

The study also found that lawyers constituted the second largest demographic by occupation, accounting for 15 percent of the individuals charged.<sup>24</sup> The report concluded that “lawyers convicted of money laundering were willing to exploit reporting exemptions in order to launder funds.”<sup>25</sup> In support, it cites a case from 2005 where a lawyer encouraged an undercover officer to conduct money laundering in Canada because there was “little police oversight,” and also used solicitor-client privilege to enhance his money laundering services.<sup>26</sup> Although this case provides support for the study’s broad conclusion, the report offers little insight into how widespread such cases truly are. I also note the misconduct that occurred in the case cited happened before the implementation of most of the Law Society’s anti-money laundering measures.

A further limitation of this study is the fact it is based upon an examination of court cases between 2000 and 2014. Unfortunately, FINTRAC does not have statistics on the

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17 Evidence of G. Ngo, Transcript, November 16, 2020, p 7.

18 Exhibit 194, FINTRAC, Review of Money Laundering Court Cases in Canada, p 2.

19 Evidence of G. Ngo, Transcript, November 16, 2020, p 8.

20 Exhibit 194, FINTRAC, Review of Money Laundering Court Cases in Canada, pp 5–6.

21 Evidence of G. Ngo, Transcript, November 16, 2020, pp 8–9.

22 Ibid, pp 9–10.

23 Ibid, pp 10–11.

24 Exhibit 194, FINTRAC, Review of Money Laundering Court Cases in Canada, pp 4–5. Approximately one-third of the individuals charged were classified as business owners or entrepreneurs who mainly used their company to launder funds.

25 Ibid, p 5.

26 Ibid, p 5.

number of money laundering prosecutions that have been commenced in British Columbia since that time.<sup>27</sup>

## FINTRAC Study on Lawyers

FINTRAC has also conducted what Bruce Wallace, manager of strategic policy and reviews at FINTRAC, described as a “small-scale project [done] in part to assess our ability to identify financial activities associated with legal professionals and their data holdings.”<sup>28</sup> The study was carried out around 2016 or 2017.<sup>29</sup> Mr. Wallace testified that it did not go beyond a draft report and was never peer reviewed; the information was gathered for the benefit of having a discussion with the Federation of Law Societies of Canada.<sup>30</sup>

The study had the following goals:

- to examine the financial activity associated with legal professionals in Canada;
- to assess whether legal professionals are prevalent in money laundering schemes; and
- to identify the types of legal professionals involved and how funds are moved.<sup>31</sup>

Given that lawyers are not reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* regime, the study attempts to identify lawyer involvement through two sources of data: disclosures and large cash transaction reports (LCTRs).

### Disclosures

The first set of data comprises FINTRAC disclosures to law enforcement and national security agencies from April 2013 to December 2016.<sup>32</sup> The study identifies 289 disclosures meeting the criteria.<sup>33</sup> Such disclosures are made when FINTRAC has reasonable grounds to suspect that the information may be relevant to a prosecution or investigation of money laundering or terrorist activity financing.<sup>34</sup> Mr. Wallace explained, however, that the fact that FINTRAC makes a disclosure does not mean it views the transaction as suspicious: it simply means the information may be “relevant” to an investigation or prosecution.<sup>35</sup>

<sup>27</sup> Evidence of G. Ngo, Transcript, November 16, 2020, p 11.

<sup>28</sup> Transcript, November 16, 2020, p 45.

<sup>29</sup> Ibid, p 48.

<sup>30</sup> Ibid.

<sup>31</sup> As described in Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing* (June 26, 2019), slide 11.

<sup>32</sup> Ibid, slide 13. Mr. Wallace explained that this period was chosen in an effort to obtain fairly recent data and to ensure the amount of data was manageable: Transcript, November 16, 2020, pp 48–49.

<sup>33</sup> Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 13.

<sup>34</sup> Evidence of B. Wallace, Transcript, November 16, 2020, pp 48–50.

<sup>35</sup> Ibid, p 57. He further explained that, as there is no determination of suspicion, the information disclosed may be exculpatory or inculpatory.

The study identifies 304 individual law firms and legal counsel within the 289 disclosures. Using publicly available information, it determines that the primary areas of law being practised at the subject firms are corporate (67%), real estate (64%), commercial (38%), immigration (35%), and family (32%).<sup>36</sup> It is important to note that the study does not examine the lawyer’s role in the transaction, nor does it attempt to determine if the lawyer’s involvement was in any way suspicious.<sup>37</sup>

In addition, the study looks at the kinds of financial instruments used by legal professionals. The highest proportion (80%) involved negotiable instruments – bank drafts, certified cheques, and personal or business cheques.<sup>38</sup> The next highest were electronic funds transfers and trust transactions (47% and 44%, respectively).<sup>39</sup> Of note, cash transactions only accounted for 6 percent of the instruments used.<sup>40</sup>

### **Large Cash Transaction Reports**

The second set of data comprises LCTRs filed between April 2013 and December 2016. A reporting entity must file an LCTR when it receives an amount of \$10,000 or more in cash in a single transaction (or cumulatively over a 24-hour period). Because lawyers are not reporting entities, the study uses LCTRs from other sectors, such as financial institutions and casinos.<sup>41</sup> Lawyers are identified when either the conductor’s occupation was identified as being a lawyer or the transaction was conducted by or on behalf of a law firm.<sup>42</sup> Notably, the study did not differentiate between lawyers acting in their personal versus professional capacities.<sup>43</sup>

The data indicates there were over 5,400 LCTRs, totalling approximately \$89.5 million in cash, transacted by lawyers in Canada during the relevant period.<sup>44</sup> Deposits into personal bank accounts feature predominantly in the transactions (58%), followed by purchase of casino chips (15%) and deposits to a business account, which includes general and trust deposits (10%).<sup>45</sup> Mr. Wallace explained the percentages are based on the number of LCTRs in each category, as opposed to the dollar value.<sup>46</sup>

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36 Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 15. See also Evidence of B. Wallace, Transcript, November 16, 2020, p 55, where he explains that the goal was to determine the primary scope of business, recognizing that many firms have multiple practice areas.

37 Evidence of B. Wallace, Transcript, November 16, 2020, p 55.

38 Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 16; Evidence of B. Wallace, Transcript, November 16, 2020, p 56.

39 “Trust transactions” refers to transactions involving either the establishment or use of trust accounts: Evidence of B. Wallace, Transcript, November 16, 2020, p 56.

40 Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 16.

41 Evidence of B. Wallace, Transcript, November 16, 2020, pp 47–48.

42 Ibid, p 50.

43 Ibid, p 53. Mr. Wallace explained that at least some of the reports would have included personal transactions made by lawyers.

44 Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 14.

45 Ibid. See also Evidence of B. Wallace, Transcript, November 16, 2020, pp 51–53.

46 Evidence of B. Wallace, Transcript, November 16, 2020, p 52.

It is important to note that FINTRAC did not determine the percentage of LCTRs that were also reported as suspicious transactions.<sup>47</sup> Reporting entities must file suspicious transaction reports (STRs) when they have reasonable grounds to suspect a transaction is related to the commission or attempted commission of a money laundering or terrorist financing offence. Given that the study considers LCTRs only, Mr. Wallace agreed that a good number of the transactions could be perfectly legitimate.<sup>48</sup>

This analysis of LCTRs also has other limitations. First, by definition, it only deals with transactions over \$10,000. As such, it does not consider the scope or use of cash by lawyers more generally.<sup>49</sup> Second, the study is based on a very small sample size compared to the overall number of reports.<sup>50</sup> Finally, it is worth noting the study focuses only on lawyers, not the individuals who seek to exploit them.<sup>51</sup>

### **Conclusions**

Overall, Mr. Wallace characterized the study as illustrative but cautioned against drawing conclusions from it.<sup>52</sup> While it validates that large cash transactions associated to lawyers are being reported on and disclosed, the study provides no insight into the nature of lawyers' involvement in the transactions.<sup>53</sup>

Although the study provides some guidance as to which legal practices are particularly susceptible to money laundering risks and methods of lawyer involvement, given the significant limitations on the study, I am not able to draw any firm conclusions from it. In light of the value of such information to law enforcement, regulators, and policy makers, it is my hope that FINTRAC will continue to develop approaches to studying the involvement of lawyers in money laundering and share its findings with the Federation of Law Societies of Canada and the provincial law societies.

### **Dr. Benson's Qualitative Study**

Dr. Benson's study took a qualitative approach to assessing lawyers' facilitation of money laundering<sup>54</sup> in an attempt to fill a research void. She decided early on not to assess the *scale* of the problem, noting that "[d]ata is not routinely collected on legal or accountancy professionals involved in money laundering in any meaningful

47 Ibid, p 54.

48 Ibid.

49 Ibid, p 47.

50 Ibid, pp 46–47. Mr. Wallace testified that in 2019, FINTRAC received approximately 10 million LCTRs, whereas the study identified only 5,000 transactions involving legal professionals in the relevant period.

51 Ibid, p 47.

52 Transcript, November 16, 2020, p 60.

53 Ibid, pp 60–62.

54 As Dr. Benson explained in her testimony, "I would conceptualise the facilitation of money laundering as a term that encompasses the various ways by which someone in a legitimate occupational position plays a role in how another person uses, moves or conceals the origins of the proceeds of crime": Transcript, November 17, 2020 (Session 1), p 132.

or analysable way ...”<sup>55</sup> Instead, she sought to understand the *nature* of lawyers’ involvement in facilitating money laundering and its control through regulation and the criminal justice system.<sup>56</sup>

Dr. Benson identified 20 cases in which solicitors had been convicted of offences under the United Kingdom’s proceeds of crime legislation between 2002 and 2013. To avoid subjective assessments of what might constitute money laundering in the absence of a conviction, she relies only on cases where convictions were obtained; the sample therefore does not include lawyers who went undetected, were not prosecuted, or received only a regulatory sanction.<sup>57</sup>

The study also focuses only on instances where lawyers acted in their professional role and facilitated the laundering of the proceeds of crimes committed by others (i.e., their clients). As Dr. Benson explains, “[t]his was because the research was interested in the role that professionals played in the facilitation of laundering by their clients, rather than the self-laundering of proceeds from criminal activity they had carried out themselves.”<sup>58</sup> In addition to examining cases, Dr. Benson interviewed members of law enforcement and criminal justice bodies, members of supervisory bodies, and practising professionals. Despite her best efforts, she was unable to interview convicted lawyers.<sup>59</sup>

Before turning to the findings, it is important to note some legislative differences between the United Kingdom and Canada. In addition to similar offences to those set out in sections 354 (possession of property obtained by crime) and 462.31 (laundering proceeds of crime) of the Canadian *Criminal Code*, it is a crime in the United Kingdom to “fail to disclose.” This offence obligates reporting entities, including lawyers, to report transactions in circumstances where they suspect someone may be involved in money laundering. The fact that lawyers in the United Kingdom are subject to reporting obligations is distinct from Canadian lawyers, who are exempt from the *PCMLTFA* regime. Second, the offence is very broad, as lawyers can be found guilty even if they lack actual knowledge. These differences are important to keep in mind when making comparisons between Dr. Benson’s case studies and the Canadian context.

Although recognizing the difficulties in doing so,<sup>60</sup> Dr. Benson allocates cases into four categories: buying or selling property, misuse of trust accounts, corporate vehicles

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55 Exhibit 218, K. Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals,” pp 89–90.

56 Transcript, November 17, 2020 (Session 1), pp 105–6.

57 Transcript, November 17, 2020 (Session 1), pp 109, 110; Exhibit 218, K. Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals,” pp 96–99.

58 Exhibit 219, K. Benson, “Money Laundering, Anti-Money Laundering and the Legal Profession,” p 121; Exhibit 220, K. Benson, *Lawyers and the Proceeds of Crime*, pp 29–30; Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), pp 119–22.

59 Exhibit 218, K. Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals,” p 99; Transcript, November 17, 2020 (Session 1), p 109.

60 Among other concerns, Dr. Benson notes that boundaries between categories are blurred and that “[c]ategorising the cases in this way does not take into account the underlying purpose of the transactions – that is, what the predicate offender is trying to achieve through the transaction.” See Exhibit 218, K. Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals,” pp 121–22.

and offshore companies, and other legal and/or financial services.<sup>61</sup> I begin by reviewing some of her general findings and return to a consideration of the categories she identifies below.

First, Dr. Benson finds considerable variation among the cases with respect to several factors:

- **The lawyer’s actions and behaviours:** activities ranged from involvement in property and trust account transactions (the most common situations) to persuading a bank to unfreeze an account to paying bail for a client using proceeds of crime.<sup>62</sup>
- **Financial benefit:** some lawyers appeared to benefit financially from their involvement, while others appeared to acquire no direct financial gain apart from the normal fees they would have received.<sup>63</sup>
- **Knowingness or intent:** while lawyers in four cases seemed to be knowingly and intentionally involved in the laundering, the majority of lawyers appeared to have no intent or active involvement.<sup>64</sup>
- **Purpose of the transaction:** it was not always clear whether the transaction was an end point in itself or a means to an end. For example, where a predicate offender conducts a real estate transaction with a lawyer’s assistance, the purpose could be to legitimately buy property to live in, or the transaction could be used as a means to launder illicit funds.<sup>65</sup>
- **Nature of the relationship with the predicate offender:** most lawyers in the study had a solicitor-client relationship with the predicate offender. However, some had personal relationships (e.g., family or romantic), and some situations involved “brokers” (i.e., someone trusted by the lawyer who introduced the lawyer to the predicate offender).<sup>66</sup>

Second, predicate offences related to the lawyers’ activities mostly involve drug trafficking and various forms of fraud. Notably, only one case involves “white collar” or “corporate” crime, contrary to what Dr. Benson expected. In her view, this result likely has to do with the kinds of cases being investigated and prosecuted:

So apart from the one case of corruption, none of the cases involved what we might classify as white collar or corporate crime. So, none of the cases, for example, involved corporate bribery or insider trading or corporate fraud or the offences by corporations or financial institutions. And this ...

<sup>61</sup> Exhibit 220, K. Benson, *Lawyers and the Proceeds of Crime*, p 53.

<sup>62</sup> Exhibit 219, K. Benson, “Money Laundering, Anti-Money Laundering and the Legal Profession,” p 124.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, pp 124–25.

<sup>65</sup> Exhibit 218, K. Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals,” p 122.

<sup>66</sup> *Ibid.*, pp 126–30.

raises questions about what gets investigated and what gets prosecuted, what gets convicted and what doesn't. So, it seems highly unlikely that those kinds of offences don't require the involvement of professionals, especially with the amounts of money that would be involved. And so, again, does this mean that either this kind of professional enabler or this kind of predicate criminality is less likely to be investigated, prosecuted or convicted? Are they perhaps more likely to be addressed through regulatory mechanism or are they able to slip through the net completely?<sup>67</sup>

Third, and to similar effect, Dr. Benson finds that contrary to the “official discourse” that paints financial transactions related to money laundering as increasingly complex, the cases she reviews tend to involve relatively unsophisticated transactions.<sup>68</sup> This result might suggest that lawyers involved in complex cases are often not convicted (and thus not captured by the cases she reviewed), or it may be that most transactions related to money laundering are essentially the same transactions that lawyers carry out for “legitimate” clients. As Dr. Benson explains:

Most of the transactions in the cases examined are the same transactions that legal professionals will carry out on behalf of clients, for legitimate reasons, on a regular basis, as part of their occupational role ... So, this means that non-legitimate transactions (or transactions with non-legitimate funds) will be ‘hidden’ amongst legitimate transactions ... This has implications, therefore, for the identification and prevention of transactions involving criminal funds.<sup>69</sup>

Based on her work, Dr. Benson concludes that facilitation of money laundering by lawyers is a complex and diverse phenomenon that defies neat categories or blanket descriptions:

We should avoid the temptation ... to see “the facilitation of money laundering” as a singular phenomenon and ask what “it” looks like, or “lump together” all the ways in which professionals are involved in the management of the proceeds of crimes committed by others. Terms such as “gatekeepers” or “professional enablers” suggest a homogeneity of actors, actions and relations that does not exist. We should also be wary of relying on simple categorisations to describe and delineate different measures of “facilitation” ... While this is useful for identifying services provided by professionals that are – or can be – used by those in possession of criminal proceeds, and highlighting areas of vulnerability for certain professions, it tends to decontextualize the behaviours and decision-making involved. Many of the cases identified in this research involve individual, possibly one-off actions that emerge

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67 Transcript, November 17, 2020 (Session 1), pp 144–45.

68 Exhibit 218, K. Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals,” p 123.

69 Ibid, pp 123–24; Transcript, November 17, 2020 (Session 1), pp 145–47; Exhibit 220, K. Benson, *Lawyers and the Proceeds of Crime*, pp 68–69.

out of particular circumstances at a particular point in time, and cannot be easily grouped with others. We need to move beyond *descriptions* of actions and processes, therefore, to understand the *contexts* of these actions and the decisions they involve, and the factors that shape the individual lawyers' roles in the facilitation of money laundering. [Emphasis in original.]<sup>70</sup>

I review other findings from Dr. Benson's study below. Although the study has some limitations, and certain aspects may not be applicable in the Canadian context, it is useful in demonstrating the limitations to categorization, as well as the challenges faced in identifying and preventing money laundering in the legal profession.

## FATF Guidance for a Risk-Based Approach for Legal Professionals

As I note in Chapter 6, the Financial Action Task Force (FATF) makes recommendations for member countries with respect to anti-money laundering and counterterrorism financing initiatives. In *Guidance for a Risk-Based Approach: Legal Professionals*, FATF explains how they relate to lawyers:<sup>71</sup>

The basic intent behind the FATF Recommendations as it relates to legal professionals is to ensure that their operations and services are not abused for facilitating criminal activities and [money laundering / terrorist financing]. This is consistent with the role of legal professionals, as guardians of justice and the rule of law[,], namely to avoid knowingly assisting criminals or facilitating criminal activity.<sup>72</sup>

The guidance further specifies that the FATF recommendations apply when lawyers engage in the following activities:

- buying and selling real estate;
- managing client money, securities, or other assets;
- managing bank, savings, or securities accounts;
- organizing contributions for the creation, operation, or management of companies; and
- creating, operating, or managing legal persons or arrangements, and buying and selling business entities.<sup>73</sup>

<sup>70</sup> Exhibit 220, K. Benson, *Lawyers and the Proceeds of Crime*, p 70.

<sup>71</sup> Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals* (June 2019).

<sup>72</sup> *Ibid*, para 59.

<sup>73</sup> *Ibid*, para 17; Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [FATF Recommendations], p 18, Recommendation 22.

Among other things, the guidance explains how to implement the risk-based approach in the legal context. The key elements are risk identification, risk management and mitigation, ongoing monitoring, and documentation. For example, it identifies measures and policies to assist in the assessment of potential risks posed by clients and transactions. It also provides guidance on completing the client due diligence and reporting outlined in the recommendations.<sup>74</sup>

## **Thematic Review of Risks Faced by Lawyers**

In what follows, I set out a number of the risks facing lawyers as identified by FATF, national risk assessments, academics, and other sources. In seeking to describe the nature of these risks, I am mindful of Dr. Benson’s concerns that relatively little evidence exists concerning the nature and extent of lawyers’ involvements in money laundering, as well as the limitations of viewing the risks in strict categories. Nonetheless, I consider it useful conceptually to examine the key areas that give rise to risks among lawyers.

I am also mindful of the Law Society’s submission that the existence of a risk is not the same as a risk actually occurring:

The existence of a ML [money laundering] risk does not, of course, equate to ML’s actual occurrence. Discussions of “inherent” risk refer to the level of risk that exists without consideration of any mitigating measures, such as Law Society regulation. With such mitigating measures, the risk may not come to fruition at all, or at least not as often as it otherwise might.<sup>75</sup>

This observation is sound. However, to the extent that money launderers are operating in a jurisdiction and are, as part of their schemes, using vehicles such as shell companies or real estate transactions, it would be naive not to acknowledge the inevitable involvement, even if only unwittingly, of lawyers in money laundering.

In my discussion below, I address the following risk areas: solicitor-client privilege and the lawyer-client relationship; the purchase and sale of property; misuse of trust accounts; use of corporate vehicles and offshore accounts; provision of other legal and financial services; and litigation and private lending.

### **Solicitor-Client Privilege and the Lawyer-Client Relationship**

A frequently cited risk associated with lawyers is the concern that criminal activity goes undetected or is difficult to investigate because of solicitor-client privilege and the lawyer’s duty of confidentiality.

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<sup>74</sup> Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals*, paras 70, 103, 104.

<sup>75</sup> Closing submissions, Law Society of British Columbia, July 9, 2021, para 5.

As I discuss throughout these chapters, there are stringent protections for privilege in Canada. In general, privileged communications cannot be revealed to anyone unless the client consents or one of the few exceptions applies. These strict protections mean that some information will simply be beyond the reach of law enforcement. As Professor Jason Sharman from the University of Cambridge explains, they may also cause law enforcement to be overly cautious:

[T]he idea of legal professional privilege ... may create an extra layer of secrecy that makes it more difficult for law enforcement to find out what's going on and can often kind of warn off or deter law enforcement from even looking at things because law enforcement says well, there's lawyers involved; there's legal professional privilege; if we put enough time and effort, we might be able to overcome this, but we have a lot of crime to investigate and maybe we'll just leave this one alone and go on and do something easier.<sup>76</sup>

The FATF guidance accepts that solicitor-client privilege (and the civil law concept of professional secrecy) is “founded on the nearly universal principle of the right of access to justice and the rationale that the rule of law is protected where clients are encouraged to communicate freely with their legal advisors without fear of disclosure or retribution.”<sup>77</sup> Accordingly, the FATF recommendations exempt lawyers from reporting privileged information.<sup>78</sup>

Solicitor-client privilege, as a matter of common sense, is attractive for criminals. It provides a curtain behind which certain activities and information will be sheltered from view. It is clear that, in some circumstances, the existence of privilege can impede investigations by law enforcement. However, as I discuss further in Chapter 28, law enforcement should not shy away from cases involving lawyers simply because lawyers are involved. Search warrants and production orders can be obtained for information and documents held by lawyers, and the Law Society has implemented guidelines for searching law offices in a manner that respects privilege. Further, privilege does not apply where a client seeks to use a lawyer's services to facilitate a crime. The Law Society's Rules also allow it to refer matters to law enforcement when it comes across evidence of a possible offence. It is crucial that the Law Society and law enforcement make use of these pathways, which can help narrow the gap resulting from lawyers' exclusion from the *PCMLTFA* (see Chapter 28).

Nor should the Law Society's role in regulating lawyers be underestimated. The Law Society is empowered to review all material possessed by lawyers, including privileged information. It is therefore uniquely placed to examine all aspects of a lawyer's practice, and it has powerful sanctions at its disposal. In some ways, Law Society regulation is

<sup>76</sup> Transcript, May 6, 2021, p 74.

<sup>77</sup> Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals*, para 28.

<sup>78</sup> Exhibit 4, Appendix E, *FATF Recommendations*, p 85, Interpretive note to Recommendation 23, para 1.

able to target lawyer misconduct more effectively than the criminal justice system. Therefore, both regulation and law enforcement have a role to play in addressing the misuse of lawyers' services.

I return to these points in Chapter 28.

## Purchase and Sale of Property

There is no dispute in the evidence before me that lawyers' involvement in real estate transactions presents inherent risks. In an advisory to the profession, the Federation's Anti-Money Laundering and Terrorist Financing Working Group (FLSC Anti-Money Laundering Working Group)<sup>79</sup> explains the risk as follows:

Real estate is a popular vehicle for those engaged in fraud and money laundering. It is generally an appreciating asset and its sale can lend legitimacy to the appearance of funds.

Consequently, the purchase of real estate is a common outlet for criminal proceeds. Fraudsters and other criminals often go to great lengths to ensure that real estate transactions used to launder funds look legitimate, masking the true intent of the transaction, which could be a purchase, sale or refinancing.<sup>80</sup>

In a similar vein, Dr. Benson explains that real estate offers two methods of legitimizing funds:

The purchase of commercial or residential property provides an ideal method of laundering criminal funds, offering two points at which the funds can be legitimised: firstly, as deposits are moved through a law firm's client account and, secondly, as the funds are exchanged for the ownership of property. Furthermore ... rental income or profit made by the sale of the property also provide legitimate income from initially illegitimate funds.<sup>81</sup>

Risks relating to real estate have likewise been identified by FATF, Canada's 2015 national risk assessment, the United Kingdom's national risk assessments, and FINTRAC.<sup>82</sup>

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79 I discuss this working group in Chapter 27.

80 Exhibit 191, Overview Report: Anti-Money Laundering Initiatives of the LSBC and FLSC, Appendix J, *Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing* (December 2019), p 2.

81 Exhibit 220, K. Benson, *Lawyers and the Proceeds of Crime*, p 73.

82 See, respectively, Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals*, para 46; Exhibit 192, Overview Report on the Regulation of Legal Professionals in BC, Appendix N, 2015 National Risk Assessment, p 53; Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), p 113; Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 15; Evidence of B. Wallace, Transcript, November 16, 2020, pp 41-42.

The majority of cases Dr. Benson reviews in her study involve real estate or the use of trust accounts to facilitate transactions derived from criminal activity or to move funds.<sup>83</sup> She testified that it is “inevitable” that some legal professionals will be involved in property transactions involving illicit funds, given the likelihood that criminals will buy or invest in property and the necessary role of lawyers in this area.<sup>84</sup>

Similarly, Professor Schneider’s study finds that lawyers encounter proceeds of crime mainly through their role in facilitating real property transactions by individuals engaged in drug trafficking or with accomplices.<sup>85</sup> He describes the kinds of services that lawyers provide as follows:

The services provided to those clients investing illegal revenues into real estate were typical of what a lawyer offers to any client in a real property transaction: conducting lien searches, obtaining property tax information, calculating property tax payments for the buyer and seller, obtaining information on insurance requirements, preparing title transfer and mortgage documents, registering the transfer of title, and receiving and disbursing funds through the law firm’s bank account as part of the real estate deal (including deposits, down payments, “cash-to-close,” and mortgage financing).<sup>86</sup>

Professor Sharman notes that banks in other jurisdictions have not been able to tackle the risk of money laundering in the real estate sector because they see only the trust account of the lawyer (or realtor) rather than the underlying customer’s account. He also notes the problem of real estate purchases being made through shell companies or corporate vehicles, which can render the beneficial (or true) owner difficult to identify.<sup>87</sup>

There is consensus on the point that real estate transactions pose a risk to lawyers. In my view, the rules adopted by the Law Society with respect to limitations on accepting cash, customer identification and verification, and trust account regulation go a long way to mitigating those risks. I discuss these rules, along with areas where they might be improved, in Chapter 28.

## Misuse of Trust Accounts

Closely related to concerns about real estate transactions are fears about the misuse of trust accounts to launder illicit proceeds. The traditional concerns in this respect are that a client could give large amounts of cash to a lawyer and later receive a

<sup>83</sup> Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), p 133.

<sup>84</sup> *Ibid*, p 135.

<sup>85</sup> Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 67.

<sup>86</sup> Exhibit 6, Stephen Schneider, *Money Laundering in British Columbia: A Review of the Literature* (May 2020), p 105; Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 68.

<sup>87</sup> Transcript, May 6, 2021, pp 27–28.

refund by cheque, or that the client could allow the cash to accumulate and use it later to conduct a transaction or purchase real estate. It is important to note at the outset that regulation by the Law Society has essentially eliminated these risks. As I discuss in Chapter 28, lawyers must abide by stringent trust regulation rules and face regular audits; they are prohibited from accepting more than \$7,500 in cash (with some exceptions); and when lawyers receive cash from clients, they must also make any refunds in cash. I am satisfied that these measures have addressed the traditional money laundering risks associated with trust accounts.

In this regard, it is interesting to note that FINTRAC’s study on legal professionals found that cash deposits to trust accounts (as opposed to personal accounts) were “of minimal representation in FINTRAC reporting.”<sup>88</sup> Mr. Wallace testified that this finding was significant, given that many typologies and methodologies, particularly historical ones, contain “assertions that trust accounts are frequently used” for large cash transactions.<sup>89</sup> However, it is important to recall that trusts transactions were used by legal professionals in almost half of the disclosures.<sup>90</sup> Mr. Wallace acknowledged that “because of the limitations of the study and by virtue of the fact we don’t get reports from legal professional[s], it’s really hard to say what’s going on with trust accounts.”<sup>91</sup> For these reasons, the FINTRAC study must not be taken as suggesting there is no risk associated with trust accounts. I am satisfied that, given their very nature, they continue to pose significant concerns.

One particular concern is the potential for solicitor-client privilege to attach to transactions that go through trust accounts. As privileged information cannot be disclosed unless the client consents or an exception applies, the potential for transactions going through trust accounts to elude law enforcement is considerable. In *Dirty Money 2*, Dr. Peter German went so far as to describe lawyers as the “‘black hole’ of real estate and of money movement generally,” noting that law enforcement’s inability to know what enters and leaves a lawyer’s trust account stymies investigations.<sup>92</sup>

As I discuss in Chapter 27, recent case law from the Supreme Court of Canada suggests that trust account records may be considered presumptively privileged. However, this is only a presumption – not an across-the-board rule. Such records will not always be privileged, and it may be possible to obtain redacted records that omit the privileged information. For this reason, as I discuss further in Chapter 28, law enforcement should not take the view that everything related to a trust account will necessarily be privileged. It must use the tools at its disposal (including warrants, production orders, and the crime exception to privilege) to follow leads that involve trust accounts and attempt to gain access to the information it needs.

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88 Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 18.

89 Transcript, November 16, 2020, pp 58–59.

90 Ibid, p 60; Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*, slide 16.

91 Transcript, November 16, 2020, p 59.

92 Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*], p 121.

A related concern with respect to trust accounts is that the involvement of lawyers may provide an appearance of legitimacy, causing law enforcement, financial institutions, and others to ask fewer questions. Dr. Benson articulates this concern as follows:

Law firms' [trust accounts] can play an important role for those wanting to launder criminal proceeds. They provide a "façade of legitimacy" to funds that pass through them, and transactions that originate from them. As well as funds being used as the deposit in a property purchase, this includes money that is being transferred to other bank accounts or being used to make large-scale purchases ... Furthermore, because of the principle of lawyer-client confidentiality, banks are unaware of the identity of the client whose funds are being moved through the client account, and so their use can help to circumvent banks' anti-money laundering procedures.<sup>93</sup>

FATF's guidance and other commentators share the concern that banks do not or cannot ask probing questions about the underlying customer when funds are in a lawyer's trust account.<sup>94</sup>

It is apparent that trust accounts cause significant concern among commentators and are frequently cited as a money laundering risk. In seven of the 20 cases analyzed by Dr. Benson, passing criminal proceeds through a trust account was identified as the primary means of facilitating money laundering.<sup>95</sup> Similarly, Professor Schneider concludes that trust accounts are "regularly used and abused for [money laundering] purposes."<sup>96</sup> On the evidence before me, I am unable to make any findings about the extent of misuse of trust accounts by lawyers in British Columbia. I accept, however, that there is a very real risk of them being misused. Indeed, there are several examples of misuse in Law Society discipline cases.<sup>97</sup>

Two discipline cases are illustrative. I emphasize that my discussion of these cases is entirely reliant on the Law Society's public decisions, and I make no findings of my own with respect to the lawyers' conduct.

The first case is the well-known one of *Re Gurney*. It is broken up into two parts – the first dealing with the basis of the misconduct and the second with the appropriate sanctions and penalties.<sup>98</sup> The hearing panel found that Mr. Gurney had used his trust

<sup>93</sup> Exhibit 220, K. Benson, *Lawyers and the Proceeds of Crime*, p 74.

<sup>94</sup> See Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals*, para 45; Evidence of J. Sharman, Transcript, May 6, 2021, p 28; Exhibit 959, Jason Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, pp 3–4; Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), p 113.

<sup>95</sup> Exhibit 218, K. Benson, "The Facilitation of Money Laundering by Legal and Financial Professionals," p 114.

<sup>96</sup> Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 106; Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 70.

<sup>97</sup> In addition to the cases I review below, see also *Law Society of British Columbia v Hsu*, 2019 LSBC 29; *Law Society of British Columbia v Daignault*, 2020 LSBC 18; and *Law Society of British Columbia v Hammond*, 2020 LSBC 30.

<sup>98</sup> See *Re Gurney*, 2017 LSBC 15, and *Re Gurney*, 2017 LSBC 32.

account to receive and disburse approximately \$25.8 million on behalf of a client without making reasonable inquiries about the circumstances, and without providing substantial legal services in connection with the matters. It held that he had committed professional misconduct, but made no finding of fraud or money laundering in relation to the funds. He received a six-month suspension from the practice of law, was ordered to disgorge his fees, and was subject to additional conditions on the use of a trust account. The panel noted:

[A] lawyer’s trust account cannot be used only for the purpose of facilitating the completion of a transaction, but *the lawyer must also play a role as a legal advisor with regard to the transaction*. This is the requirement to provide legal services. [Emphasis added.]<sup>99</sup>

As I discuss further in Chapter 28, this statement led to a formal codification in the Rules that trust accounts can be used only in direct connection with legal services.<sup>100</sup>

A more recent case of interest is *The Law Society of British Columbia v Yen*.<sup>101</sup> The hearing panel found that over a two-year period, Ms. Yen received over \$10 million in trust from a variety of sources, including Panama, Singapore, and Luxembourg. In that same time period, Ms. Yen paid the equivalent amount out of her trust account in 45 transactions. The panel further found that only about \$1.5 million of the funds were directly related to legal services.

Ms. Yen was found to have committed professional misconduct by depositing and disbursing significant amounts of money through her trust account without making sufficient inquiries or providing legal services in relation to most of the funds. As the panel explained:

[I]t is not enough that a lawyer does legal work, even substantial legal work, for a client who deposits money into the lawyer’s trust account. These legal services must be “in connection with the trust matter.”<sup>102</sup>

The hearing panel on disciplinary action notably considered that Ms. Yen’s actions may have contributed to money laundering:

[Ms. Yen] was at best wilfully blind in allowing her firm’s trust accounts to be used and manipulated in this manner. This Panel cannot definitively conclude that money laundering occurred, but it is not our role to make that determination.

Nevertheless, if money laundering did in fact occur, it could not have happened without the participation and assistance of [Ms. Yen], however inadvertent such assistance may have been.<sup>103</sup>

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99 2017 LSBC 15 at para 79.

100 See Rule 3-58.1.

101 *The Law Society of British Columbia v Yen*, 2020 LSBC 45.

102 *Ibid*, para 40.

103 *Re Yen*, 2021 LSBC 30 at paras 24–25.

The panel also reiterated the principle from *Re Gurney* that trust accounts must only be used for purposes directly related to legal services:

It is well established that lawyers are gatekeepers of their trust accounts. In *Law Society of BC v. Gurney*, 2017 LSBC 15, the panel explained that lawyers' trust accounts are not to be used as a conduit; rather, they are only to be used for legitimate purposes and transactions. The reason for this is that lawyers are granted the privilege of operating trust accounts without scrutiny or interference by government authorities such as FINTRAC. This exemption from government scrutiny arises from the principle that trust funds are protected by solicitor-client privilege. This privilege carries with it the weighty obligation of ensuring that trust accounts are not misused or that rules governing their use skirted or outright circumvented.<sup>104</sup>

Ms. Yen was suspended from legal practice for three months.<sup>105</sup>

As I discuss in Chapter 28, the Law Society and the Federation are aware of the risks posed by trust accounts. The Law Society has a robust trust audit program and has increased the number of audits it conducts for high-risk practice areas. Audits are not a perfect solution; they will not catch every wrongful use of a trust account. Nonetheless, I find that they are a strong deterrent. Indeed, as Jeanette McPhee, chief financial officer and director of trust regulation at the Law Society, noted in her testimony, Mr. Gurney's case was detected through a compliance audit.<sup>106</sup>

Even so, given the inherent risks associated with the use of a trust account and the fact that lawyers in Canada are currently exempt from a reporting regime, it is crucial that funds enter a lawyer's trust account only when necessary. This restriction avoids having solicitor-client privilege apply too broadly, covering transactions that would not be privileged if conducted by another professional. As I expand in Chapter 28, further limitations are warranted in this regard.

## Use of Corporate Vehicles and Offshore Accounts

Another commonly cited risk in relation to lawyers is their role in creating corporate structures and trusts, and the use of offshore bank accounts. As Dr. Benson explains:

Concern about the role of legal professionals in the facilitation of money laundering often focuses on the assistance they can provide through the creation and management of companies and other corporate vehicles, such as trusts and foundations, and the use of bank accounts in off-shore locations. Corporate vehicles can be used as a means of confusing or disguising the links between offenders and the proceeds of their crimes,

<sup>104</sup> Ibid at para 26.

<sup>105</sup> Ibid at para 60.

<sup>106</sup> Transcript, November 18, 2020, p 122.

and off-shore bank accounts provide a level of secrecy that can be used to hide illicit funds (i.e. the proceeds of crime, money on which tax is being evaded, or funds being used in the commission of crime). Of course, such financial constructions are not illegal in themselves and are used for legitimate reasons; for example, for the purposes of privacy, security and financial planning. However, there are increasing concerns over the use of corporate vehicles such as ‘shell companies’ to hide their ‘beneficial owners’ (i.e. the person[s] who ultimately owns, controls or benefits from the company or other asset) for illegitimate reasons.<sup>107</sup>

The FLSC Anti-Money Laundering Working Group similarly notes that criminals are increasingly turning to shell companies and trusts to facilitate money laundering because these vehicles make it possible to conceal the true ownership of funds.<sup>108</sup> These concerns are repeated in the FATF guidance, a presentation given by FINTRAC to the FLSC Anti-Money Laundering Working Group, and the United Kingdom’s national risk assessments.<sup>109</sup>

In Dr. Benson’s study, two cases fall into this category. One of them involves proceeds of corruption being transferred by a solicitor into offshore trusts and shell companies, and the other involves a solicitor transferring ownership of hotels while the owner was under a criminal investigation.<sup>110</sup> Dr. Benson testified that this low number of cases did not reflect the concerns about the use of corporate vehicles she expected. She suspects this is owing to difficulties with investigation and prosecution:

[T]hat might be because it doesn’t happen, but I think it’s more likely that it reflects the nature of the cases that are investigated and prosecuted and convicted. So, I think that raises a number of questions that need to be considered further, for example [whether] more complex cases involving corporate vehicles and offshore accounts and complex transactions are less likely to result in prosecution or in conviction and if so, is this due to their complexity and the challenges of investigating transactions hidden behind financial constructions whose purpose is to provide secrecy and conceal ownership. So, I think the risk of money laundering through corporate vehicles should be taken seriously and the lack of convictions that I saw in the sample ... gives us a lot of questions to think about.<sup>111</sup>

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107 Exhibit 220, K. Benson, *Lawyers and the Proceeds of Crime*, pp 60–61.

108 Exhibit 191, Overview Report: Anti-Money Laundering Initiatives of the LSBC and FLSC, Appendix J, *Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing*, pp 5, 10.

109 See, respectively, Exhibit 193, FATF, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals*, paras 49–51; Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*; and Evidence of B. Wallace, Transcript, November 16, 2020, p 43; Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), p 140.

110 Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), pp 140–41.

111 *Ibid*, pp 141–42.

Professor Schneider notes in his review that “truly sophisticated” money laundering operations are “often characterized by the international movement of funds, including the use of financial haven countries, which often necessitate the use of legal professionals.”<sup>112</sup> He explains that lawyers are retained to incorporate companies, set up bank accounts, establish trusteeship, and sometimes help funnel illicit money to laundering vehicles.<sup>113</sup>

Clearly, lawyers’ involvement in creating corporations, trusts, and other legal entities brings associated risks. Law Society oversight of lawyers’ anti-money laundering obligations, such as source-of-funds inquiries and client identification requirements, can assist in combatting this risk. So, too, can limiting the use of a lawyer’s trust account to those circumstances where it is necessary. A beneficial ownership registry would also go some way toward addressing this risk. I return to these topics in Chapters 24 and 28.

## Other Legal and Financial Services

FATF’s guidance notes that legal professionals may sometimes undertake “management” activities for clients pursuant to a court order or power of attorney. Although such services are generally legitimate, it warns criminals might seek to use them “to minimize the number of advisors and third parties who have access to the client’s financial and organizational details.”<sup>114</sup> The guidance recommends that lawyers carefully scrutinize requests for assistance beyond their primary services.

The guidance highlights additional specialized legal skills that may be used to transfer illicit proceeds and obscure ownership, namely, creating financial instruments and arrangements, drafting contractual arrangements, creating powers of attorney, and being involved in probate, insolvency, or bankruptcy.<sup>115</sup>

FINTRAC’s presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing (FSLC–Canada Working Group)<sup>116</sup> similarly noted that lawyers can be called on to manage client money, securities, or other assets; manage bank, savings, and securities accounts; buy and sell business entities; and set up and manage charities.<sup>117</sup>

Professor Schneider repeats many of these concerns.<sup>118</sup> He adds that lawyers may be asked to act as directors, officers, trustees, or even as owners or shareholders of a company, and that law offices may be used as the corporate addresses for companies controlled by criminal entrepreneurs.<sup>119</sup>

<sup>112</sup> Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, pp 107–8.

<sup>113</sup> *Ibid.*

<sup>114</sup> Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals*, para 52.

<sup>115</sup> *Ibid.*, para 53.

<sup>116</sup> I discuss this working group further in Chapter 27.

<sup>117</sup> Exhibit 199, FINTRAC, *Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing*.

<sup>118</sup> Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, pp 104–5.

<sup>119</sup> Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 69.

## Private Lending and Litigation

I discuss the risks associated with private lending in more detail in Chapter 17. Briefly, there are two main ways in which lawyers can be exposed to these risks. First, they may be involved in structuring private lending (e.g., drafting and reviewing loan documents). Second, they may be involved in enforcing private lending arrangements through litigation or otherwise.

The Law Society has issued a discipline advisory on private lending.<sup>120</sup> It cautions that lawyers “who are retained to draft loan or security documents, to register the same, or to assist with the advance or recovery of funds should take additional steps to protect themselves and maintain public trust in the profession.” Those steps include asking additional questions and ensuring they know their clients and the subject matter of their retainers. It notes that, although most private loans are legitimate, “there is an increased risk of illegal activity with them.” The advisory lists a number of red flags of which lawyers should be mindful:

- there is no clear or plausible reason why the borrower is not borrowing from a commercial lender;
- the amount or fact of the loan seems inconsistent with the client’s circumstances;
- third parties are involved without apparent good reason;
- the funds advanced are in cash, and the parties are unwilling or unable to provide basic details or documentation concerning the loan, including its source;
- the funds come from, go to, or are to be repaid offshore or to a jurisdiction that is known to be secretive or restrictive;
- there is no security for a large loan or the security is a subsequent mortgage or charge on a fully or near-fully encumbered property;
- the actual or agreed-to repayment period is unusually short;
- the interest rate exceeds the criminal rate or is above market;
- the lawyer is retained after the funds have been advanced;
- the lawyer is not experienced in the relevant area of law, or the client has been refused counsel or changed counsel recently or several times without apparent good reason;
- any party to the transaction has an alleged or known history of drug trafficking, money laundering, civil forfeiture, loan-sharking, fraud, high-stakes gambling or similar activity; and
- the client is unusually familiar with or resistant to client identification and verification requirements.

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<sup>120</sup> <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019/>.

The FLSC Anti–Money Laundering Working Group has issued a similar risk advisory on private lending.<sup>121</sup>

It has also issued risk advisories addressing money laundering risks in litigation.<sup>122</sup> I agree that lawyers must also be cognizant of this risk in connection with litigation, and I endorse the extension of its risk advisory to that activity.<sup>123</sup>

The FSLC risk advisory notes that some forms of litigation, particularly debt recovery actions, may pose risks:

Criminals may attempt to launder proceeds of crime by filing and recovering on civil claims. This could, for example, involve using fabricated documents to misrepresent transactions or claim an interest in property. A lawyer should not assist a client in enforcing a contract that may be based on criminal activity.<sup>124</sup>

The advisory explains that lawyers should be alert to risks when retained to assist with private loan recovery, builders' lien claims, claims for recovery of capital investment, as well as claims for defective goods and unpaid commercial invoices.<sup>125</sup> It sets out a number of risk factors in line with those identified in the preceding advisories.

## Conclusion

In this chapter, I have reviewed some of the key risk areas in which lawyers may be used to facilitate money laundering. In doing so, I do not purport to identify all the risks that arise in the legal profession. I have also noted a lack of data generally when it comes to the extent and nature of lawyers' involvement in money laundering. My hope is that research by the proposed AML Commissioner, academics, and others will shed further light on this issue. I also expect that the enhanced investigation and prosecution of money laundering will supply further insight into the nature and extent of lawyers' involvement in these schemes. Given the inherent risks associated with the activities in which lawyers engage for clients, it is crucial that regulators, law enforcement, and policy makers stay alert to these risks and to new forms of money laundering that continue to develop.

<sup>121</sup> Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, Appendix J, *Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing*, pp 8–9.

<sup>122</sup> *Ibid.*, pp 12–13.

<sup>123</sup> I mention this because the recommendations set out in the FATF guidance do not apply to lawyers representing clients in litigation unless they also engage in a specified activity: Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A, FATF, *Guidance for a Risk-Based Approach for Legal Professionals*, para 17.

<sup>124</sup> Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, Appendix J, *Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing*, p 12.

<sup>125</sup> *Ibid.*

## Chapter 27

# The *Federation* Decision and the Feasibility of a Reporting Regime for Lawyers

Unlike a variety of other professionals in Canada, lawyers are currently not subject to the requirements of the *PCMLTFA* and its regulations. The exclusion of lawyers from the federal regime has a complicated history that culminated in the 2015 *Federation* decision,<sup>1</sup> which held that the application of the regime to lawyers as it then stood was unconstitutional.

Following the *Federation* decision, there have been strong critiques levelled at Canada for its failure to bring lawyers into the *PCMLTFA* regime in a constitutionally compliant way. Critics have called the exclusion of lawyers from the regime a gap in Canada's anti-money laundering framework, maintaining the view that lawyers are not subject to anti-money laundering regulation in this country.

As I explain below, it is too simplistic to say that lawyers are not subject to anti-money laundering oversight. It is certainly true that FINTRAC does not receive reports from lawyers and thus does not have the same lens into lawyers' and their clients' activities as it does into other professions subject to the *PCMLTFA*. This fact is significant and does constitute a gap in terms of intelligence gathering. Further, there are certainly unique and important challenges for law enforcement when it comes to investigating money laundering activity when lawyers are involved.

However, it is inaccurate to say lawyers in British Columbia<sup>2</sup> are not regulated for anti-money laundering purposes: they are, in fact, subject to extensive anti-money

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<sup>1</sup> *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 [*Federation*].

<sup>2</sup> As my mandate is limited to considering British Columbia, I have not arrived at conclusions about the regimes in other provinces. However, there are sound reasons to believe that the regimes in other provinces are similar to that in British Columbia, given the harmonizing role played by the Federation of Law Societies of Canada.

laundering regulation by the Law Society of British Columbia. In my opinion, this regulation has gone a long way to addressing many of the money laundering risks in this sector, and critics have given it too short shrift.

Law Society regulation does not duplicate the *PCMLTFA* measures. In some ways – particularly the fact that FINTRAC does not receive reports on suspicious activity from lawyers – this is a disadvantage and prevents FINTRAC and law enforcement from obtaining important intelligence. Significantly, however, there are also benefits to be gained from dealing with anti-money laundering issues from a regulatory perspective. One such advantage is that the Law Society is entitled to see *all* aspects of a lawyer's practice, including confidential and privileged information. On the whole, the issue of anti-money laundering regulation of lawyers in British Columbia is much more nuanced than some critiques have appreciated.

In this chapter, I describe the scheme that Parliament attempted to apply to lawyers. I then discuss the successful constitutional challenge to that regime; actions taken by the Law Society and the Federation of Law Societies of Canada following the *Federation* decision; and the critiques that have been levelled at Canada for failing to bring lawyers into the *PCMLTFA* regime.

At the end of this chapter, I consider the possibility of a provincial reporting regime for lawyers. Although such a regime would likely be beneficial in the fight against money laundering, there are significant constitutional difficulties inherent in crafting such a regime. In my view, these challenges are so considerable that the Province of British Columbia should not attempt to legislate a reporting regime for lawyers. Instead, as I set out below and in Chapter 28, the Law Society must continue to strengthen its anti-money laundering regulation, particularly with respect to trust accounts, and it must prioritize information sharing and other collaborative measures with law enforcement and other stakeholders. While pathways already exist for information sharing and collaboration, it is crucial that the Law Society, law enforcement, and other bodies make better use of them.

## Lead-up to the Constitutional Challenge

The *PCMLTFA* was enacted in 2000. I explain the regime in detail in Chapter 7. Essentially, it requires specified entities (including, but not limited to, financial institutions, accountants, insurance brokers, casinos, and BC notaries<sup>3</sup>) to collect information about the identities of their clients; keep records of transactions; report suspicious, large cash, and large virtual currency transactions to FINTRAC; and establish internal programs to ensure compliance with the scheme.

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<sup>3</sup> See Chapter 29 for a discussion of the notarial profession in British Columbia and the risks specific to it. Given the differences between the BC notarial profession and that in other common law provinces and in Quebec, BC notaries are the only legal professionals in Canada who are subject to the *PCMLTFA*. Notably, solicitor-client privilege does not attach to their dealings with clients.

Lawyers became subject to the *PCMLTFA* in 2001, when they were required to report suspicious transactions involving their clients to FINTRAC. The Federation and several provincial law societies promptly launched constitutional challenges and obtained injunctions relieving legal counsel of the reporting requirements.<sup>4</sup> The litigation was adjourned, and the parties entered into an agreement precluding the federal government from applying new regulations to lawyers and Quebec notaries<sup>5</sup> without the Federation's consent.

In 2004, the Federation (and, shortly afterward, the Law Society) adopted a Model Rule on cash transactions preventing lawyers from accepting more than \$7,500 in cash (with some exceptions). Ms. Wilson testified that the federal government at the time viewed this rule as an appropriate alternative to the large cash-transaction reporting requirement under the *PCMLTFA*.<sup>6</sup> I discuss the cash transactions rule in Chapter 28.

In 2006, the *PCMLTFA* was amended to exempt lawyers and Quebec notaries from the reporting requirements.<sup>7</sup> Significantly, lawyers have not been subject to reporting requirements under the *PCMLTFA* since this amendment – well before the *Federation* decision in 2015.

In 2007, the federal government pre-published regulations that would make the legal profession subject to the client identification and verification (CIV) requirements under the *PCMLTFA*. This led to discussions between the Federation, the federal Department of Finance, and FINTRAC.<sup>8</sup>

Key aspects of the proposed scheme included:

- **Identification and verification:**

- Lawyers would be required to *identify* the persons and entities on whose behalf they acted as financial intermediaries.
- Lawyers would be required to *verify* the identity of persons or entities on whose behalf the lawyer receives or pays funds, with some exceptions.
- Lawyers would be required to collect information on the client such as the names of directors and shareholders of corporations and information about trustees and beneficiaries.

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4 *Law Society of British Columbia v Canada (Attorney General)*, 2001 BCSC 1593, aff'd 2002 BCCA 49, leave to appeal to the Supreme Court of Canada discontinued, SCC file number 29048.

5 The Quebec notarial profession is distinct from both the British Columbia profession and that in other provinces. The Supreme Court of Canada has explained that Quebec notaries play a similar role to solicitors in common law provinces, and their work is notably covered by professional secrecy (the civil law equivalent to solicitor-client privilege): see *Canada (Attorney General) v Chambre des notaires du Québec*, 2016 SCC 20 [*Chambre*] at para 42; and *Notaries Act*, CQLR, c N-3, ss 10, 14.1.

6 Transcript, November 16, 2020, pp 116–17.

7 *PCMLTFA*, s 10.1.

8 Evidence of F. Wilson, Transcript, November 16, 2020, pp 123–24.

- **Record keeping:**
  - Lawyers would be required to create a “receipt of funds record” when they received \$3,000 or more in a transaction, which would document the personal details of the individual from whom the funds were received, account information, details about the transaction, and more.
  - The records had to be kept for at least five years following the completion of the transaction and produced to FINTRAC on request.
  
- **Search and seizure:**
  - FINTRAC was authorized to “examine the records and inquire into the business and affairs” of any lawyer. This authorization included the power to search through computers and to print or copy records. Lawyers were required to comply with FINTRAC’s requests for information.
  - FINTRAC had the ability to disclose to law enforcement certain information it came across during a search and equivalent foreign state agencies.
  - There were some protections for solicitor-client privilege, principally a specification that lawyers were not required to disclose privileged information and a procedure for protecting privileged information during a search.<sup>9</sup>

The Federation considered the new provisions but ultimately refused consent. Litigation restarted in 2007.<sup>10</sup>

In 2008, the Federation adopted model rules for client identification and verification (discussed in Chapter 28) that closely tracked the provisions the federal government sought to impose on lawyers through the *PCMLTFA*.<sup>11</sup> The model rules were adopted by all Federation members.<sup>12</sup> In explaining why the Federation adopted the CIV Model Rules at that time, Ms. Wilson testified that the law societies, while taking the view that the federal regulations were unconstitutional, believed that regulation of lawyers to reduce the risk of money laundering and terrorist financing was undoubtedly part of their public interest mandate.<sup>13</sup>

In 2013, when the BC Code came into effect, it reiterated an existing rule that “[a] lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.”<sup>14</sup> As I discuss further in Chapter 28, this broad rule – in combination with specific anti–money laundering rules – is an important part of the Law Society’s anti–money laundering regulation.

<sup>9</sup> *Federation* at paras 14–19.

<sup>10</sup> Evidence of F. Wilson, Transcript, November 16, 2020, pp 123–24.

<sup>11</sup> *Ibid*, pp 124–127.

<sup>12</sup> The Law Society adopted these Rules in 2008: Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, para 5.

<sup>13</sup> Transcript, November 16, 2020, p 126.

<sup>14</sup> *Code of Professional Conduct for British Columbia* [BC Code], Rule 3.2-7.

The litigation regarding the *PCMLTFA*'s provisions for lawyers lasted from 2009 to 2015. Ms. Wilson and Mr. Avison testified that, during that time, there was virtually no engagement between the federal government, the Federation, and individual law societies on anti-money laundering issues. Nor were any significant new anti-money laundering initiatives or model rules implemented by the Federation.<sup>15</sup> Mr. Avison described this as “lost time when the parties could have been working effectively together to develop collective approaches around how they could engage the issues more directly and more effectively.”<sup>16</sup>

## A Successful Constitutional Challenge

In a constitutional challenge that made its way to the Supreme Court of Canada, the Federation – along with the Law Society and other legal advocates – argued that the federal scheme violated solicitor-client privilege and threatened fundamental constitutional principles related to lawyers' duties to their clients. All three levels of court agreed that the scheme was unconstitutional.

It is important to keep in mind that, at the time of this constitutional challenge, the provisions relating to suspicious transaction and other reporting requirements no longer applied to lawyers, owing to the amendment to the *PCMLTFA* in 2006 (as noted above). The challenge therefore focused solely on the client identification and verification and search and seizure provisions.

## Unreasonable Searches and Seizures

The Supreme Court of Canada held that parts of the proposed legislation authorizing FINTRAC to conduct searches of lawyers' offices and copy records violated section 8 of the *Canadian Charter of Rights and Freedoms*<sup>17</sup> (*Charter*) – the right to be free from unreasonable search and seizure.

The Court held that the “regime authorizes sweeping law office searches which inherently risk breaching solicitor-client privilege.”<sup>18</sup> It emphasized that searches of law offices will be unreasonable unless they provide a “high level of protection for material subject to solicitor-client privilege.”<sup>19</sup> The Court reiterated that this privilege “must remain as close to absolute as possible if it is to retain relevance.”<sup>20</sup> On the whole, there was insufficient protection for solicitor-client privilege and a substantial risk that privilege would be lost.<sup>21</sup>

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15 Evidence of F. Wilson, Transcript, November 16, 2020, p 127; Evidence of D. Avison, Transcript, November 18, 2020, p 31.

16 Transcript, November 18, 2020, pp 33–34.

17 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

18 *Federation* at para 35.

19 *Ibid* at para 36.

20 *Ibid* at para 44.

21 *Ibid* at paras 40, 48–52.

Despite the importance of the objectives of combatting money laundering and terrorist financing, the Court concluded that there were less drastic means of pursuing the same objectives. Therefore, the provisions applying to lawyers were found to be unconstitutional.<sup>22</sup>

Significantly, the Court did not firmly close the door on a scheme that included searches of lawyers' offices; it left open the possibility that Parliament could craft a constitutionally compliant scheme without the requirement of a warrant.<sup>23</sup> The Court added that different considerations would apply to professional regulatory schemes:

The issues that would arise in the event of a challenge to professional regulatory schemes are not before us in this case. Different considerations would come into play in relation to regulatory audits of lawyers conducted on behalf of lawyers' professional governing bodies. The regulatory schemes in which the professional governing bodies operate in Canada serve a different purpose from the Act and Regulations and generally contain much stricter measures to protect solicitor-client privilege.<sup>24</sup>

## Breach of Lawyers' Right to Liberty

In addition to authorizing unreasonable searches and seizures, the federal scheme was held to breach lawyers' right to liberty under section 7 of the *Charter*. This right was engaged because lawyers were liable to prosecution and imprisonment if they failed to comply with the scheme.<sup>25</sup>

The Court went so far as to recognize as a principle of fundamental justice that "the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes."<sup>26</sup> I pause here to note the significance of this holding. Section 7 of the *Charter* states that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof *except in accordance with the principles of fundamental justice* [emphasis added]." A "principle of fundamental justice" is therefore a constitutional concept. Principles of fundamental justice do not exist in the ether; to achieve constitutional status, they must be recognized by the courts. Once this recognition happens, the effect is significant: if a law affects someone's life, liberty, or security of the person and is inconsistent with a principle of fundamental justice, it will almost certainly be unconstitutional. The Supreme Court's holding therefore lends constitutional protection to the lawyer's duty of commitment to the client's cause.

The Court also noted that it was significant, though not determinative, that the federal scheme went beyond what the Federation and provincial law societies

<sup>22</sup> Ibid at paras 59–63.

<sup>23</sup> Ibid at para 56.

<sup>24</sup> Ibid at para 68.

<sup>25</sup> Ibid at paras 71, 110.

<sup>26</sup> Ibid at para 84.

considered necessary for effective and ethical representation of clients.<sup>27</sup> Moreover, it concluded that clients would reasonably consider that lawyers were acting on behalf of the state in complying with the scheme and that privileged information could be disclosed without their consent.<sup>28</sup> The Court found this “would reduce confidence to an unacceptable degree in the lawyer’s ability to provide committed representation.”<sup>29</sup> The Court emphasized, however, that the duty of commitment “must not be confused with being the client’s dupe or accomplice ... [and] does not countenance a lawyer’s involvement in, or facilitation of, a client’s illegal activities.”<sup>30</sup>

The Court concluded by noting that Parliament might be able to design a constitutionally compliant scheme, provided there were sufficient protections for solicitor-client privilege and meaningful immunity for clients if they were later prosecuted:

[T]he scheme requires significant modification in order to comply with the requirements of the right to be free from unreasonable searches and seizures. Given that there are a number of ways in which the scheme could be made compliant with s. 8, I do not want to venture into speculation about how a modified scheme could appropriately respond to the requirements of s. 7. However, it seems to me that if, for example, the scheme were to provide the required constitutional protections for solicitor-client privilege as well as meaningful derivative use immunity of the required records for the purposes of prosecuting clients, it would be much harder to see how it would interfere with the lawyer’s duty of commitment to the client’s cause.

The information gathering and record retention provisions of this scheme serve important public purposes. They help to ensure that lawyers take significant steps so that when they act as financial intermediaries, they are not assisting money laundering or terrorist financing. The scheme also serves the purpose of requiring lawyers to be able to demonstrate to the competent authorities that this is the case. *In order to pursue these objectives, Parliament is entitled, within proper limits which I have outlined, to impose obligations beyond those which the legal profession considers essential to effective and ethical representation.* Lawyers have a duty to give and clients are entitled to receive committed legal representation as well as to have their privileged communications with their lawyer protected. Clients are not, however, entitled to make unwitting accomplices of their lawyers let alone enlist them in the service of their unlawful ends. [Emphasis added.]<sup>31</sup>

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27 Ibid at paras 107–8. The Court recognized that professional ethical standards “cannot dictate to Parliament what the public interest requires or set the constitutional parameters for legislation. But these ethical standards do provide evidence of a strong consensus in the profession as to what ethical practice in relation to these issues requires.”

28 Ibid at para 109.

29 Ibid.

30 Ibid at para 93.

31 Ibid at paras 112–13.

Unfortunately, in the years following this invitation by the Supreme Court to revisit the *PCMLTFA*, many remained focused on how lawyers could be brought into that regime in a constitutionally compliant way to the exclusion of considering whether alternative measures, including law society regulation, could fill the gap resulting from lawyers' exclusion. This is not to say that revisiting the federal legislation is not desirable; my point is that there was insufficient focus during this period on what law societies were doing to address the fact that lawyers were not subject to the *PCMLTFA* regime.

## Aftermath of the Decision

For some time following the *Federation* decision, it appeared that the federal government would attempt to legislate lawyers back into the *PCMLTFA* regime in a constitutionally compliant way.<sup>32</sup> By 2018, however, the Federation understood the government was abandoning this idea.<sup>33</sup> Since then, the Federation has not heard any indication of an intention to legislate lawyers back into the *PCMLTFA* regime. Ms. Wilson testified that she believes that the federal government “is not currently looking at regulating the legal profession” and has “embraced the opportunity to work with [the Federation] collaboratively.”<sup>34</sup>

To understand this shift in the federal government's thinking, it is necessary to review some of the immediate aftermath of the Supreme Court's decision, in particular the measures taken by the Law Society and the Federation and the criticism levelled at Canada for its failure to bring lawyers into the *PCMLTFA* regime.

## Actions by the Law Society and the Federation Following the *Federation* Decision

Following the *Federation* decision, three working groups focused on anti-money laundering were established involving the Federation, the Law Society, and the federal government. I review each in turn.

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32 The 2015 national risk assessment noted that the federal government was “revisiting” the *PCMLTFA* provisions and “intends to bring forward new provisions for the legal profession that would be constitutionally compliant”; see Exhibit 192: Overview Report on the Regulation of Legal Professionals in British Columbia, Appendix N, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: Department of Finance, 2015), p 32, footnote 31. This was also alluded to at a June 2016 meeting between federal officials and the FLSC: Exhibit 204, Federation of Law Societies of Canada – Memorandum from Frederica Wilson to CEO, Re FATF Mutual Evaluation Report – September 21, 2016, para 11; Evidence of F. Wilson, Transcript, November 16, 2020, pp 174–75.

33 See Exhibit 205, FLSC – Memorandum from Richard Scott to Federation Council Law Society Presidents and CEOs, Re Anti-Money Laundering and Terrorist Financing – Engagement with the Department of Finance, July 30, 2018, paras 6–8.

34 Transcript, November 16, 2020, pp 185–86.

## The FLSC Anti–Money Laundering Working Group

A key step by the Federation following the *Federation* decision was the creation of the FLSC Anti–Money Laundering and Terrorist Financing Working Group. The working group is made up of senior staff from law societies across Canada, including two from British Columbia. It was created with a mandate to “undertake a review of the Model No Cash and Client Identification and Verification Rules and to consider issues related to their enforcement.”<sup>35</sup> It was approved by the Federation’s Council in 2016 and formed in 2017.<sup>36</sup>

From October 2017 to March 2018, the working group held consultation on several proposed amendments to the Federation’s Model Rules – namely, the cash transaction and client identification and verification rules – and the introduction of a trust account model rule. This review of the Rules led to updates to the Model Rules for cash transactions, client identification and verification, and trust regulation in 2018.<sup>37</sup> Corresponding updates to the Law Society’s Rules were made between July 2019 and January 2020.<sup>38</sup> I discuss specific results from this review in Chapter 28.

To complete this review, the working group divided into two subgroups: one focused on the review of the Rules, and the other focused on compliance and enforcement.<sup>39</sup>

The rules subgroup discussed experiences with the Rules; examined federal regulations and amendments; looked at the Financial Action Task Force’s mutual evaluation report;<sup>40</sup> and considered guidance from the task force, the International Bar Association, and others. Ms. Wilson described the working group’s approach to the Rules review as follows:

The other thing to note is that we took the position at the outset that the goal was to assess whether or not the rules were as effective and robust as they should be to manage the risks that they were intended to address. So nothing was off the table ... [S]ometimes when you are looking at regulations you’re really only looking at has anything changed, do we need to tweak here and there. We stood right back from both rules, and we had an early conversation in that regard about risk-based approaches and whether we should be stepping completely back and looking at a different approach. There were lots of reasons why we didn’t do that at the time, but that’s still very much on the table.<sup>41</sup>

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35 Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, Appendix D, FLSC Anti–Money Laundering Working Group, Terms of Reference, para 1. See also Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), pp 5–6.

36 Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), p 5.

37 Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, paras 16–19.

38 Ibid, para 8.

39 Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), pp 6–7.

40 See **Chapter 6** for an explanation of the mutual evaluation regime.

41 Transcript, November 17, 2020 (Session 1), p 13.

Meanwhile, the enforcement subgroup conducted a survey of law societies to understand the tools they had for monitoring compliance and enforcing the rules.<sup>42</sup> This survey was in response to an issue that arose during the 2016 mutual evaluation conducted by the Financial Action Task Force,<sup>43</sup> when the Federation did not have statistics available to address some of the evaluators' questions.<sup>44</sup> I suspect this lack of data may have contributed to the evaluators' failure to fully appreciate the efforts already being undertaken by law societies and to their perception that lawyers are not regulated for anti-money laundering purposes. As a contemporary internal memo explained:

The Federation representatives provided the assessors with information on the law society rules and regulations in place across Canada. Using the material put before the courts in the Federation's case against the federal government, they also gave a general outline of the range of methods used by law societies to monitor compliance by members of the legal profession. The FATF assessors asked a number of questions about enforcement, including whether law societies take account of the relative risks that may be posed in different contexts. *The assessors also enquired about statistics on enforcement, prosecutions and sanctions. They were informed that we do not currently collect such statistics.* [Emphasis added.]<sup>45</sup>

Ms. Wilson explained that the difficulty in collecting specific anti-money laundering statistics as follows:

One of the challenges in terms of getting information on enforcement and it remains a challenge today and something that we're quite focused on at the moment is that [the Model] Rules find their expression in law society rules in different ways. Some of them are part of the accounting rules. Some are part of the general rules and regulations of [the] law society. And how a particular matter is referred for investigation or how it's referred to prosecution does not necessarily reference anything to do with anti-money laundering rules.

So you may find, for example, that somebody is cited for a breach of the trust accounting rules. It doesn't tell you, without digging further, exactly what was behind it. That's something that existed at the time of this evaluation, something that we are still working ... with the law societies to get to a place where we can produce more specific data that looks more specifically at ... this suite of rules that are relevant to the anti-money laundering efforts.<sup>46</sup>

<sup>42</sup> Ibid, p 7.

<sup>43</sup> Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016).

<sup>44</sup> Evidence of F. Wilson, Transcript, November 16, 2020, p 157.

<sup>45</sup> Exhibit 203, Memorandum from Federation Executive to Council of the Federation & Law Society Presidents & CEOs Re Anti-Money Laundering and Terrorist Financing Issues, December 3, 2015, para 5.

<sup>46</sup> Transcript, November 16, 2020, pp 153–54.

The enforcement subgroup’s study showed that all law societies except one had comprehensive spot audit programs in place, which were supplemented by risk-based audits. It also showed that some law societies were starting to use data analytics, which is now a more entrenched practice.<sup>47</sup>

The survey also revealed discrepancies in the treatment of breaches of the cash transaction rule. For example, some law societies would refer all breaches for investigation, while others exercised some discretion as to whether to refer the matter for investigation or adopt a remedial approach.<sup>48</sup>

Ms. Wilson described the study as an illustration of the “difficulty in extracting consistent and comparable data across the law societies because of the way that they classify investigations and disciplinary matters.”<sup>49</sup> Moreover, because of similar challenges, the study did not collect statistical data about the numbers of investigations, breaches, and the like. Ms. Wilson testified that the Federation is working with law societies to develop more consistent ways of recording data.<sup>50</sup>

This study is a good first step toward gathering consistent and useful data about law society practices across Canada. I consider it very important for the law societies and the Federation to strive for more consistent and effective data collection, particularly given the lack of evidence on the involvement of lawyers in money laundering (see Chapter 26).

**Recommendation 53:** I recommend that the Law Society of British Columbia work with the Federation of Law Societies of Canada to develop uniform metrics to track, at a minimum:

- the nature and frequency of breaches of rules that are relevant to anti-money laundering regulation;
- the number of breaches that are referred for investigation or into a remedial stream;
- the outcome of the referrals, including the nature and frequency of sanctions that are imposed;
- the rules, policies, and processes law societies have regarding information sharing with and referrals to law enforcement;
- the frequency, nature, and circumstances of the information sharing or referrals, including whether this includes sharing of non-public or compelled information and the stage of a proceeding or investigation at which occurs; and
- the use of data analytics by law societies.

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47 Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), pp 6–7.

48 Ibid, pp 7–8.

49 Ibid, p 8.

50 Ibid, pp 9–11.

The working group is currently undergoing a second review of the Model Rules. I discuss that review in Chapter 28.

Aside from this review, the working group also conducts other anti–money laundering–related activities, such as issuing “risk advisories” to the profession.<sup>51</sup> I review one of these risk advisories relating to private lending and litigation in Chapter 26. In my view, these risk advisories are very useful, particularly as they can address new and evolving money laundering risks. I encourage the working group and the Law Society to continue issuing such advisories to their members.

## The Law Society’s Anti–Money Laundering Working Group

The Law Society has also developed an anti–money laundering working group that “monitors and advises the Benchers on key matters relating to the state of anti–money laundering strategies and initiatives in British Columbia.”<sup>52</sup> The working group also ensures continuing liaison between the Benchers and the provincial government on money laundering; monitors and advises the Benchers on the Federation’s work on anti–money laundering issues; liaises with various committees at the Law Society; develops and recommends model anti–money laundering policies; and works with the Law Society’s Communications Department.<sup>53</sup>

The Law Society also provided the Commission with its strategic and operational anti–money laundering plans.<sup>54</sup> The strategic plan highlights areas of priority where the society should direct its anti–money laundering efforts.<sup>55</sup> The operational plan “provides details of specific anti–money laundering initiatives, status, timelines and next steps.”<sup>56</sup>

## The FLSC–Canada Working Group

A third development following the *Federation* decision was the creation of the FLSC–Government of Canada Working Group on Money Laundering and Terrorist Financing. The working group’s mandate is “to explore issues related to money laundering and terrorist financing in the legal profession and to strengthen information sharing between the law societies and the Government of Canada.”<sup>57</sup>

51 See, e.g., Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, Appendix J, FLSC Anti–Money Laundering Working Group, *Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing*.

52 Exhibit 222, Law Society of British Columbia, *Introduction to the Law Society*, para 22. For example, it advises the Benchers on actions the Law Society is taking in terms of anti–money laundering initiatives, money laundering trends in British Columbia and other provinces, the progress of this Commission, and the nature and adequacy of Law Society resources being dedicated to anti–money laundering.

53 *Ibid.*

54 *Ibid.*, Appendices B and C.

55 *Ibid.*, para 23.

56 *Ibid.* See also Evidence of D. Avison, Transcript, November 18, 2020, pp 27–28.

57 Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, Appendix L, FLSC–Canada Working Group, Terms of Reference.

A presentation prepared for the Commission by the federal Department of Finance explains the rationale for the working group's creation:

- The legal profession presents a high money laundering and terrorist financing risk.
- The *Federation* decision left the regulation of lawyers' conduct to law societies, which can play an important role in mitigating those risks.
- The group aims to share information and explore ways of addressing the inherent risks of money laundering and other illicit activity that can arise in the practice of law.<sup>58</sup>

The working group has various objectives set out in its terms of reference. These relate in broad strokes to strengthening communication between law societies and the federal government; sharing information about money laundering risks; discussing improvements to existing systems; and developing new practices.<sup>59</sup>

The working group is co-chaired by the Federation and the Department of Finance. Its standing members include representatives from Justice Canada, the Department of Finance, and law societies. It also invites representatives from other departments (such as the RCMP, FINTRAC, and the Canada Revenue Agency) to attend on an ad hoc basis.<sup>60</sup>

The working group was created in June 2019 following a special ministerial meeting on money laundering in Vancouver and had met three times as of the Commission's hearings.<sup>61</sup> Mr. Ngo testified that these meetings focused on information sharing and best practices, with FINTRAC, various law societies, and the Department of Finance making presentations.<sup>62</sup> He stated that a key takeaway from the Law Society's presentation centred on its significant regulatory powers and ability to refer cases to law enforcement.<sup>63</sup>

Ms. Wilson testified that the Federation has plans for subsequent meetings of the working group. For example, it plans to update the group on its continued review of the Model Rules and to introduce some new guidance documents. It also aims to present a new online educational tool about the risks of money laundering in the practice of law.<sup>64</sup>

Although it took several years for this working group to be established following the *Federation* decision, I consider it an important step. I encourage the Law Society, the Federation, and the federal government to make full use of this forum to share best practices, engage in meaningful information sharing, and assist one another in identifying evolving money laundering risks in the legal sector.

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58 Exhibit 198, Overview of the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing: Presentation by the Department of Finance Canada, October 2020, slide 3.

59 Exhibit 191, Overview Report: Anti-Money Laundering Initiatives of the LSBC and FLSC, Appendix L, FLSC-Canada Working Group, Terms of Reference, p 1.

60 Evidence of G. Ngo, November 16, 2020, pp 16-17.

61 Ibid, pp 17-18.

62 Ibid, pp 18-19.

63 Ibid, pp 25-26.

64 Transcript, November 17, 2020 (Session 1), pp 70-73.

## Critiques of Canada’s Anti–Money Laundering Regime

In Chapter 6, I describe Canada’s fourth mutual evaluation<sup>65</sup> conducted by the Financial Action Task Force in 2016, about a year after the *Federation* decision. The report was highly critical of a perceived gap in the anti–money laundering framework with respect to lawyers. It concluded:

The legal profession is not currently subject to AML/CFT [anti–money laundering / combatting the financing of terrorism] supervision due to a successful constitutional challenge that makes the PCMLTFA inoperative in respect of legal counsels, legal firms, and Quebec notaries. There is therefore no incentive for the profession to apply AML/CFT measures and participate in the detection of potential [money laundering / terrorist financing] activities. The exclusion of the legal profession from AML/CFT supervision is a significant concern considering the high-risk rating of the sector and its involvement in other high-risk areas such as the real estate transactions as well as company and trust formation. This exclusion also has a negative impact on the effectiveness of the supervisory regime as a whole because it creates an imbalance amongst the various sectors, especially for [reporting entities] that perform similar functions to lawyers.<sup>66</sup>

Elsewhere, the report described the fact that lawyers are not subject to the *PCMLTFA* regime as a “significant loophole” in Canada’s anti–money laundering framework,<sup>67</sup> a “significant concern,”<sup>68</sup> and a “serious impediment” to Canada’s efforts to fight money laundering.<sup>69</sup> A “priority action” was to “[e]nsure that legal counsels, legal firms, and Quebec notaries engaged in the activities listed in the standard are subject to AML/CFT obligations and supervision.”<sup>70</sup> The report was also critical of the Federation, which had participated in the evaluation process on behalf of Canadian law societies:<sup>71</sup>

[T]he Federation of Law Societies, although aware of the findings of the [2015 national risk assessment], did not demonstrate a proper understanding of [money laundering / terrorist financing] risks of the legal profession. In particular, they appeared overly confident that the mitigation measures adopted by provincial and territorial law societies (i.e. the prohibition of conducting large cash transactions and the identification and record-keeping requirements for certain financial transactions performed on behalf of the clients) mitigate the risks. While monitoring measures are applied by the provincial and territorial law societies, they are limited in

65 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti–Money Laundering and Counter–Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016).

66 *Ibid.*, p 95.

67 *Ibid.*, p 3.

68 *Ibid.*, p 4.

69 *Ibid.*, p 7.

70 *Ibid.*, p 9.

71 Evidence of F. Wilson, Transcript, November 16, 2020, pp 146–47.

scope and vary from one province to the other. The on-site visit interviews suggested that the fact that [anti-money laundering / counter-terrorist financing] requirements do not extend to legal counsels, legal firms and Quebec notaries also undermines, to some extent, the commitment of [reporting entities] performing related functions (i.e. real estate agents and accountants).<sup>72</sup>

In October 2021, the Financial Action Task Force conducted its first regular follow-up report and technical compliance re-rating of Canada since the 2016 mutual evaluation.<sup>73</sup> Although Canada's ratings improved in several categories, the follow-up report indicates that the continued non-inclusion of legal professionals "affects the overall outcome."<sup>74</sup>

While the 2016 mutual evaluation is arguably the most significant critique of Canada's regime following the Supreme Court's decision, other commentators have shared the concern that a gap exists in Canada's anti-money laundering framework.

In *Dirty Money 2*, Dr. Peter German notes that lawyers are "at high risk of being targeted by money launderers" given their exemption from reporting and the inherent risks in their work.<sup>75</sup> In Dr. German's view, the lack of financial reporting by lawyers makes Canada an "outlier" compared to other common law jurisdictions that have found workarounds to address issues such as privilege.<sup>76</sup> Professors Maureen Maloney, Tsur Somerville, and Brigitte Unger similarly note that, despite the Law Society's regulation of lawyers, "legal professionals will still not have a positive obligation to report suspicious transactions to anyone."<sup>77</sup>

Finally, in testimony before me, Mr. Wallace expressed the view that non-reporting by lawyers constitutes a gap in the intelligence FINTRAC receives.<sup>78</sup> He described this gap as an advantage for someone looking to launder funds in the sense that, unlike countries where lawyers are required to report suspicious transactions, FINTRAC does not have "a line of sight into transactions conducted by lawyers on behalf of clients."<sup>79</sup>

In my view, the above critiques blend two related, but distinct, issues. The first is the perception that lawyers are not subject to anti-money laundering regulation and that there is therefore no incentive for lawyers and law firms to adopt anti-money

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72 Exhibit 192, Overview Report on the Regulation of Legal Professionals in British Columbia, Appendix M, *FATF Canada Report 2016*, p 81.

73 Exhibit 1061, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures, Canada, 1st Regular Follow-up Report & Technical Compliance Re-Rating* (October 2021).

74 *Ibid*, p 3.

75 Peter M. German and Peter German & Associates Inc., *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*], p 121.

76 *Ibid*, p 124.

77 Maureen Maloney, Tsur Somerville, and Brigitte Unger, "Combatting Money Laundering in BC Real Estate," Expert Panel, March 31, 2019 [Maloney Report], p 84.

78 Transcript, November 16, 2020, p 13.

79 *Ibid*, p 14.

laundering measures. I respectfully disagree with these views, given the significant anti-money laundering regulation undertaken by the Law Society. The second is the concern that non-reporting by lawyers to FINTRAC or another body creates an intelligence gap. I share this concern. I deal with these two issues in turn.

First, critiques to the effect that lawyers are not subject to anti-money laundering regulation and have no incentive to adopt preventive measures are not accurate. These criticisms appear to assume that, because lawyers are not subject to the *PCMLTFA* regime, they are not regulated for anti-money laundering purposes. This is simply not the case.

As I elaborate in Chapter 28, the Law Society has implemented a number of anti-money laundering rules aimed at preventing lawyers from being involved in money laundering. These include the cash transactions rule and client identification and verification rules, which parallel, and in some ways go further than, similar rules under the *PCMLTFA*. They also include extensive trust-accounting rules intended to prevent and detect the misuse of trust accounts. This trust regulation includes periodic, mandatory audits of law firm trust accounts. The Law Society's ability to investigate lawyers, to view all aspects of a lawyer's practice (including confidential and privileged information), and to impose sanctions – up to and including disbarment – provide a strong incentive to comply with these rules. For these reasons, I disagree with the argument that lawyers are not subject to anti-money laundering regulation and have no incentive to comply.

Relatedly, I find that the criticism of the Federation (and, by implication, the Law Society) to the effect it does not understand the money laundering risks facing the legal profession unfair. The evidence before me demonstrates that the Law Society and the Federation have worked to gain a strong understanding of the money laundering risks in this sector and have implemented measures focused on anti-money laundering since at least 2004. They also continue to revisit their anti-money laundering rules to address new and evolving risks. While there is always room for improvement in every sector – including the legal profession – it is not accurate to say the Federation and the Law Society do not understand the risks faced by their members. I return to the measures in place by the Law Society and the Federation in Chapter 28.

The analysis and critiques in the Financial Action Task Force's 2016 mutual evaluation seem to employ a standard that adheres rigidly to the model of reporting to a country's financial intelligence unit (in this country, FINTRAC). Such reporting is indeed an important part of anti-money laundering efforts; however, it is by no means the only solution that can be effective. (And, indeed, to the extent that reporting to FINTRAC has proven ineffective at addressing money laundering activity, there may be sound reasons that it should not be seen as a silver bullet solution.) A regime in which lawyers reported to FINTRAC would, if properly and constitutionally implemented, resolve an inequity in relation to other sectors of activity. But such reporting on its own would not seem to offer a comprehensive solution. In my view, the existence of a robust regulatory model seems to be a more important and effective aspect of anti-money laundering regulation in the legal sector.

I turn now to the second criticism: the concern that FINTRAC lacks a lens into the suspicious activities of lawyers and their clients. I agree that such a gap exists. In Chapter 26, I discuss a study conducted by FINTRAC that attempted to analyze lawyer involvement in money laundering based on reports from other reporting entities and disclosures from FINTRAC to law enforcement. Mr. Wallace testified that, in the absence of reporting by lawyers themselves, the study was unable to come to any conclusions about the nature of lawyer involvement in money laundering. He further testified that FINTRAC generally lacks a lens into activities in the legal sector.<sup>80</sup> The absence of lawyers from the regime means that Canada’s financial intelligence unit lacks information about the legal sector. Further, law enforcement will, in some cases, be compromised in its ability to trace funds or “follow the money” when it passes through a lawyer’s trust account.

The lack of lawyer reporting also means that lawyers may unwittingly be involved in illegitimate transactions. Whereas a single transaction may, in the absence of further context, appear legitimate to a lawyer, law enforcement or an entity such as FINTRAC may be able to piece together that transaction with other intelligence to determine that it is part of a series of transactions that are, collectively, suspicious (or that the context and intelligence surrounding a transaction change its character).

I am also concerned that the lack of reporting to FINTRAC by lawyers and the very public criticisms of this gap may lead prospective money launderers to perceive this jurisdiction as a “safer” one in which to move or hold their illicit proceeds. As I discuss further in Chapter 28, lawyers in British Columbia are subject to significant anti-money laundering regulation, and there are methods by which information about suspicious transactions can be communicated to or pursued by law enforcement. To dispel the myth that the lack of reporting by lawyers to FINTRAC has created a safe haven for money launderers, it is important that information about regulation, detection, and enforcement avenues be communicated publicly.

Whether lawyers should be required to report suspicious activity to FINTRAC, the Law Society, or some other body is, however, a highly complex issue. As I discuss further below, lawyers have constitutional duties to protect privileged information and to be committed to their clients’ causes. Unfortunately, these important duties pose significant difficulties when contemplating a reporting regime by lawyers.

I do not express an opinion as to whether the federal government could bring lawyers into the *PCMLTFA* regime in a constitutionally compliant way. This Report is not the proper forum to do so, since any proposed legislation would need to be put before a court, with submissions from affected parties and a ruling by the judge. However, it has been suggested that the Province of British Columbia should design its own reporting regime for lawyers, which is a policy question properly before me. In my opinion, the difficulties that would be involved in designing such a regime are so great that the Province should not attempt to do so. Indeed, it is apparent that, despite the Supreme Court of Canada leaving open the possibility of some incorporation of lawyers into

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<sup>80</sup> Transcript, November 16, 2020, pp 61–63.

the *PCMLTFA* regime, the federal government has not found a way to do so and does not appear to have any plans to attempt to do so in the foreseeable future. Further, for British Columbia to legislate a reporting regime for lawyers without parallel regimes in other provinces would lead to inequality of reporting among provinces and would clearly be less desirable than a reporting regime that applied across Canada.

In what follows, I expand on the difficulties inherent in designing a provincial reporting regime for lawyers. Then, in Chapter 28, I outline what I consider to be a more attainable and effective method of regulating lawyers in British Columbia for anti-money laundering purposes.

## Calls for a Provincial Reporting Regime for Lawyers

The concept of a provincial reporting regime for lawyers was suggested in the reports of both Dr. German and Professors Maloney, Somerville, and Unger.

In *Dirty Money 2*, Dr. German suggested that lawyers might report to a separate body administered by law societies or the Federation, or that a “blind” could be established that would allow for transmitting financial data without violating solicitor-client privilege.<sup>81</sup> This recommendation was grounded in his conclusion that there is “no blanket privilege that shields all such records from disclosure” and that British Columbia case law “recognizes that information relating to financial transactions in trust account records will in general not be privileged.”<sup>82</sup>

Professors Maloney, Somerville, and Unger similarly recommended that lawyers be required to report suspicious activity to their law societies. They suggest that limitations could be placed on the Law Society’s ability to use that information in investigations:

Where a lawyer properly reports a suspicious transaction and withdraws from representing the client, as required by law society rules, the law society would not be able to take action or share the information. But where the suspicious transaction report (STR) provides reasonable grounds to investigate another lawyer who did not report or withdraw, it could become clear that solicitor-client privilege does not apply, in which case there could be further investigation and information sharing by the law society. If implemented, law societies should be required to report statistical information about STRs to FINTRAC, to combine with information about STRs submitted by reporting entities.<sup>83</sup>

The French model of lawyer reporting arguably provides support for these proposals. As Professor Levi explained, the French system involves reporting to a third party called the *bâtonnier*, who assesses issues of privilege before forwarding reports to the financial intelligence unit.<sup>84</sup>

<sup>81</sup> *Dirty Money 2*, pp 160–61.

<sup>82</sup> *Ibid*, pp 141–44.

<sup>83</sup> Maloney Report, p 84.

<sup>84</sup> Transcript, November 20, 2020, pp 38–40.

With respect, I am not persuaded by the proposal by Professors Maloney, Somerville, and Unger. As I understand it, the aim would be to potentially identify situations in which a lawyer or an individual (other than the reporting lawyer or the lawyer's client) was engaged in suspicious activity in situations where no solicitor-client privilege attached. It is not clear to me how often such reporting would produce intelligence that the Law Society could use, nor am I confident that the lawyer would be able to report such information in a way that does not breach solicitor-client privilege or the duty of confidentiality. Further, the proposal may be seen as countenancing the lawyer's ability to engage in a suspicious transaction so long as the suspicions are reported, contrary to ethical and professional obligations. In this regard, I agree with the concerns raised by Ms. Wilson:

I'm going to be candid and tell you that I have really struggled to understand what [this proposal] would accomplish. So, as I understand the proposal ... lawyers would, if there was a suspicious transaction, report that suspicious transaction to the law society and then withdraw. So what is not clear is whether the lawyer is going to conduct the transaction or not under that proposal, and if the idea is that they could conduct the transaction, we say that is absolutely antithetical to the role of lawyers in our society and to the duty they owe to the administration of justice. It is out of the question to imagine a scheme that would permit lawyers to facilitate something that they think is probably illegal and then get off the record. So perhaps that is not what is suggested. Perhaps upon further examination we would see the idea is ... they wouldn't engage in the transaction, so the transaction doesn't happen as far as that lawyer is concerned. They report their suspicions to the law society, which, according to the recommendation, the law society then does nothing with. They don't do anything with it with regards to that lawyer ... But perhaps if there is information about another lawyer they could ... investigate and go to the law enforcement. There are a lot of things that are assumed in that recommendation. The assumption is that there is another lawyer and they haven't reported and they haven't got off the record, [and so] they are inevitably as a result involved in the commission of assistance with or facilitation of a criminal act or something illegal. That's not evident ... We don't know that without investigation. It may very well be that upon further investigation we discover that that lawyer just isn't as far along in the process. They are perhaps further down the chain in the transaction. They haven't done anything yet and they are still trying to figure out what is going on trying to do their risk assessment.<sup>85</sup>

Meanwhile, Dr. German's proposal focuses on reporting of purely financial data, which he concludes is not covered by a blanket privilege. On its face, this proposal has a certain appeal. However, with respect, it seems me that the issue of trust accounts and privilege is not as straightforward as Dr. German sets out. Further, the duty of commitment to the client's cause would seem to pose significant difficulties in this regard, whether or not the privilege issues could be resolved.

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<sup>85</sup> Transcript, November 17, 2020 (Session 1), pp 77–79.

## Solicitor-Client Privilege

There is extensive Supreme Court of Canada case law on solicitor-client privilege, which is itself a principle of fundamental justice.<sup>86</sup> There are various rationales for it, including that the law is complicated and cannot be realistically navigated without a lawyer's expert advice; that lawyers must know all the facts of their client's case to give accurate and useful advice; and that clients will not divulge everything without an assurance of confidentiality.<sup>87</sup> The Supreme Court has stated that, as a general rule, all privileged information is immune from disclosure, and all communications between a lawyer and client are presumed to be confidential.<sup>88</sup>

Clients reasonably expect that all documents held by their lawyer will remain private, an expectation that is “invariably high” when the information is privileged, regardless of the circumstances of the legal advice.<sup>89</sup> Importantly, privilege belongs to the client, not the lawyer. This means that only the client may waive it; the lawyer is the “gatekeeper, ethically bound to protect the privileged information.”<sup>90</sup>

As I outline in Chapter 25, some narrow exceptions to privilege have been recognized, namely the crime exception, the innocence at stake exception, and the future harm / public safety exception. However, in recognition of the principle that privilege must remain “as close to absolute as possible to ensure public confidence and retain relevance,” these exceptions have been strictly defined.<sup>91</sup>

If the state seeks to narrow the scope of privilege, a court will consider whether the limitation is “absolutely necessary.” This test is “as restrictive a test as may be formulated short of an absolute prohibition in every case.”<sup>92</sup> It has led to stringent requirements when law enforcement seeks to search a lawyer's office.<sup>93</sup> Legislation has also been found unconstitutional where the information sought could have been obtained from another source, showing that resort to the lawyer was not “absolutely necessary.”<sup>94</sup>

In a series of cases in which the Supreme Court has found legislation unconstitutional for interfering with privilege, some common constitutional defects have emerged. In general, notice must be given to the client that privilege may be

86 *Lavallee, Rackel & Heintz v Canada (Attorney General)*, 2002 SCC 61 [*Lavallee*] at para 49; *Chambre* at para 28.

87 *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 [*Blood Tribe*] at para 9; *R v McClure*, 2001 SCC 14 [*McClure*] at para 2.

88 *Chambre* at para 32; *Blood Tribe* at para 16; *Foster Wheeler Power Co v SIGED*, 2004 SCC 18 [*Foster Wheeler*] at para 42.

89 *Federation* at para 38; *Lavallee* at para 35.

90 *Lavallee* at para 24. See also *Chambre* at para 45; *Blood Tribe* at para 9; *Federation* at para 48.

91 *McClure* at para 35; *Blood Tribe* at para 10; *Smith v Jones*, [1999] 1 SCR 455 at para 86; *Chambre* at para 38.

92 *Chambre* at paras 38, 82; *Lavallee* at paras 36–37; *McClure* at para 35; *R v Brown*, 2002 SCC 32 at para 27; *Goodis v Ontario (Correctional Services)*, 2006 SCC 31 [*Goodis*] at paras 15, 20.

93 *Lavallee* at para 49; *Federation* at para 53. Principles with respect to searches include that no warrant can be issued with respect to documents known to be privileged; there must be no reasonable alternative to a search; and documents must be immediately sealed and an opportunity given for privilege to be claimed.

94 See, e.g., *Blood Tribe* at paras 17, 32–34; *Chambre* at para 59.

threatened. Since privilege belongs to the client, it is insufficient to notify the lawyer and assume the lawyer will protect it.<sup>95</sup> Similarly, legislation that does not allow a judge to determine privilege issues in the absence of a specific assertion of privilege has also been found unconstitutional.<sup>96</sup> Finally, a failure to limit the future use of privileged information can lead to an unacceptable risk that it could be used in other circumstances that are not absolutely necessary.<sup>97</sup>

It can readily be seen that protections for solicitor-client privilege in Canadian law are very strong. Again, the Supreme Court has repeatedly affirmed that solicitor-client privilege must remain “as close to absolute as possible.” In the context of the *PCMLTFA* specifically, the Supreme Court held that the *risk* of privileged information being disclosed during a search by FINTRAC was unacceptable:

The *Lavallee* analysis does not assume, of course, that all records found in the possession of a lawyer are subject to privilege and I do not approach this case on the basis that all the materials that lawyers are required to obtain and retain by the Act are privileged. The *Lavallee* standard aims to prevent the significant risk that some privileged material will be among the records in a lawyer’s office examined and seized pursuant to a search warrant. Similarly, in this case, *there is a significant risk that at least some privileged material will be found among the documents* that are the subject of the search powers in the Act. [Emphasis added.]<sup>98</sup>

Any reporting obligation would therefore need to be very narrowly tailored to avoid even the risk of privileged information being disclosed or, at least, would require an arbiter to determine privilege issues before information gets passed on to law enforcement. This point brings me to Dr. German’s proposal to require reporting of non-privileged financial data to the Law Society, the Federation, or some other body. He arrived at this proposal following an analysis of British Columbia case law that he interpreted as establishing that trust account records are generally not privileged. This conclusion is worth exploring in some detail.

## Trust Accounts and Privilege

Dr. German’s analysis relies on various BC cases. I focus my analysis on *Donell* and *Luu*,<sup>99</sup> two leading decisions of this province’s Court of Appeal.

In *Donell*, the British Columbia Court of Appeal considered whether solicitor-client privilege attached to a lawyer’s trust account ledgers. The court stated that the “general rule” is that privilege attaches to “communications for the purpose of obtaining legal

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95 *Lavallee* at paras 39–42; *Federation* at paras 48–50; *Chambre* at paras 6, 46, 51–54.

96 *Lavallee* at para 43; *Federation* at paras 47, 51–52; *Chambre* at paras 78–79.

97 *Chambre* at para 87.

98 *Federation* at para 42.

99 *Donell v GJB Enterprises*, 2012 BCCA 135 [*Donell*]; *Wong v Luu*, 2015 BCCA 159 [*Luu*].

advice.” It then referred to the “distinction between communications, which are privileged, and facts, which are not.”<sup>100</sup> In this regard, it referred to a 1983 decision of the Ontario Divisional Court, *Greymac*,<sup>101</sup> which held:

*Evidence as to whether a solicitor holds or has paid or received moneys on behalf of a client is evidence of an act or transaction, whereas the privilege applies only to communications. Oral evidence regarding such matters, and the solicitor’s books of account and other records pertaining thereto (with advice and communications from the client relating to advice expunged) are not privileged, and the solicitor may be compelled to answer the questions and produce the material. [Emphasis added.]*

The British Columbia Court of Appeal noted that *Greymac* had been cited with approval by the Supreme Court of Canada in its 2003 *Maranda* decision.<sup>102</sup> The latter case held that a lawyer’s legal bills are presumed to be privileged.

Although *Maranda* had rejected a firm fact / communication distinction when considering whether privilege attached to a lawyer’s bill,<sup>103</sup> the Court of Appeal concluded that *Maranda* had not abolished the distinction between facts and communications in general.<sup>104</sup> The Court of Appeal held that a lawyer’s trust account ledgers were not presumptively privileged in the same way as a lawyer’s bill of account. In the court’s view, trust ledgers “[g]enerally ... record facts, not communications, and are not subject to solicitor-client privilege.”<sup>105</sup> However, such records should not automatically be produced; a court would have to “ensure that entries on a trust ledger do not contain information that is ancillary to the provision of legal advice.”<sup>106</sup>

A few years later, in *Luu*, the British Columbia Court of Appeal affirmed *Donell*, noting that, whereas a lawyer’s *bills* are ordinarily descriptive and may divulge a client’s instructions, this is not the case with trust account ledgers:

The privilege extends to administrative facts tending to reveal the nature or extent of legal assistance sought and received. However, there is good reason not to extend the presumed privilege to the trust ledger. The entries in a trust account record the possession of and movement of funds which the client may be compelled to disclose. Insofar as the entries record the payment of funds to parties who do not owe a duty of confidence to the client, the client cannot have expected the fact of payment to remain confidential as between himself and his counsel.<sup>107</sup>

<sup>100</sup> *Donell* at para 35.

<sup>101</sup> *Ontario Securities Commission and Greymac Credit Corp*, 1983 CanLII 1894 (Ont Div Ct) [*Greymac*].

<sup>102</sup> *Maranda v Richer*, 2003 SCC 67 [*Maranda*].

<sup>103</sup> *Ibid* at paras 30–33.

<sup>104</sup> *Donell* at para 49.

<sup>105</sup> *Ibid* at para 51.

<sup>106</sup> *Ibid*.

<sup>107</sup> *Luu* at paras 38–39.

The above cases lend some support to Dr. German’s conclusion that trust account records are not presumptively privileged. However, it is not clear whether they continue to be valid in light of two 2016 decisions of the Supreme Court of Canada: *Chambre and Thompson*.<sup>108</sup>

*Chambre and Thompson* dealt with provisions of the *Income Tax Act* that allowed the Canada Revenue Agency to obtain “accounting records” of lawyers and Quebec notaries. The *Income Tax Act* defined solicitor-client privilege to specifically exclude “accounting records of a lawyer” from its ambit but did not define an “accounting record.”

The Supreme Court held that the scheme was unconstitutional for several reasons relating to the process of obtaining “accounting records” from lawyers and Quebec notaries. It further held that the definition of solicitor-client privilege was itself unconstitutional.

In *Chambre*, the Court addressed the fact / communication distinction as follows:

[I]t is not appropriate to establish a strict demarcation between communications that are protected by professional secrecy<sup>109</sup> and facts that are not so protected ... The line between facts and communications may be difficult to draw ... The Court has found that “[c]ertain facts, if disclosed, can sometimes speak volumes about a communication”

...

It follows that we must reject the argument ... that some information, particularly information found in accounting records, constitutes facts rather than communications and is therefore always excluded from the protection of solicitor-client privilege as defined in s. 232(1) of the [*Income Tax Act*].<sup>110</sup>

In *Thompson*, it appeared to reject the distinction in even stronger terms:

[T]his Court has since rejected a category-based approach to solicitor-client privilege that distinguishes between a fact and a communication for the purpose of establishing what is covered by the privilege ... While it is true that not everything that happens in a solicitor-client relationship will be a privileged communication, facts connected with that relationship (such as the bills of account at issue in *Maranda*) must be presumed to be privileged absent evidence to the contrary.<sup>111</sup>

The Court further explained that “even where accounting information includes no description of work, it may in itself, if disclosed, reveal confidential and privileged information.”<sup>112</sup> The focus should not be on the *type* of document but, rather, its content:

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108 *Chambre; Canada (National Revenue) v Thompson*, 2016 SCC 21 [*Thompson*].

109 Professional secrecy is the civil law equivalent of solicitor-client privilege. In *Chambre*, the Supreme Court explained that there are “strong similarities” between the two concepts and that cases nationwide with respect to these duties have been consistent: *Chambre* at para 42.

110 *Chambre* at paras 40, 42.

111 *Thompson* at para 19.

112 *Chambre* at para 72.

Whether a document or the information it contains is privileged depends not on the type of document it is but, rather, on its content and on what it might reveal about the relationship and communications between a client and his or her notary or lawyer. If lawyers' fees can reveal privileged information, it is difficult to see why this could not also be the case for accounting records. Such records will not always contain privileged information, of course, but the fact remains that they may contain some, so their disclosure could involve a breach of professional secrecy. This is sufficient for the purpose of our analysis.<sup>113</sup>

The Court also noted that accounting records could contain clients' names (which can in themselves be privileged in some situations<sup>114</sup>), as well as a description of the mandate, particulars about work performed, and other information that could reveal aspects of litigation strategy.<sup>115</sup> On the whole, the "outright exclusion" of accounting records from the definition of privilege was problematic, particularly because the term "accounting record" was not defined and could be open to multiple interpretations.<sup>116</sup> The Court also found that the term could prove to be overly broad and allow the Canada Revenue Agency to obtain a far wider range of documents than was absolutely necessary to achieve its objectives.<sup>117</sup>

As the above discussion demonstrates, the law with respect to trust account records and privilege is complex, and it is not clear how the approaches by the British Columbia Court of Appeal and the Supreme Court of Canada intersect. Given these uncertainties, it would, in my view, be risky to develop a reporting regime for lawyers based on the law articulated in the decisions of the Court of Appeal. It seems to me that a reporting regime in which lawyers were required to report trust account transactions as a matter of course would likely require, at the very least, some kind of arbiter to determine whether a given record includes privileged information. Dr. German suggests that the Law Society, the Federation, or some other body could play that role. Although this proposal is certainly a possibility, it raises a number of significant difficulties.

First, the determination of whether a record contains privileged information will not always be straightforward. As the above cases reveal, the question of whether a particular record is privileged may, in some cases, require resolution by a court. This means that any privilege arbiter other than a court may not be able to resolve the issue personally. This raises the question of whether recourse to a court would need to be available, thereby unduly complicating the reporting scheme.

Second, as noted above, the Supreme Court has held that it is not sufficient to rely on a lawyer to protect a client's privileged information.<sup>118</sup> Legislative schemes have been

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113 *Ibid* at para 73.

114 *Federation* at para 55.

115 *Chambre* at para 74.

116 *Ibid* at paras 75–76.

117 *Ibid* at para 84.

118 *Chambre* at paras 6, 48–57; *Lavallee* at paras 39–40.

struck down where there was no mechanism by which the client could be informed of a potential loss of privilege.<sup>119</sup> Informing the client about suspicions would likely defeat the purpose of a reporting regime. Although the Supreme Court has noted that it might be sufficient to inform a member of the Law Society rather than the client of a potential loss of privilege “where it would not be feasible to notify the potential privilege holders,”<sup>120</sup> it is not obvious to me that an automatic reporting obligation where the client was not informed would survive constitutional scrutiny.

Third, if the reporting obligation were based on a threshold amount of money, the arbiter could be inundated with trust-accounting reports, most of which might be perfectly legitimate. While I did not have direct evidence on this point, it seems to me unlikely that the Law Society or the Federation would be equipped to deal with such a volume of reporting. Further, the cost would no doubt be significant, whether handled by one of these entities or another body established to deal with such reports. Moreover, given the privilege issues, the reports could not go directly to law enforcement or a financial intelligence unit, resulting in an extra layer of cost and complexity.

Finally, if reporting were based on suspicion by the lawyer, there is a substantial likelihood that it would implicate the constitutionally protected duty of the lawyer’s commitment to the client’s cause. This issue is perhaps the most significant: even assuming privilege issues could be accommodated, it is not obvious to me that barriers stemming from the lawyer’s duty of commitment could be overcome. I turn to this issue now.

## **The Duty of Commitment to the Client’s Cause**

Lawyers owe a duty of loyalty to their clients, which has three dimensions: a duty to avoid conflicting interests; a duty of commitment to the client’s cause; and a duty of candour.<sup>121</sup> As I note above, the Supreme Court of Canada gave constitutional protection to the second of these duties – the duty of commitment to the client’s cause – in the *Federation* case. It is now a principle of fundamental justice that “the state cannot impose duties on lawyers that undermine their duty of commitment to their clients’ causes.”<sup>122</sup>

Lawyers must be “zealous advocate[s] for the interests of [their] client[s].”<sup>123</sup> A client “must be able to place ‘unrestricted and unbounded confidence’ in his or her lawyer”; this confidence is “at the core of the solicitor-client relationship.”<sup>124</sup> The duty of commitment is “fundamental to how the state and the citizen interact in legal matters.”<sup>125</sup> In giving constitutional protection to this duty in the *Federation* case, the Supreme Court explained:

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119 *Chambre* at para 51; *Federation* at para 48; *Lavallee* at para 40.

120 *Lavallee* at para 41.

121 *Canadian National Railway v McKercher*, 2013 SCC 39 [*McKercher*] at para 19.

122 *Federation* at para 84.

123 *McKercher* at para 25.

124 *Federation* at para 83.

125 *Ibid* at para 95.

Clients – and the broader public – must justifiably feel confident that lawyers are committed to serving their clients’ legitimate interests free of other obligations that might interfere with that duty. Otherwise, the lawyer’s ability to do so may be compromised and the trust and confidence necessary for the solicitor-client relationship may be undermined. This duty of commitment to the client’s cause is an enduring principle that is essential to the integrity of the administration of justice.<sup>126</sup>

It appears from the *Federation* case that reporting on one’s client would implicate the duty of commitment. A lawyer who reports suspicions about a client’s activities would seem to be in an inherent conflict of interest: on the one hand, potentially assisting law enforcement with an investigation of the client, and on the other, seeking to give the client the best possible legal advice and represent the client’s interests zealously.

In the *Federation* case, the Supreme Court stated that the duty of commitment “does not countenance a lawyer’s involvement in, or facilitation of, a client’s illegal activities.”<sup>127</sup> The Court continued:

Committed representation does not ... permit let alone require a lawyer to assert claims that he or she knows are unfounded or to present evidence that he or she knows to be false or to help the client to commit a crime. The duty is perfectly consistent with the lawyer taking appropriate steps with a view to ensuring that his or her services are not being used for improper ends.<sup>128</sup>

This point raises the question of whether reporting would be an “appropriate step” to ensure that legal services are not being misused.

In related contexts, lawyers who come across potentially unlawful activity by their clients are required to withdraw, but not report the client or disclose the reason for withdrawal. For example, if a client persists in instructing a lawyer to act contrary to professional ethics, the lawyer must withdraw.<sup>129</sup> The lawyer cannot, however, disclose the reasons behind the withdrawal if it results from confidential communications between the lawyer and client.<sup>130</sup> Indeed, the Supreme Court of Canada has said that if a lawyer seeks to withdraw based on “ethical reasons” – which include situations where a client requests a lawyer to act contrary to professional obligations – a court must “accept counsel’s answer [that the withdrawal is for ethical reasons] at face value and not enquire further so as to avoid trenching on potential issues of solicitor-client privilege.”<sup>131</sup>

Similarly, complex ethical issues arise where a lawyer knows or suspects a client may commit perjury (a criminal offence) on the stand. The lawyer is confronted by

126 Ibid at para 96.

127 Ibid at para 93.

128 Ibid.

129 BC Code, s 3.7-7.

130 Ibid, s 3.7-9.1.

131 *R v Cunningham*, 2010 SCC 10 [*Cunningham*] at para 48.

the duty of loyalty on the one hand, which militates against exposing secrets that may undermine the client’s defence, and, on the other, his or her duties not to mislead the court or be involved in criminal activity. The lawyer is also bound not to disclose privileged information.<sup>132</sup> Accordingly, most codes of conduct require the lawyer to withdraw (assuming the lawyer cannot persuade the client against perjury).<sup>133</sup> Again, there is no requirement to report the potential criminal activity.<sup>134</sup> On the contrary, the lawyer would likely be duty bound to not report.

Withdrawal as a response in the anti–money laundering context is certainly not a perfect solution, and it has been the subject of some criticism. The client could, after all, simply move from lawyer to lawyer in the hope that one will eventually assist in the illegal activity. Yet, it is notable that law society codes of conduct are largely consistent in mandating withdrawal in the face of illegal activity, rather than going further and, for example, requiring a lawyer to report illegal conduct to the police. The Supreme Court has made clear that although law society codes are not binding on legislators, they nonetheless demonstrate consensus in the profession as to what ethical practice requires and are an important statement of public policy.<sup>135</sup> The consistency of Canadian law societies on this point suggests that those charged with regulating the profession consider it to be the best way (even if imperfect) of balancing a lawyer’s duties to a client with duties to the court and the administration of justice.

132 David Layton and Michel Proulx, *Ethics and Criminal Law*, 2nd ed (Toronto: Irwin Law, 2015), pp 330–32.

133 *Ibid*, pp 332–34, 339–40, 343–44. In British Columbia, several rules in the BC Code are relevant to perjury, including:

- Rule 5.1-1, which requires a lawyer to “represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect” and specifies in the commentary the limits on a lawyer’s ability to raise certain defences in the face of admissions by the client;
- Rule 5.1-2, which prohibits the lawyer from, among other things, knowingly assisting or permitting a client to do anything dishonest or dishonourable, as well as from knowingly attempting to “deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct”;
- Rule 5.1-4, which requires a lawyer to disclose and attempt to correct errors or omissions, subject to the duty of confidentiality, and withdraw if the client persists in instructing the lawyer to breach that rule; and
- Rule 3.2-7, which forbids a lawyer from “engag[ing] in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.”

If a client persistently instructs a lawyer to act contrary to those rules, the lawyer must withdraw: Rule 3.3-7.

134 Some codes do provide an *option* to go further, but still appear to struggle with balancing an obligation to take action in the face of illegal activity with the duties of loyalty and confidentiality. For example, the Manitoba and Saskatchewan law societies permit (but do not require) lawyers to disclose confidential information “if the lawyer has reasonable grounds for believing that a crime is likely to be committed and believes that disclosure could prevent the crime”: see Rule 3.3-3B of the Manitoba and Saskatchewan codes. Even then, however, the provisions set out a number of factors for the lawyer to balance, including the effect on the client, thereby leaving the ultimate ethical decision to the lawyer.

135 *Federation* at paras 107, 108; *Cunningham* at para 38.

In view of the above, obliging a lawyer to report on a client's suspicious activity would be a dramatic departure from the long-standing practice of requiring lawyers to withdraw when faced with illegal or unethical conduct by a client. It would also raise serious questions about whether such mandated reporting would impermissibly undermine the lawyer's commitment to his or her client's cause and to the lawyer-client relationship generally.

The ethical and constitutional issues associated with reporting would not appear to be lessened if reports were made to a law society or another entity. Having such an intermediary may assist in determining privilege issues (as discussed above), but it is not obvious that the solution would avoid contravening the duty of commitment. Although the reports would not be passed directly to a financial intelligence unit or law enforcement, the lawyer would nonetheless be starting a process in which information that is harmful to the client could ultimately be disclosed to law enforcement.

### **Should Lawyers Have a Reporting Obligation of Some Kind?**

The above discussion reveals significant difficulties in crafting a reporting obligation for lawyers. First, given the stringent protections for solicitor-client privilege, the obligation would need to be so narrowly tailored to avoid the risk of catching potentially privileged information that it would likely be of minimal utility to the recipient. Second, the state of the law on privilege and trust accounts casts doubt on whether even a narrowly tailored approach that involved reporting only "purely" financial information would avoid trenching on privilege. Finally, even assuming the privilege issues are addressed, the lawyer's duty of commitment poses particular difficulties that would seem to arise even if there were a privilege arbiter.

In light of these difficulties, it is worth taking a critical look at reporting and its potential use in the context of the legal profession. As I comment on in other parts of this Report, some critics maintain that FINTRAC receives a high volume of low-quality reports and say that FINTRAC is a "black box" that collects this information and is unable, largely because of its enabling legislation, to share it with the agencies that need it. To the extent such criticisms hold water, it should not be assumed that more reporting will lead to better outcomes.

Indeed, Professor Levi noted that the Financial Action Task Force has not been able to successfully determine how effective lawyer performance in reporting has been in jurisdictions where it occurs, or how many reports are "enough":

[E]ven if you are making a lot of reports, are you making reports on trivial stuff but not on big stuff that is more socially important? Are you reporting on local drug dealers buying small houses but not on kleptocrats buying large mansions?

So, for that we need some qualitative insight into the process, and the data don't speak for themselves in terms of numbers. We need to look

qualitatively at the kind of reports that are made, if we're legally allowed to, and assess whether that indicates that people are doing their job in all the spheres that they should be doing their job.<sup>136</sup>

Similarly, based on his knowledge of the experience in the United Kingdom, where lawyers *are* required to report suspicious transactions to the financial intelligence unit, Professor Sharman noted that the “conventional wisdom” that more reporting by lawyers will result in substantially less money laundering vulnerability “actually has very little evidence to support it.”<sup>137</sup> He explained that the prevailing view in the United Kingdom is, in fact, that lawyer reporting is ineffective:

Both those who submit and those who receive lawyers' Suspicious Activity Reports in the UK regard a large majority of these reports as a waste of everyone's time. The most commonly mentioned offences are asbestos in clients' buildings and failure to preserve trees. The idea that regulating lawyers is “better than nothing” ignores the fact that regulation does not come for free, even or particularly where the cost is borne by the community rather than the government. In this sense, regulation may well be worse than nothing.<sup>138</sup>

In a similar vein, Nicholas Maxwell, head of the Future of Financial Intelligence Sharing Programme of the United Kingdom's Royal United Services Institute Centre for Financial Crime and Security Studies, testified that the “most tragic element of the Canadian regime” is that FINTRAC, despite receiving far more reports than equivalent agencies in the United States and the United Kingdom, is constrained by various limitations in the *PCMLTFA* that were motivated by concerns about privacy and information sharing. As a result, less than 1 percent of suspicious transaction reports are disclosed to law enforcement.<sup>139</sup>

It is also significant that Canada is not alone in excluding lawyers from reporting obligations.

In a report prepared for the Commission that examines lawyer regulation regimes around the world, Professor Levi explained that there is currently no requirement in Australia for lawyers to report suspicious transactions to the country's financial intelligence unit (AUSTRAC) or any other body, and the Law Council considers its professional standards to be adequate. Moreover, lawyers are largely not subject to Australia's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.<sup>140</sup>

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136 Transcript, November 20, 2020, pp 55–58. See also Exhibit 244, Michael Levi, *Lawyers, Their AML Regulation and Suspicious Transaction Reporting* (2020), p 48.

137 Exhibit 959, Jason Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, pp 11–12.

138 *Ibid*, p 12; see also Transcript, May 6, 2021, pp 74–76.

139 Transcript, January 14, 2021, pp 70–75.

140 However, changes have been “long promised,” and lawyers in Australia must report transactions involving AUD\$10,000 or more in cash. Moreover, this apparent exclusion has been criticized. See Exhibit 244, M. Levi, *Lawyers, Their AML Regulation and Suspicious Transaction Reporting*, pp 44–45.

US lawyers are also not subject to the general anti–money laundering responsibilities, including suspicious activity reporting, customer due diligence, or record keeping.<sup>141</sup> The approach to lawyer regulation in the United States appears similar to Canada’s in that the 50 state bars work with the American Bar Association, which, in turn, produces benchmark standards of professional conduct.<sup>142</sup> The association has issued an opinion stating that lawyers in the United States are required to inquire into suspicious requests by clients and withdraw if necessary,<sup>143</sup> which parallels Canadian rules.

Although not determinative, it is significant that similarly situated countries with a strong emphasis on the sanctity of the lawyer–client relationship have struck balances comparable to Canada’s and have not obliged lawyers to report to their financial intelligence unit.

In a context where designing a constitutionally compliant reporting regime for lawyers is highly complex and subject to substantial constitutional constraints and risks, it is important to think critically about whether reporting by lawyers will be of sufficient utility to justify the accompanying cost and legal risk. As I develop in the next chapter, I believe it is ultimately more efficient and effective to focus on other anti–money laundering efforts, rather than devoting great efforts to pursuing a constitutionally compliant reporting regime. Specifically, I see five overarching ways in which to address anti–money laundering risks in the legal sector:

- continuing to revisit and expand existing anti–money laundering regulation by the Law Society, including limiting the circumstances in which a client’s funds can enter a trust account;
- strengthening and making better use of information-sharing arrangements between the Law Society and other stakeholders;
- increasing use by the Law Society of its ability to refer matters to law enforcement when there is evidence of a potential offence;
- encouraging law enforcement to make better use of existing mechanisms by which it can access the information it needs from lawyers during investigations; and
- increasing public awareness about these measures to counter any perception that transactions conducted through a lawyer in furtherance of an unlawful aim are immune from detection.

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141 However, US lawyers, must not retain a fee received from illicit funds; receive currency of USD\$10,000 or more unless they file a currency transaction report; or transact, facilitate, or advise with respect to a transaction with “Specially Designated” or “blocked persons.” See Exhibit 244, p 45.

142 Exhibit 244, M. Levi, *Lawyers, Their AML Regulation and Suspicious Transaction Reporting*, pp 45–46.

143 *Ibid*, p 46.

## Conclusion

In this chapter, I reviewed the *Federation* decision and its implications on anti-money laundering regulation of lawyers in British Columbia. As I have explained, because of constitutional aspects of the lawyer-client relationship, this sector poses unique problems in the fight against money laundering. These problems do not mean that robust anti-money laundering regulation of lawyers is not possible or should not be pursued. It is crucial that such regulation be in place and that alternative pathways are used to ensure that criminals cannot make use of lawyers' services with impunity. In my final chapter on lawyers, I discuss the regulation that is in place, areas of improvement, and ways in which the Law Society, law enforcement, and others can ensure that anti-money laundering activity involving lawyers is properly scrutinized and investigated while also respecting constitutional principles.

## Chapter 28

# Law Society Regulation and Information Sharing

As I have noted throughout these chapters, lawyers in British Columbia are subject to extensive regulation by the province's Law Society. The Law Society has long taken the view that regulation for money laundering is part of its public interest mandate. It also works closely with the Federation of Law Societies of Canada (Federation) to try to harmonize standards across Canada.

In this chapter, I review the various measures put in place by the Law Society and the Federation's Model Rules. This review demonstrates that British Columbia has a relatively strong anti-money laundering regime in place with respect to lawyers. As is the case in any sector of the economy, there can never be a "perfect" regime, in the sense that money laundering is a constantly moving target. I accordingly include in my discussion potential areas of improvement. I find that the Law Society and the Federation are committed to regularly reviewing measures in place and to identifying and addressing deficiencies. I trust they will consider my recommendations seriously.

At the end of this chapter, I discuss the Law Society's information-sharing arrangements with law enforcement and others, the Law Society's power to refer matters to law enforcement, and the pathways that law enforcement can use when investigating lawyers. Although not a perfect substitute for subjecting lawyers to the *PCMLTFA* or another reporting regime, it is my view that robust regulation combined with increased reliance on these avenues is a reasonable alternative that respects constitutional limitations.

## A Preference for a Pan-Canadian Approach to Money Laundering

Law Society witnesses testified that their preference is to ensure a pan-Canadian approach to anti-money laundering regulation whenever possible. As Mr. Avison explained:

The work that we do with the Federation is much more focused in relation to those areas where we would look to have consistency across the country. [Anti-money laundering] is a perfect example of that.

...

I think there is a high degree of collaboration and cooperation across the country, and the benefit that we get from that is the pooling of the intellectual resources, if I can put it that way, from all the law societies to ensure that those resources are harnessed as effectively as possible in developing the most appropriate rules to deal with current and emerging situations.

I'll reference the benefit that we get in British Columbia of the work not only of the Federation but colleagues like Jim Varro from the Law Society of Ontario. And I think for a number of the smaller jurisdictions the benefit of having that work that is done collectively with the Federation is extremely helpful in relation to matters where they might not have the resources to be able to deal with that independently.<sup>1</sup>

Mr. Ferris added that a pan-Canadian approach is “sensible because it recognizes the flow of funds and flow of capital and flow of ideas and thoughts of how to do these things is a national issue and an international issue”<sup>2</sup> and makes particular sense when dealing with lawyers who practise in multiple jurisdictions.<sup>3</sup> He further explained that the Federation plays a key role in communicating with the federal government, describing it as “really our branch office in Ottawa.”<sup>4</sup>

Law Society witnesses did, however, emphasize that the Benchers ultimately determine what rules are appropriate for British Columbia. As Mr. Ferris put it, while they greatly value collaboration with the Federation,

we don't just sort of take what the Federation gives us and rubber stamp it ... [T]he Federation will take a look at rules, will send them to our ethics committee, we'll send comments back and ultimately there's a recommendation that comes from the Federation which we may take to the benchers as is or we may revise or the benchers may revise. So it's a very

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1 Transcript, November 18, 2020, pp 19–21. See also Evidence of C. Ferris, Transcript, November 18, 2020, pp 21–22.

2 Transcript, November 19, 2020, p 81.

3 Transcript, November 18, 2020, p 21.

4 Ibid, p 32.

iterative process, and so even where we're adopting Federation common rules, it's hard to say that those are Federation rules because there's been an independent review of those by the benchers in BC.<sup>5</sup>

Although it is clear that the Law Society and the Federation prefer to develop pan-Canadian approaches to anti-money laundering *regulation*, it is not clear to me that the kind of collaboration described by Mr. Avison – one that recognizes the flow of funds, capital, and ideas across boundaries, particularly where lawyers work in multiple jurisdictions – is occurring. In other words, it appears that the law societies and Federation share strategic, but not tactical, information<sup>6</sup> that would facilitate investigations across jurisdictions. I have recommended in Chapter 27 that the Law Society and the Federation work to develop uniform metrics to track anti-money laundering breaches and disciplinary responses. I further recommend that they develop systems to facilitate the more effective sharing of tactical information and coordination on investigations that involve other jurisdictions.

**Recommendation 54:** I recommend that the Law Society of British Columbia and the Federation of Law Societies of Canada develop systems to facilitate the more effective sharing of tactical information and coordination on investigations that affect multiple jurisdictions or involve lawyers who practise in multiple jurisdictions.

## A Risk-Based Approach

In their testimony, Law Society and Federation witnesses emphasized their support for a risk-based approach. Ms. Wilson testified that this approach focuses “the greatest regulatory efforts in areas of greatest risk” rather than recommending strict rules that apply across the board.<sup>7</sup> With respect to lawyers specifically, she gave the example of a labour lawyer who does purely arbitration with little or no engagement with individuals (rather than organizations) as clients, compared with a lawyer involved in real estate or corporate practice. The former would likely be lower risk than the latter, where more regulatory efforts would be focused.<sup>8</sup>

Ms. Wilson does not consider that either the law societies or the federal government currently take a fully risk-based approach to anti-money laundering regulation.<sup>9</sup> However, the Federation is actively considering how best to make the framework risk-

<sup>5</sup> Ibid, p 22.

<sup>6</sup> Tactical information sharing relates to specific individuals or entities, whereas strategic information focuses on typologies and general indicators of suspicion: Evidence of N. Maxwell, Transcript, January 14, 2021, pp 7–10.

<sup>7</sup> Transcript, November 17, 2020 (Session 1), p 14.

<sup>8</sup> Ibid, p 15.

<sup>9</sup> Ibid, p 16. Ms. Wilson highlighted, however, that the risk-based approach is part of their approach on the educational side, as well as within the customer identification and verification rules. Her point is that both the law society and federal government frameworks as a whole are not risk based: see *ibid*, pp 15–16.

based. Ms. Wilson explained that moving to a completely different form of regulation is a “big project and ... would involve a much more comprehensive overhaul of the approach.” As such, law societies have begun to implement it by focusing on educational materials.<sup>10</sup>

## The Prohibition Against Facilitating Illegal Conduct

Although some law society rules were designed specifically for anti–money laundering purposes, Law Society witnesses emphasized that a lot of activity that could facilitate or assist money laundering is captured by the overarching rule that lawyers must not participate in dishonest transactions or facilitate illegal activity. In British Columbia, this rule has existed in various forms since 1921.<sup>11</sup> It can currently be found in the BC Code at Canon 2.1-1(a)<sup>12</sup> and in Rule 3.2-7, which states:

A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

Rule 3.2-7 contains various commentaries, of which I highlight a few:

- Commentaries 1 and 2 explain that lawyers must be “on guard against becoming the tool or dupe of an unscrupulous client or others” and must be especially careful about becoming unwittingly involved in criminal activities like mortgage fraud and money laundering.
- Commentary 2 calls for particular vigilance in activities such as establishing, buying, or selling business entities; financing such transactions; and purchasing and selling real estate.
- Commentary 3 states that lawyers must make reasonable inquiries of clients when they have suspicions or doubts that they could be assisting in dishonest or illegal conduct.<sup>13</sup>

A number of other provisions relating to the general rule in 3.2-7 demonstrate its breadth. For example, Rule 3-109 of the Law Society Rules states that if a lawyer becomes aware, while complying with the client identification and verification rules or at any other time while retained, that they would be assisting a client in fraud or illegal conduct, the lawyer must withdraw. Similarly, Rule 3.7-7(b) of the BC Code requires a lawyer to withdraw where “a client persists in instructing the lawyer to act contrary to professional ethics.”

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<sup>10</sup> Ibid, pp 16–17.

<sup>11</sup> Exhibit 224, Law Society of British Columbia, Regulation of the Practice of Law, para 7 [Regulation of the Practice of Law].

<sup>12</sup> “Lawyers owe a duty to the state ... and should not aid, counsel or assist any person to act in any way contrary to the law.”

<sup>13</sup> Interestingly, this may be a higher standard than the counterpart model rule from the American Bar Association. A recent opinion seems to suggest that a lawyer cannot counsel a client to engage in or assist a client in conduct that the lawyer *knows* is criminal or fraudulent, whereas the BC equivalent focuses on circumstances that objectively raise suspicion: Evidence of G. Bains, Transcript, November 19, 2020, pp 142–43.

Professor Levi offered his perspective that a requirement to withdraw is insufficient to address money laundering, as criminals will simply go elsewhere.<sup>14</sup> I agree with him that withdrawal, without more, leaves open the very real possibility that the unscrupulous client will simply look elsewhere for a less diligent lawyer to do his or her bidding. I also acknowledge that withdrawal, absent any reporting, leaves law enforcement and regulators no further ahead in addressing the illegal conduct. However, as I discussed in Chapter 27, in Canada we have decided that protecting the sanctity of the lawyer-client relationship is of the utmost importance. In this context, the balance that has been struck and long applied in this country is an obligation for the lawyer to withdraw, but not report. This avoids the potential of lawyers being involved in criminality, while maintaining solicitor-client privilege.

I would encourage the Law Society to continue to carefully monitor the activities of its members and to ensure strict adherence to the lawyer's requirement to scrutinize and withdraw in the face of indicators of criminality. The more uniform this diligence and commitment to ethics is applied by the BC bar, the more difficult it will be for bad actors to find lawyers in this province to do their unscrupulous bidding.

Law Society witnesses stressed that, in their view, rules like 3.2-7 are crucial to the anti-money laundering effort and can even be more effective than a prescriptive "checklist" rule. For example, Mr. Ferris explained:

[Y]our question really highlights why the rule, and I know you said it's an old rule, about lawyers not participating in dishonest transactions with their client, but why that rule is so important and why it's so fundamental is because of exactly this issue, which is the typologies change. And if you create prescriptive rules which are sort of checklists, you don't really get lawyers engaged as well with respect to ensuring that what they're doing is correct. And as soon as you create a rule, there's something new and some new other area.

So that's why that overarching rule about lawyers not participating in something that's dishonest with their clients, it really focuses the lawyer's mind on identifying risks, ... whether they should be taking on this transaction and making sure they're complying with their ethical duties.<sup>15</sup>

Ms. Bains similarly described the rule as "the foundation to practising ethically and complying with all these other obligations."<sup>16</sup> She and Mr. Avison added that lawyers must take the barrister's oath "right out of the gate," which includes a commitment to practise honourably and to discharge all one's professional obligations with honour and integrity. Even before the oath, significant parts of the professional legal training program in British Columbia and some law school courses focus on the obligation to act ethically.<sup>17</sup>

<sup>14</sup> Transcript, November 20, 2020, pp 49–51.

<sup>15</sup> Transcript, November 18, 2020, p 56.

<sup>16</sup> Transcript, November 19, 2020, p 25.

<sup>17</sup> Evidence of G. Bains, Transcript, November 19, 2020, p 26; Evidence of D. Avison, Transcript, November 19, 2020, pp 27–28.

I agree that these overarching rules are a key component of Law Society regulation for money laundering, particularly when combined with diligent oversight on the part of the Law Society and the more specific anti-money laundering rules that I review next.

## The Cash Transactions Rule

As I noted in Chapter 25, the Federation introduced a model cash transactions rule<sup>18</sup> in September 2004. The Law Society of British Columbia was the first law society to adopt this model rule in 2004.<sup>19</sup> In British Columbia, Rule 3-59 of the Law Society Rules states in part:

**3-59(3)** While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than \$7,500 in respect of any one client matter.

Ms. Wilson explained the purpose of the rule as follows:

[T]he purpose of the rule is to restrict the amount of cash that lawyers can accept from clients. The goal of that is to mitigate the possibility of criminally minded clients trying to place large amounts of cash with lawyers for the purposes of laundering money or financing terrorism. It was a direct response to the suspicious transaction reporting requirements, which ... we believed and we were in fact found to be correct that they were unconstitutional.

And it's a different approach. We took a different approach to this by restricting the amount of cash ... lawyers could accept. When we refer to it being on a client matter, of course it's an aggregate; it doesn't matter whether ... the matter stretches over a week or four years. If it's a single client matter, the total cash that can be accepted, subject to certain exceptions in the rule, is \$7,500.<sup>20</sup>

Subrule 3-59(1) specifies that the rule applies when a lawyer or firm (a) receives or pays funds; (b) purchases or sells securities, real property, or business assets or entities; or (c) transfers funds or securities by any means.<sup>21</sup>

The rule therefore covers all cash that flows through a lawyer's trust account that relates to client work.<sup>22</sup> Moreover, as Ms. Wilson noted, it is an *aggregate*: it applies to a single client matter, however long the work lasts. The rule contains some exceptions

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18 This rule is often referred to colloquially as the “no-cash” rule. However, Ms. Wilson highlighted that this is not entirely accurate, as the rule limits the amount of cash that can be accepted rather than prohibiting acceptance of any cash. She accordingly prefers to call it the “cash transactions rule”: Transcript, November 16, 2020, p 114. I agree that the “cash transactions rule” is a more accurate descriptor.

19 Evidence of D. Avison, November 18, 2020, pp 28–30.

20 Transcript, November 16, 2020, pp 116–17.

21 The rule equally applies when the lawyer or law firm gives instructions on behalf of a client in respect of these activities.

22 Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), p 86.

whereby lawyers are permitted to accept more than \$7,500 in cash. The most controversial is Subrule 3-59(4):

[A] lawyer or law firm may receive or accept cash in an aggregate amount greater than \$7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.

The rule likewise does not apply when a lawyer or law firm receives or accepts cash in the following situations:

- from a peace officer, law enforcement agency, or other agent of the Crown acting in an official capacity (Rule 3-59(2)(b));
- pursuant to a court or tribunal order for the release of client funds that have been seized by a peace officer, law enforcement agency, or other agent of the Crown acting in an official capacity (Rule 3-59(2)(c));
- to pay a fine, penalty, or bail (Rule 3-59(2)(d)); or
- from a financial institution or public body (Rule 3-59(2)(e)).

These exceptions all contain the condition that the cash accepted must be “in connection with the provision of legal services by the lawyer or law firm.” I return to this qualifier below.

Rule 3-59(5) specifies that a lawyer or law firm that accepts cash of over \$7,500 in any of the permissible circumstances must make any refund of such money in cash. Rule 3-70 further requires lawyers to maintain a cash receipt book for receiving and refunding cash and to document specified information.<sup>23</sup>

Finally, unless permitted under the cash transactions rule, a lawyer or law firm that receives cash must:

1. Make no use of the cash;
2. Return the cash, or if that is not possible, the same amount in cash, to the payer immediately;
3. Make a written report of the details of the transaction to the Executive Director [of the Law Society] within seven days of the receipt of the cash; and
4. Comply with all other rules pertaining to the receipt of trust funds.<sup>24</sup>

<sup>23</sup> Lawyers must record the date, amount of cash, file number, client’s name, payer’s name, payer’s and lawyer’s signatures, and any dates on which the receipt was modified.

<sup>24</sup> Rule 3-59(6).

The model cash transactions rule was reviewed in detail by the Federation of Law Societies of Canada Anti–Money Laundering and Terrorist Financing Working Group (FLSC Anti–Money Laundering Working Group) during its 2018 review. In what follows, I examine some key discussion points that arose during that process.

### ***Whether to Remove or Alter Exceptions to the Cash Transactions Rule***

An important part of the review consisted in looking at the exceptions to the cash transactions rule to determine if they were still appropriate. Ms. Wilson testified that the group analyzed each exception in detail and did a risk / utility assessment to determine if it should stay in.<sup>25</sup>

### ***Exception for Professional Fees, Disbursements, and Expenses***

The working group began by considering whether the exception for professional fees, disbursements, and expenses continued to be justified in an increasingly cashless society. It consulted target groups of lawyers, mainly criminal defence lawyers. This consultation revealed that cash payments remained an “important, though not necessarily common” method of payment used by certain types of clients, for example, those in rural communities. The group was surprised to discover, however, that the practice among criminal defence lawyers varies, with some accepting cash for fees and others refusing it.<sup>26</sup>

Mr. Ferris explained that a key concern in removing the exception is the balance between a person’s fundamental right to have a defence lawyer and concerns about the source of funds:

So just from an overall perspective when we’re looking at rules, while we do have a very high anti–money laundering focus, we also have to balance in other factors as well, which is access to justice, and in this particular concern most of the cash retainers, as I understand, are received by criminal lawyers. And so the right to a full answer and defence of people is a fundamental right in the country.

And so if you were to restrict that exemption or to force somebody to go open a bank account before they can retain a lawyer, you’re starting to put up impediments in the way of people getting that defence and retaining that lawyer. And so there’s many circumstances where people don’t have proper ID, where they – you know, they’re disadvantaged people, homeless people, don’t have ID, may have some cash, and other circumstances.<sup>27</sup>

In his view, the best way to balance these issues is to ensure that the exemption is not abused. Lawyers must be aware of red flags and ensure that there is no conversion of

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<sup>25</sup> Transcript, November 17, 2020 (Session 1), p 23.

<sup>26</sup> Ibid, pp 28–29.

<sup>27</sup> Transcript, November 18, 2020, p 69.

the money in the trust account. This result can be achieved in part by requiring excess cash to be returned in the same form.<sup>28</sup>

Relatedly, Ms. Bains underscored that lawyers are not exempt from the *Criminal Code* provisions on money laundering. For example, if a client came in with \$10,000 in \$20 bills to pay legal fees, the lawyer would have to ensure that accepting the cash would not facilitate the laundering of proceeds of crime.<sup>29</sup> Otherwise, they could be charged with a criminal offence.

Interestingly, the cash exception for legal fees and disbursements has its origins in the initial provisions of the *PCMLTFA* that targeted lawyers.<sup>30</sup> While not determinative of the question of whether the exception should remain or be modified, its inclusion in the *PCMLTFA* suggests the federal government also considered it problematic to adopt a blanket ban on lawyers accepting large amounts of cash. It is also notable that the limit chosen by the Law Society (\$7,500) is less than the requirement for reporting large cash transactions under the *PCMLTFA* (\$10,000).

The working group also considered whether a cap could be imposed on the amount of cash that can be accepted under the professional fees exception. It determined, however, that more consultation with the bar was needed to understand what lawyers were charging in fees, what kinds of disbursements they were incurring, and the like.<sup>31</sup> As Ms. Wilson explained, although a cap may be desirable, determining the right figure presents challenges:

[I]t's really just a matter of trying to identify a number that is meaningful that isn't simply arbitrary. One could say well, let's say it's \$10,000. Let's just say it's \$5,000. Let's just say it's \$25,000. It will or will not be a meaningful amount depending on the nature of the legal services being sought. If you are undertaking a trial in a superior court in the country, \$25,000 is nothing. If on the other hand you're asking somebody to review an agreement of purchase and sale, it's excessive. So that is why in our current considerations we are looking at whether the exemption should exist at all. It's difficult ... for two reasons. One is that the assessment of whether it serves a useful function [and] that it does not interfere with the purpose of the rule, with the goal of the rule, and of course that is partly an examination of whether it's used and who uses it and so forth. But it's also an examination of a potential risk that the exemption creates. In this case in the absence of a limit, I think we would say there are some risks associated with it which might not be justifiable in light of the goal of the

28 Ibid, p 70.

29 Transcript, November 18, 2020, p 90.

30 Evidence of G. Bains, Transcript, November 18, 2020, pp 102-3.

31 Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), p 22; Exhibit 207, Federation of Law Societies of Canada – Memorandum from No Cash Model Rule Sub-group to Anti-Money Laundering and Terrorist Financing Working Group, Re Review of No Cash Rule – April 9, 2017 [Federation 'No Cash Rule' Memorandum], paras 8-9.

rule, and the options are place a cap or do away with it really, maintain it, place a cap or do away with it. And the difficulty with the cap is, as I said, finding a meaningful dollar figure and we haven't landed anywhere yet but that makes the notion of doing away with it a more straightforward alternative that's consistent with the goal of the rule and doesn't get us into sort of mental gymnastics of trying to ascertain, you know, is it \$2,000, \$5,000, \$25,000, what's an appropriate cap in the circumstances.<sup>32</sup>

Ms. Bains testified that the Law Society has investigated lawyers who received large amounts of cash even when an exception is invoked. She gave the example of a 2017 case in which a lawyer was found to have deliberately breached the part of the rule requiring refunds to be made in cash.<sup>33</sup> However, in her experience, the vast majority of cases in which a lawyer is alleged to have contravened the rule have been because of inadvertent errors, such as not appreciating that the limit applied throughout the duration of the retainer or failing to refund amounts in cash. Regardless of whether an error is inadvertent or deliberate, all such cases are referred to a discipline committee.<sup>34</sup>

The Law Society can become aware of breaches of the cash transactions rule through the compliance audit process and annual self-reports. The normal compliance audit process requires looking at all books, records, and accounts, which can reveal breaches of the rule.<sup>35</sup> Meanwhile, lawyers must also self-report when they receive over \$7,500 in cash outside the exceptions<sup>36</sup> or inadvertently breach the Rules.<sup>37</sup> These reports are referred to the Law Society's investigations department.<sup>38</sup> As a result of these processes, therefore, the Law Society does have data on how often cash over \$7,500 is accepted.<sup>39</sup>

### ***Other Exceptions***

The FLSC Anti-Money Laundering Working Group also considered whether the other exceptions under which lawyers may receive over \$7,500 in cash remained appropriate. It determined that one exception – for moneys paid or received pursuant to a court order – was no longer needed. In its view, this exception could result in “sham litigation,” meaning that a person could bring a claim that is deliberately uncontested, with the result that a court order for repayment is made on fraudulent pretenses – all without the lawyer knowing.<sup>40</sup> The exception was accordingly removed in 2018.

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<sup>32</sup> Transcript, November 17, 2020 (Session 1), pp 31–33.

<sup>33</sup> Transcript, November 18, 2020, pp 92–93.

<sup>34</sup> Ibid, pp 90–92.

<sup>35</sup> Evidence of J. McPhee, Transcript, November 18, 2020, pp 72–73.

<sup>36</sup> See Rule 3-59(c), which requires a lawyer who receives cash when not permitted by the rule or exceptions to submit a mandatory report to the Law Society's executive director.

<sup>37</sup> Evidence of J. McPhee, Transcript, November 18, 2020, pp 71–72.

<sup>38</sup> Evidence of G. Bains, Transcript, November 18, 2020, p 86.

<sup>39</sup> Evidence of J. McPhee, Transcript, November 18, 2020, p 95.

<sup>40</sup> Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), pp 23–24.

The working group initially recommended removing the exception for money received by a peace officer.<sup>41</sup> Upon consulting with stakeholders, however, it determined that the exception was sometimes useful and posed a low risk. Accordingly, it was left in.<sup>42</sup>

### **Cash Must Be “In Connection with the Provision of Legal Services”**

As noted above, the cash transactions rule specifies that all cash received pursuant to an exception must be “in connection with the provision of legal services.” This qualifier was added as a result of the 2018 review. This change was recommended because it was revealed “that lawyers sometimes rely on the exceptions to justify accepting large amounts of cash even though it is not related to the provision of legal services.” This was, in the working group’s view, “inconsistent with the letter and spirit of the rule.”<sup>43</sup>

### **The Requirement to Refund in Cash**

A lawyer who receives cash over \$7,500 under the professional fees exception must make any refunds with respect to those funds in cash.<sup>44</sup> As Ms. McPhee testified, this requirement is meant to ensure that cash received is commensurate with the fees.<sup>45</sup> Ms. Bains added that the Law Society has issued various publications to the profession explaining that cash received must be commensurate with the amount required for a retainer or fees. She explained:

If a lawyer asks a client for a \$5,000 retainer, and the client brings the lawyer \$50,000 in cash, in my view, that’s a clear red flag and that is a suspicious circumstance and that lawyer ought to be stopping, making inquiries, and satisfying themselves of the appropriateness of continuing.<sup>46</sup>

The requirement that cash received must be commensurate with the amount required for the retainer or fees strikes me as a sound rule. Although the Law Society has included this guidance in publications to the profession, it would be preferable, in my view, that it be made explicit in the rule itself.

**Recommendation 55:** I recommend that the Law Society of British Columbia amend Rule 3-59 of the *Law Society Rules* to make explicit that any cash received under the professional fees exception to the cash transactions rule must be commensurate with the amount required for a retainer or reasonably anticipated fees.

<sup>41</sup> Exhibit 207, Federation ‘No Cash Rule’ Memorandum, para 7.

<sup>42</sup> Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), p 23.

<sup>43</sup> Exhibit 208, Federation of Law Societies of Canada, Consultation Report – Anti–Money Laundering and Terrorist Financing Working Group (October 2, 2017), para 12. Ms. Wilson testified that the purpose of including exceptions is to provide exceptions that are useful and not unduly risky, in the sense of providing a backdoor way for people to use a lawyer’s trust account for improper purposes: Transcript, November 17, 2020 (Session 1), p 36.

<sup>44</sup> Rule 3-59(5).

<sup>45</sup> Transcript, November 18, 2020, pp 66–67.

<sup>46</sup> *Ibid*, pp 67–68.

Importantly, a refund to a client who has paid a cash retainer must actually be in cash. The use of a trust cheque payable to cash is not acceptable; the lawyer must physically make a cash withdrawal, issue a cash receipt for the refund, and have the client sign for receipt.<sup>47</sup> In this fashion, the process prevents an unscrupulous client from turning cash into a cheque and thereby legitimizing and/or laundering cash.

In my view, the requirement that refunds be in cash is a crucial part of the cash transactions rule, and the Law Society must diligently monitor its members' adherence to it. This rule is central to addressing the risk of lawyers being used to directly launder cash, as it prevents cash from entering a lawyer's trust account and being converted into another form.

### ***Conclusions on the Cash Transactions Rule***

In my view, the cash transactions rule is a crucial part of anti-money laundering regulation of lawyers. In some ways, it is more restrictive than the rules under the *PCMLTFA*, which require those subject to the regime to report – but not necessarily to refuse – cash transactions of more than \$10,000.

The issue of whether an exception to the cash transactions rule should exist for professional fees, disbursements, or expenses is complex. Clearly, the current exception without a cap means that lawyers could potentially be receiving large amounts of cash of unknown origin. This possibility raises ethical issues that are worth exploring, as the Federation and the Law Society are doing. Whether the exception raises a *money laundering* risk, however, is a different matter.

It is not obvious to me that the exception poses a money laundering risk. To the extent that funds are retained by the lawyer to pay fees and disbursements, there has not been a conversion. The requirement that a lawyer make any refund in cash when a client pays for legal fees in cash would seem to adequately address the money laundering risk. An explicit requirement that any cash received be commensurate with the legal fees and disbursements would help ensure that lawyers do not receive excessive amounts of cash in the first place. There may well be sound reasons for the Law Society to continue to review and consider the professional fees exception to the cash transactions rule,<sup>48</sup> but I am not persuaded that money laundering considerations support my making a recommendation respecting the rule.

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47 Exhibit 224, Regulation of the Practice of Law, para 32.

48 I also note that the Federation is studying a rule adopted by the Barreau du Québec that requires members who accept more than \$7,500 in cash pursuant to an exception to submit a copy of the cash transaction record within 30 days of the receipt of cash with a notation indicating the exception under which it is received: Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), p 26. Mr. Avison testified that the Quebec rule is “one of the elements that I think [the Law Society is] going to want to discuss as part of the working group with the Federation”: Transcript, November 18, 2020, p 76.

## Client Identification and Verification Rules

As I noted in Chapter 27, the Federation adopted model client identification and verification rules in 2008, with the Law Society adopting the model rules shortly after.<sup>49</sup> These rules parallel in many ways the requirements under the *PCMLTFA*. Given that lawyers in British Columbia are not reporting entities under this Act, I applaud the Law Society for filling this void by requiring lawyers to comply with the strict client identification and verification rules it has put in place. While not a complete substitute for *PCMLTFA* reporting (which would have the information available to FINTRAC), given the current landscape within which the Law Society operates, the client identification and verification rules are a reasonable substitute and go some way to filling the void.

In British Columbia, these rules are found in Part 3, Division 11, of the Law Society Rules. Lawyers must fulfill six main requirements:

- identify the client<sup>50</sup> and record basic identification about the client upon being retained (Rule 3-100);
- verify the client's identity<sup>51</sup> if there is a financial transaction<sup>52</sup> (Rules 3-102 to 3-106);
- obtain from the client and record information about the source of money if there is a financial transaction (Rules 3-102(1)(a), 3-103(4)(b)(ii), 3-110(1)(a)(ii));
- maintain and retain records of documents and information used in identification, verification, and monitoring (Rule 3-107);
- withdraw if the lawyer knows or ought to know that they are assisting in fraud or other illegal conduct (Rule 3-109); and
- monitor the lawyer-client professional business relationship to ensure consistency between the client's activities, source of money and instructions (Rule 3-110).

Ms. Bains explained the purpose of the client identification and verification rules as follows:

<sup>49</sup> Evidence of D. Avison, Transcript, November 18, 2020, p 30.

<sup>50</sup> Distinct rules apply when identifying and verifying the identity of individuals compared to organizations, corporations, trusts, and the like.

<sup>51</sup> There are three methods of verifying an individual client's identity: using government-issued identification; using a credit file in existence in Canada for at least three years; or a dual-process method involving two different and reliable sources. For a client that is an organization, trust, partnership, or the like, the identity can be verified in several ways, including a certificate of corporate status, articles of incorporation, or a trust or partnership agreement. See Exhibit 224, para 43; Rule 3-102(2)-(4).

<sup>52</sup> Rule 3-98 defines "financial transaction" as meaning the receipt, payment, or transfer of money on behalf of a client, or giving instructions for these things on behalf of a client. That rule further defines "money" as including "cash, currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person's title or right to or interest in them, and electronic transfer of deposits at financial institutions."

The purpose of these rules is ... the very important obligations to know your client, to verify that your client is who the client says they are, with “client” having quite a broad definition including the instructing individual and what I’ll call the beneficial client for whose benefit the work is being done, understanding the purpose of your retainer, understanding the source of money that is involved in the legal services that you are providing. It’s all a part of that, which really goes to understanding the risks in providing those legal services and being able to mitigate against those risks so that you’re not furthering any inappropriate illegal, dishonest fraudulent conduct.<sup>53</sup>

The client identification and verification rules can be triggered even if no funds flow through the lawyer’s trust account.<sup>54</sup> However, there are some instances in which a lawyer must identify the client but not verify their identity, including (a) when the client is a financial institution, public body, or reporting issuer, and (b) when the lawyer pays or receives money to pay a fine, penalty, or bail, or for professional fees, disbursements, or expenses.<sup>55</sup>

Mr. Avison expressed the view that much of the value of the client identification and verification rules comes from identifying red flags rather than the recording of information itself.<sup>56</sup> Ms. Bains agreed but noted that recording is also important on a number of levels: it allows many lawyers at the firm to understand what has happened in a file, assists with the obligation to monitor the relationship periodically, and is useful for after-the-fact investigations and audits.<sup>57</sup>

As I expand on below, compliance with the client identification and verification rules is assessed as part of compliance audits. Any breaches are referred to investigations. Further, the annual trust report asks about the client identification and verification systems in place.<sup>58</sup>

## **2018 Review of the Client Identification and Verification Rules**

The FLSC Anti-Money Laundering Working Group did a comprehensive review of the client identification and verification rules in 2018, which resulted in several amendments. The Law Society implemented these amendments in January 2020.

First, the amendments made verification requirements ongoing. Under Rule 3-110, a lawyer must, while retained for a financial transaction, periodically assess whether

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53 Transcript, November 19, 2020, pp 3–4. See also *The Law Society of British Columbia v Christopher James Wilson*, 2019 LSBC 25 at para 21: “The Law Society rules about client identification and verification are complex and important. The goal is to ensure that the legal profession does not become an inadvertent participant in the improper processing of laundered money and that the fraud of identity theft is not aided and abetted by lawyers.”

54 Evidence of G. Bains, Transcript, November 19, 2020, p 5.

55 Rule 3-101.

56 Transcript, November 19, 2020, p 29.

57 Transcript, November 19, 2020, pp 29–30.

58 Evidence of J. McPhee, Transcript, November 19, 2020, p 24.

(a) the client’s information about their activities, source of money, and instructions are consistent with the purpose of the retainer, and (b) there is a risk that the lawyer may be assisting in or encouraging dishonesty, fraud, crime, or other illegal conduct. Ms. Wilson testified that this was one of the most significant changes to the client identification and verification rules:

That is significant for us because this was a sort of tie-in to, a sort of reminder that complying with the rules isn’t only a matter of complying with the specific requirements of this rule. This rule exists in the context of a broad suite of rules which are already in place such as the rules of professional conduct that speak in quite a lot of detail to ethical obligations that include ... the obligation not to facilitate or assist with the commission of any illegal act.<sup>59</sup>

Second, in line with the amendments to the cash transactions rule, the exception to the client identification and verification rules for money received pursuant to a court order was removed. Further, the rules previously contained an exception for moneys received in settlement of any legal or administrative proceeding, which was also removed.<sup>60</sup>

Third, the obligation to “take reasonable steps to verify” a client’s identity was changed to a more stringent requirement “to verify.” Ms. Wilson noted that the Federation and the provincial law societies adopted this change despite negative feedback from the profession.<sup>61</sup>

In the case of beneficial ownership, amendments were made to impose a “reasonable efforts to verify” requirement. Ms. Wilson explained that in the absence of a beneficial ownership registry – which both the Federation and the Law Society support<sup>62</sup> – it would be unrealistic to require lawyers “to verify” beneficial ownership. She emphasized, however, that the Federation is “ready and willing to move to a mandatory requirement when there is a comprehensive way across the country to verify beneficial ownership information.”<sup>63</sup>

As I discuss further in Chapters 23 and 24, I am of the view that a beneficial ownership registry is desirable for many reasons. One of these reasons, which is demonstrated here, is the fact that a beneficial ownership registry would simplify the client identification and verification obligations of gatekeepers – including both reporting entities under the *PCMLTFA* and lawyers under their professional rules.

Fourth, other changes were made to track amendments to the federal client identification and verification obligations. These notably include a requirement to

59 Transcript, November 17, 2020 (Session 1), pp 39–40.

60 Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), p 40.

61 Ibid, pp 40–41.

62 Ibid, pp 52–53; Evidence of D. Avison, Transcript, November 19, 2020, p 9.

63 Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), pp 41, 42.

inquire into the client’s “source of money.”<sup>64</sup> The Law Society is aware that there is ambiguity about this requirement. For example, an internal memo noted that lawyers do not always consider the economic origin of the funds and instead refer to the “form of funds” (e.g., cheque, bank draft), the person who provided the funds (e.g., client, John Doe), or the financial institution that issued the cheque or electronic funds transfer.<sup>65</sup> The memo notes that a Law Society *Benchers’ Bulletin* in fall 2019 explained that lawyers should, at a minimum, record:

- information obtained from the client about the activity or action that generated the client’s money (e.g., salary, bank loan, inheritance, court order, sale agreement, settlement funds);
- the economic origin of the money (e.g., credit union account, bank account, Canada Post money order, credit card charge, cash);
- the date the money was received; and
- the source from whom the money was received (i.e., the payer: the client or name and relationship of the source to the client).<sup>66</sup>

The memo further states that some have interpreted the requirement to “obtain and record the source of money” literally and have done only that, without considering whether the source of money is reasonable and proportionate to the client’s profile.<sup>67</sup> It also suggests there should be clarification of the various terms that can be used, given that “source of funds” is sometimes used interchangeably with “source of money” and “source of wealth.”<sup>68</sup>

Ms. Bains testified that, although there are guidance documents and other materials<sup>69</sup> on these issues, the Law Society recognizes that including this information in the Rules themselves would be ideal. She noted that the FLSC Anti-Money Laundering Working Group is considering whether the Rules should be amended.<sup>70</sup> Ms. Bains further explained that, even without these requirements being spelled out in the Rules, hearing panels ultimately ask whether conduct is a “marked departure” from what the Law Society expects. To that end, the Law Society expects lawyers to look at the Rules, BC Code, guidance documents, *Benchers’ Bulletins*, FAQs, discipline advisories, risk advisories, and the like.<sup>71</sup>

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64 Ibid, p 41; Rule 3-102.

65 Exhibit 235, Law Society of British Columbia – Memorandum from Jeanette McPhee to Federation of Law Societies of Canada Working Group, Re Source of Funds (or Money) and Wealth – October 25, 2019, p 2.

66 Ibid, p 4; The Law Society of British Columbia, *Benchers’ Bulletin, Fall 2019*, Vol 2019, No 3, p 15, available online: [https://www.lawsociety.bc.ca/getattachment/7f3444a3-153f-4715-a338-6a58d512eec6/BB\\_2019-03-Fall.pdf.aspx](https://www.lawsociety.bc.ca/getattachment/7f3444a3-153f-4715-a338-6a58d512eec6/BB_2019-03-Fall.pdf.aspx).

67 Ibid, p 2.

68 Ibid, p 2.

69 Mr. Avison added that practice advisors are also available to address questions by members in this regard: Transcript, November 19, 2020, p 17.

70 Transcript, November 19, 2020, pp 15–16.

71 Evidence of G. Bains, Transcript, November 19, 2020, pp 20–21.

Although there is guidance for lawyers with respect to the “source of money” requirement, it would be preferable, in my view, that the Rules themselves explain what is needed in more detail. The internal memo referenced above indicates there is ambiguity in the Rules and that the profession is not clear on the requirements.

**Recommendation 56:** I recommend that the Law Society of British Columbia amend its client identification and verification rules to explain what is required when inquiring into a client’s source of money. The rules should make clear, at a minimum:

- that the client identification and verification rules require the lawyer to record the information specified in the fall 2019 *Benchers’ Bulletin*;
- the meaning of the term “source of money”; and
- that lawyers must consider whether the source of money is reasonable and proportionate to the client’s profile.

## The Limitation of a “Financial Transaction”

Currently, verification requirements are triggered only when lawyers are involved in a “financial transaction.” Ms. Wilson testified that there was no discussion of expanding the ambit of the rule during the 2018 review; however, if the Federation moves to a more truly risk-based approach, this might be revisited.<sup>72</sup>

On the issue of non-financial transactions, Ms. Bains pointed to the more general rules against being involved in illegality:

So when lawyers are providing other services that may not get captured by a financial transaction, they still have to comply with the code provisions. And so in particular rule 3.2-7 and its commentary, they have to be alive to the risks, so for example, if they are incorporating a company or establishing a trust, they need to be aware of those risks and if there are suspicious, objectively suspicious circumstances they have a duty to make reasonable inquiries, very similar to the type of inquiries that the monitoring and these client identification and verification rules require.<sup>73</sup>

She also expressed the view that part of practising competently is understanding how a company that a lawyer incorporates will be used.<sup>74</sup>

<sup>72</sup> Transcript, November 17, 2020 (Session 1), p 43.

<sup>73</sup> Transcript, November 19, 2020, pp 6–7.

<sup>74</sup> *Ibid*, pp 7–8.

Again, although lawyers may be obligated to make these inquiries by virtue of other rules, I am of the view that the anti-money laundering rules should be explicit to ensure that members are aware of their obligations.

**Recommendation 57:** I recommend that the Law Society of British Columbia extend the ambit of its client identification and verification rules to include the situations in which a lawyer is truly acting as a gatekeeper. The rules should be extended to include, at a minimum:

- the formation of corporations, trusts, and other legal entities;
- real estate transactions that may not involve the transfer of funds, such as assisting with the transfer of title; and
- litigation involving enforcement of private loans.

## Fiduciary Property

Fiduciary property refers to “funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship.”<sup>75</sup> I discuss the rules pertaining to fiduciary property, in particular the use of trust accounts to hold such property, below. For present purposes, however, I note that lawyers who hold such property must identify but not necessarily verify the identity of the client.

As Ms. Bains explained:

So if a lawyer is holding fiduciary property, it has to arise from a solicitor / client relationship, and so the triggering event for identification under the client identification and verification rules is that a lawyer is providing legal services to a client. And so there would have been an obligation to identify the client at the time that those legal services were provided that makes the thing fiduciary property. So that part of the rule certainly would apply.

Whether the verification part of the rule and the other portions of the client identification and verification rules apply would depend on whether there was a financial transaction at that time prior to the lawyer accepting fiduciary property, and that would vary from matter to matter. So ... it all hinges on fiduciary – the holding of fiduciary property is not the provision of legal services.<sup>76</sup>

In my view, the client identification and verification rules should apply when lawyers are handling fiduciary property, regardless of whether there is a financial transaction.

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<sup>75</sup> *Law Society Rules*, Rule 1, “fiduciary property.”

<sup>76</sup> Transcript, November 18, 2020, p 168.

There would seem to be no downside in requiring the lawyer to verify a client’s identity in these circumstances, and such a requirement would prevent the lawyer from holding a client’s property that may have links to criminality. I accordingly recommend that the Law Society amend its Rules to require lawyers to verify their clients’ identity when handling fiduciary property.

**Recommendation 58:** I recommend that the Law Society of British Columbia amend the *Law Society Rules* to require lawyers to verify a client’s identity when holding fiduciary property on the client’s behalf.

## Trust Regulation

The evidence before me revealed concerns about the potential misuse of trust accounts for money laundering purposes. These concerns are echoed in the literature. It is clear that the use of trust accounts, coupled with the strong protection of solicitor-client privilege in Canada, presents an inherent risk that such accounts could be used to facilitate money laundering in a manner that might be difficult to detect. However, in my view, the Law Society’s extensive trust regulation and auditing powers, and its diligent application of those powers, significantly mitigate that risk in British Columbia.

### Trust Funds Must Be “Directly Related to Legal Services”

The overarching obligation with respect to trusts, which was made explicit in the Rules in July 2019 but existed beforehand,<sup>77</sup> states:

**3-58.1(1)** Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be deposited to or withdrawn from a trust account unless the funds are *directly related to legal services provided by the lawyer or law firm*. [Emphasis added.]

On completion of the legal services to which the funds relate, the lawyer or law firm must take reasonable steps to obtain instructions to pay out the funds as soon as practicable.<sup>78</sup>

Ms. Bains explained the rationale behind the rule as follows:

[T]he impetus and rationale for the rule is to preserve the importance of a trust account being used truly for funds that are trust funds that are directly related to legal services so that the trust account is not used as

<sup>77</sup> Transcript, November 18, 2020, pp 105, 107–8, 119–20. This rule codifies a principle expressed in *The Law Society of British Columbia v Gurney*, 2017 LSBC 15 at para 79: “[T]rust accounts are to be used for legitimate commercial purposes for which they are established, the completion of a transaction, where the lawyer plays the role of legal advisor *and* facilitator. They are not to be used as a convenient conduit [emphasis in original].”

<sup>78</sup> Rule 3-58.1(2).

a flow through account, as a bank account. Lawyers ought not [to] be providing banking services for clients. Those aren't proper legal services and that's not a proper use of a trust account.

So it's in recognition that there is vulnerability in non-trust funds being placed into a trust account because of the potential privilege that may apply to those transactions. So in order to ensure that it's very tight and that only matters that properly ought to be in the trust account are placed in the trust account, this rule was put into place.<sup>79</sup>

Although the rule does not explicitly say that the funds must be *necessary* for legal services, Ms. McPhee testified that “directly related” effectively says as much. She further noted that this is set out in guidance and educational materials.<sup>80</sup>

Although the amendment stating that funds must be “directly related to legal services provided by the lawyer or law firm” is a good step, I am not persuaded it is sufficient. As I discussed in Chapter 27, the Supreme Court of Canada's recent case law suggests that trust account records may be presumed to be privileged unless evidence is introduced to show otherwise. Given that funds entering a trust account may well be shielded by privilege, it is crucial that limits be placed on what can enter a trust account in the first place.

Ms. McPhee's testimony suggests the Law Society is of the view that funds must be *necessary* for legal services before they enter a trust account. Although that may be the Law Society's view, it is not explicitly stated in the Rules. Rather, the official rule requires only that funds be “directly related to legal services.” It is not obvious what this somewhat vague phrase means, and it strikes me that it could be invoked to justify any number of transactions moving through a trust account, so long as there is some connection or relationship to legal services.

Because this issue was not canvassed before me in detail, I am not prepared to recommend particular wording for the Law Society to adopt. However, it strikes me that, if a transaction is one that can occur without the use of a lawyer's trust account (for example, if it could occur through ordinary banking channels), the lawyer's trust account should not be used. There is no principled reason why a transaction that need not go through a lawyer's trust account nonetheless does so and thereby potentially acquires the protections of solicitor-client privilege.

I accept that there will be situations in which a trust account is necessary for a transaction. I am not suggesting, for example, that lawyers cannot use their trust accounts for payment of their fees and disbursements. There may also be certain kinds of transactions that require undertakings for which the lawyer's trust account may be necessary. However, to the extent trust accounts are being used for transactions that do not truly require their use, this must be avoided.

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<sup>79</sup> Transcript, November 18, 2020, p 104.

<sup>80</sup> Evidence of J. McPhee, Transcript, November 18, 2020, p 123.

The possible application of privilege to trust accounts has great potential to attract those who do not seek a lawyer’s services for legitimate ends and instead wish to keep illicit transactions or funds out of the reach of law enforcement. While the Law Society has taken steps to fill the gap left by lawyers not being subject to the *PCMLTFA*, the trust regulation rules are not a perfect substitute. Limiting the kinds of funds that can enter a lawyer’s trust account to begin with is a way of further mitigating the risk that criminals will seek to misuse such accounts.

**Recommendation 59:** I recommend that the Law Society of British Columbia amend Rule 3-58.1 of the *Law Society Rules* to clarify, at a minimum, what is meant by “directly related to legal services” and to consider how to further limit the use of trust accounts so that they are used only when necessary.

Notably, the BC Code specifies in Rule 3.2-7, Commentary [3.1](a), that a lawyer “should” also “make inquiries” of a client who “may be seeking ... the use of the lawyer’s trust account without requiring any substantial legal services from the lawyer in connection with the trust matter.” Mr. Ferris explained that this is likely a remnant of earlier times where such conduct was sometimes acceptable but is now clearly prohibited in view of Rule 3-58.1.<sup>81</sup> Ms. Bains added that there was some disagreement among members of the Law Society as to what the commentary meant, but in any event they have decided to raise the matter with the policy group and clarify it.<sup>82</sup> I find Commentary [3.1](a) to be confusing and to have the potential to mislead lawyers about the permissible uses of their trust account. I recommend that the Law Society remove this paragraph promptly.

**Recommendation 60:** I recommend that the Law Society of British Columbia promptly remove Commentary [3.1](a) from the *Code of Professional Conduct for British Columbia*.

## Trust Accounting Rules

Division 7 of the Law Society Rules sets out extensive requirements with respect to the use of trust accounts. Some key requirements that lawyers must follow are:

- They must keep detailed records of their trust and general accounts (Rules 3-54, 3-55, 3-68, 3-69).
- They must adhere to the detailed rules regarding opening and managing a pooled or separate trust account (Rules 3-60, 3-61).

<sup>81</sup> Transcript, November 18, 2020, pp 108–14.

<sup>82</sup> Ibid, pp 114–15.

- They must follow the detailed rules governing when and how funds may be withdrawn from a trust account (Rule 3-64).
- They must maintain a cash transactions record for every transaction made in cash (Rule 3-70).
- They must keep detailed records of bills and trust transactions (Rules 3-71, 3-72).
- They must prepare monthly trust reconciliations (Rule 3-73).
- They must immediately rectify trust shortages and report same to the executive director of the Law Society (Rule 3-74).
- They must deliver annual trust reports to the Law Society (Rule 3-79).

It can readily be seen that the operation of a trust account is a highly regulated endeavour. As I explain next, lawyers who operate trust accounts are also subject to regular compliance audits.

## The Trust Assurance Program

The Law Society describes the Trust Assurance Program as a program “designed to support high standards of professionalism and responsibility among lawyers, and to allow the public, clients and lawyers to have confidence that lawyers are handling client trust funds and trust accounts in a careful and appropriate manner.”<sup>83</sup> It has four main objectives:

**Compliance:** encourage, educate and assist lawyers in complying with trust accounting standards and the *Code of Professional Conduct for British Columbia*

**Deterrence:** help deter mishandling of trust funds and trust accounts

**Detection:** help detect serious trust breaches as early as possible

**Credibility:** protect the public interest, and increase the confidence of clients, lawyers and the public<sup>84</sup>

The program has four “pillars”: trust reports, lawyer self-reports, compliance audits, and education.<sup>85</sup> I review each in turn.

The program is funded through the collection of a trust administration fee.<sup>86</sup> Its operating expenses increased from approximately \$2.1 million in 2015 to \$3.6 million in

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83 Exhibit 225, Law Society of British Columbia – Trust Assurance Program Summary, para 1 [Trust Assurance Program Summary].

84 Ibid.

85 Ibid, para 2.

86 Ibid, para 3.

2020, which includes an increase of over 30 percent in its staffing budget.<sup>87</sup> Ms. McPhee testified that the program has increased the scope of its audits, added additional audit procedures, changed some audit cycles to focus on higher risk practice areas, and overall enhanced the coverage of the program.<sup>88</sup>

The program consists of 22 staff, including 14 auditors.<sup>89</sup> The director, deputy director, both team leaders, and all auditors are chartered professional accountants. The management team obtained their certified anti-money laundering specialist certification in 2017, and, since then, it has effectively become mandatory. At the time of the Commission's hearings, there were seven certified specialists and nine in the process of obtaining the certification.<sup>90</sup> Mr. Avison also noted that retention rates at the Law Society are very high, such that there is a high degree of institutional knowledge and an environment where information is shared effectively.<sup>91</sup> The program's staff members regularly participate in programs offered by the Association of Certified Anti-Money Laundering Specialists, the Association of Certified Fraud Examiners, the Canadian Anti-Money Laundering Institute, the Chartered Professional Accountants of British Columbia and of Canada, FINTRAC, and various other entities.<sup>92</sup>

### **Trust Reports**

Every practising lawyer in British Columbia must file an annual trust report, either individually or as part of a law firm, with limited exceptions.<sup>93</sup> The Trust Assurance Program receives and reviews approximately 3,600 trust reports every year.<sup>94</sup> For firms that have a trust account, the report includes information such as a description of the firm's financial profile, the volume of its trust deposits, areas of law practised, information on internal controls, the receipt of cash in an amount greater than \$7,500, and the firm's accounting procedures and activities.<sup>95</sup>

Trust reports take the form of either a "self-report" completed by the law firm or an "accountant's report" completed in part by the law firm and in part by an external, independent chartered professional accountant. The external report is required for the first two years of a new law firm's practice, when a lawyer begins using a trust account, when a law practice is terminated, or when a previous audit has identified areas of low compliance.<sup>96</sup>

87 Ibid, para 4.

88 Transcript, November 19, 2020, pp 94–95. Law Society witnesses testified that the Trust Assurance Program has always been given the budget it requires, as has the professional conduct group: Transcript, November 19, 2020, pp 95–97.

89 Exhibit 225, Trust Assurance Program Summary, para 5; Evidence of J. McPhee, Transcript, November 19, 2020, p 85.

90 Evidence of J. McPhee, Transcript, November 19, 2020, pp 85–86; Exhibit 225, Trust Assurance Program Summary, para 6.

91 Transcript, November 19, 2020, p 147.

92 Exhibit 225, Trust Assurance Program Summary, para 7.

93 Rule 3-79.

94 Exhibit 225, Trust Assurance Program Summary, para 25.

95 Ibid, para 26.

96 Ibid, para 27.

Failure to file a completed trust report on time can lead to suspension and fines.<sup>97</sup> Further, an unsatisfactory report may result in a referral to the Investigations Group or an elevated risk rating for the law firm, which in turn results in an earlier compliance audit or a future requirement to file an accountant's report.<sup>98</sup> The accuracy and completeness of the trust reports are audited as part of the compliance audit program discussed above.

### **Lawyer Self-Reports**

Lawyers must report certain breaches of the Rules to the executive director of the Law Society. These breaches include discovering a trust shortage greater than \$2,500 or being unable to deliver trust funds when due, as well as receiving cash outside the permitted circumstances.<sup>99</sup> Such a self-report may result in a referral to the Investigations Group, an earlier compliance audit, or a future requirement to file an accountant's report.<sup>100</sup>

### **Compliance Audit Program**

The compliance audit program is “a proactive process designed to support compliance with the trust accounting rules.”<sup>101</sup> A “compliance audit” is defined in Rule 3-53 as an examination of a lawyer's books, records, and accounts, as well as the answering of questions by the lawyer being audited. The goal of a compliance audit is to:

- help law firms recognize and correct minor problems with their trust accounting and recordkeeping before they lead to serious issues of non-compliance and possible professional conduct issues;
- answer questions the lawyer and law firm staff may have and to develop or improve proper accounting systems, record-keeping practises and trust fund handling procedures; and
- conduct a review of the lawyer's existing accounting records and perform a sample check of transactions and client files to review whether trust funds have been handled properly.<sup>102</sup>

Ms. McPhee testified that compliance audits are the primary way of detecting breaches of the trust accounting rules.<sup>103</sup> She explained the process in the following terms:

And so ... we get all the books, records and accounts for the law firm for trust accounts. And during the audit the auditor will select certain client

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<sup>97</sup> Rules 3-80, 3-81.

<sup>98</sup> Exhibit 225, Trust Assurance Program Summary, para 29.

<sup>99</sup> Ibid, para 30, and Rules cited therein.

<sup>100</sup> Ibid, para 31.

<sup>101</sup> Ibid, para 8.

<sup>102</sup> Ibid.

<sup>103</sup> Transcript, November 18, 2020, p 121.

files to look at, and through the review of the client file they will look at the retainer agreement, the legal services provided, any of the information in the client file as we have the entire client file. Deposits, withdrawals, anything associated with the file.

So ... the primary purpose of reviewing the client file is to look at that rule and ensure that legal services were provided and also that the funds have been paid out as soon as possible out of the trust account at the end of the legal retainer.<sup>104</sup>

The Law Society has instituted a system in which every law firm in the province that operates a trust account will be audited once every six years. Some will be audited more often depending on the firm's size, primary practice areas, compliance history, and risk rating.<sup>105</sup> The Law Society also audits a sample of firms that report having no trust account to ensure this is the case.<sup>106</sup> The executive director can also order a compliance audit of a lawyer or firm at any time.<sup>107</sup>

Law firms are selected for audits at random. However, audits can also be prompted by an indicator such as failure to file a trust report, information on a trust report that indicates non-compliance with the rules and procedures, referrals from other departments at the Law Society (e.g., the Investigations Group), inadequacies identified in a previous compliance audit, or a compliance level that raises concerns about the lawyer's trust accounting practices.<sup>108</sup>

A variety of documents need to be produced to auditors, including a listing of accounts, signatories, and sample signatures; bank statements; deposit receipts; bank reconciliations; client ledgers; cash receipt books; and billing records.<sup>109</sup> Lawyers are required to comply with audits and to produce all books, records, accounts, and any other information, even if privileged or confidential.<sup>110</sup> Failure to comply can result in suspension or other consequences.<sup>111</sup>

Between 2016 and 2019, the number of compliance audits increased from 457 to 675 per year.<sup>112</sup> Ms. McPhee testified that the Law Society's goal is to do over 600 audits per year.<sup>113</sup>

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104 Ibid, pp 121–22.

105 Exhibit 225, Trust Assurance Program Summary, para 10. For example, firms that practise primarily (over 50 percent) in the areas of wills and estates and real estate will be audited once every four years, and new firms will be audited within three years.

106 Ibid.

107 Ibid, para 10.

108 Exhibit 225, para 11.

109 Ibid, para 12.

110 Evidence of J. McPhee, Transcript, November 19, 2020, p 89.

111 Ibid, pp 89–90; Rule 3-86.

112 Exhibit 225, Trust Assurance Program Summary, para 11.

113 Transcript, November 19, 2020, p 84.

As the foregoing demonstrates, the Law Society has developed, implemented, and maintained a robust compliance audit program. I applaud its commitment to ensuring that the auditors administering the program have specific anti-money laundering training and that the number and frequency of audits has increased. Although the audits allow the Law Society to identify non-compliance, even the prospect of an audit is itself a deterrent.<sup>114</sup> The Law Society's Trust Assurance Program, while not foolproof, has significant potential to deter the use of trust accounts in connection with money laundering and to identify such a transgression should it occur. I encourage the Law Society to continue its diligent oversight in this regard.

### **Education and Outreach**

The final component of the Trust Assurance Program consists of educational programs, materials, and advice given to lawyers. The Law Society has produced various resources for lawyers explaining the trust accounting rules and procedures. It also offers free online programs covering the basics of trust accounting, the self-reporting and compliance audit process, and a webinar on anti-money laundering.<sup>115</sup>

### **Lawyers' General Accounts**

As a final note with respect to lawyers' trust accounts, it is important not to confuse them with general accounts. A general account is a "non-trust account and one from which payments for the day to day operating expenses of the practice are made."<sup>116</sup> Like trust accounts, general accounts are subject to compliance audits.<sup>117</sup>

Mr. Ferris testified that the only funds that are exempt from FINTRAC reporting are "[t]rue trust accounts," noting that when funds enter a general account, they should be treated the same as any other account.<sup>118</sup> As such, a financial institution's due diligence obligations notably apply with respect to lawyers' general accounts.

### **Referrals to the Investigations Group**

Throughout this part of the Report, I have mentioned at various points that breaches of the Rules and other circumstances can be referred to the Law Society's Investigations Group. Referrals are made concerning suspected breaches of the cash transactions rule; misuse of a trust account; failure to make reasonable inquiries in suspicious circumstances; conduct that appears to have facilitated any dishonesty, fraud, or crime; and breaches of client identification and verification rules.<sup>119</sup>

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114 Evidence of J. McPhee, Transcript, November 19, 2020, p 92.

115 Exhibit 225, Trust Assurance Program Summary, paras 33–34.

116 Law Society Trust Accounting Handbook, 44.

117 Evidence of J. McPhee, Transcript, November 18, 2020, p 143.

118 Transcript, November 18, 2020, pp 141–42.

119 Ibid, para 39.

The Law Society helpfully provided the Commission with tables detailing trends in referrals to the Investigations Group.<sup>120</sup> Ms. McPhee explained that a significant rise in referrals in 2017 was because of an increased focus on the client identification and verification rules and related initiatives.<sup>121</sup>

The Law Society also provided the Commission with information identifying which referrals to the Investigations Group related to specific anti-money laundering rules (the cash transactions rule, client identification and verification rules, and trust accounting rules).<sup>122</sup> Of the 109 referrals made to the Investigations Group in 2019, over half (67) related to the possible transgression of the Law Society's anti-money laundering rules. Ms. McPhee attributed this pattern to the audit program's increased focus on anti-money laundering.<sup>123</sup>

Mr. Avison testified that Law Society investigations in matters related to anti-money laundering are "inherently more complex given the amount of work that is required in relation to the financial components."<sup>124</sup> However, Ms. Bains expressed the view that it depends on the investigation. She explained that investigations of breaches of the cash transactions rule are often straightforward, whereas those in which the lawyer knew or ought to have known they were facilitating dishonesty, crime, or fraud are often more complex.<sup>125</sup>

As of September 30, 2020, the Investigations Group had 230 open files, of which 92 pertained to the client identification and verification rules, the cash transactions rule, or potential misuse of a trust account and/or failure to make inquiries in suspicious circumstances.<sup>126</sup>

As I noted above, members of the Law Society's Investigations Group, Discipline Group, and Forensic Accounting Group have anti-money laundering qualifications including the certified anti-money laundering specialist certification, certified fraud examiner status, and chartered professional accountant designation.<sup>127</sup> In my view, it is crucial that those charged with implementing, overseeing, and enforcing the Law Society's anti-money laundering and Trust Assurance programs have training focused on anti-money laundering. I endorse the Law Society's focus on specific anti-money laundering training and recommend that the Law Society make it a requirement for those investigating possible transgressions of the trust accounting rules.

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120 See Exhibit 225, Trust Assurance Program Summary, Figures 4 and 5.

121 Transcript, November 19, 2020, p 91.

122 Exhibit 225, Trust Assurance Program Summary, Figure 6.

123 Transcript, November 19, 2020, pp 93-94.

124 Transcript, November 18, 2020, p 14.

125 Transcript, November 19, 2020, pp 100-1; see also Transcript, November 19, 2020, pp 108-9.

126 Exhibit 223, Law Society of British Columbia, Investigations and Discipline Programs Summary, para 36 [Investigations and Discipline Programs Summary].

127 Ibid, paras 5-8.

**Recommendation 61:** I recommend that the Law Society of British Columbia require that all trust auditors and investigators charged with investigating possible transgressions of the trust accounting rules receive anti–money laundering training.

## Ongoing Review of Law Society and Federation Rules

As of the Commission’s hearings in 2020, the FLSC Anti–Money Laundering Working Group was in the middle of another review of the Model Rules. This second review is focused on source of funds, source of wealth, risk assessments, compliance measures, virtual currencies, the cash exceptions, politically exposed persons,<sup>128</sup> trustees of widely held or publicly traded trusts, electronic funds transfers and exceptions, and the proposed 2019 amendments to the *PCMLTFA* regulations.<sup>129</sup>

As noted above, the Law Society has identified ambiguities in its Rules, including with respect to source of money, and is studying possible solutions. The Law Society also recognizes the need for stronger fines<sup>130</sup> and penalties for serious breaches of the trust accounting rules. It is looking into ways in which to increase capacity for investigations and other matters, some of which may require legislative changes.<sup>131</sup>

In addition, the Law Society is considering whether to require law firms to have an “anti–money laundering compliance officer” and a firm risk policy, as is done in the United Kingdom.<sup>132</sup> As Dr. Benson explained, legal professionals in the United Kingdom must carry out and maintain a risk assessment to identify and assess money laundering and terrorist financing risks faced by their firms. They must also establish and maintain appropriate written policies, controls, and procedures,<sup>133</sup> and appoint a compliance officer responsible for ensuring the firm complies with its anti–money laundering requirements.<sup>134</sup>

## Education

Another important aspect of Law Society and Federation activities involves educating lawyers about their obligations and risks. Ms. Wilson testified that, in the Federation’s

128 Ms. Wilson noted that politically exposed persons pose an issue because there is little publicly available information to help lawyers identify them: Transcript, November 17, 2020 (Session 1), pp 50–52. I discuss this matter further in Chapter 3.

129 Transcript, November 17, 2020 (Session 1), p 48; Exhibit 224, Regulation of the Practice of Law, para 62.

130 Ms. Bains noted, however, that in some situations there are more effective measures for protecting the public interest than fines. For example, the Law Society has in the past required lawyers, who operate trust accounts about whom it has concerns, to give an undertaking either not to operate a trust account or to do so under supervision: Transcript, November 19, 2020, pp 71–72. Mr. Ferris also noted that an issue with increasing fines is that Law Society discipline panels are independent tribunals that build on precedent, which limits what they can be told to do: Transcript, November 19, 2020, pp 72–73.

131 Evidence of D. Avison, Transcript, November 19, 2020, p 70.

132 Ibid, pp 54–55.

133 Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), p 124.

134 Exhibit 245, Michael Levi, *The Legal and Institutional Infrastructure of Anti–Money Laundering in the UK: A Report for the Cullen Commission*, p 46.

experience, it is a minority of lawyers who deliberately breach the rules. Accordingly, it is crucial to focus on educating “the great majority of lawyers who want to comply, who want to do the right thing, who want to understand a risk when it’s in front of them, who want to know what it looks like, what the indicia are and how to avoid it and how to respond.” Thus, discipline and education are both important tools.<sup>135</sup>

UK money laundering expert Simon Lord similarly expressed the view that education is a useful tool in the fight against money laundering. He noted that, following a lecture he gave to a law society in the United Kingdom, he has had “non-stop questions” from lawyers asking about situations that might be suspicious.<sup>136</sup>

As I have noted throughout these chapters, the Federation has produced a number of educational materials. In addition to the 2019 Risk Advisory produced by the FLSC Anti-Money Laundering Working Group (discussed in Chapter 26), it has produced other guidance documents on specific anti-money laundering topics.<sup>137</sup>

The Law Society has also been prolific in this regard. It added an anti-money laundering component to its Professional Legal Training Course in 2004.<sup>138</sup> It has also produced a number of guidance documents, ranging from materials on the website<sup>139</sup> to *Bencher’s Bulletins*<sup>140</sup> to discipline advisories to specific anti-money laundering programs.<sup>141</sup> Members can also phone a Bencher or practice advisor with questions about an ethical issue.<sup>142</sup>

Although these educational materials are available, there is currently no *requirement* that lawyers in British Columbia receive any specific anti-money laundering education. Notably, the Financial Action Task Force Guidance states that legal professionals should be required to complete periodic continuing legal education in customer due diligence and money laundering / terrorist financing topics.<sup>143</sup>

135 Transcript, November 17, 2020, (Session 1), pp 67–68.

136 Transcript, May 29, 2020, p 58.

137 See, for example, Exhibit 191, Overview Report: Anti-Money Laundering Initiatives of the LSBC and FLSC, Appendix K, *Guidance for the Legal Profession: Your Professional Responsibility to Avoid Facilitating or Participating in Money Laundering and Terrorist Financing* (February 19, 2019); Appendix M, *Risk Assessment Case Studies for the Legal Profession* (February 2020); Appendix O, *Guidance on Monitoring Obligations: Client Identification and Verification* (July 6, 2020); Appendix P, *Guidance on Using an Agent: Client Identification and Verification* (July 6, 2020).

138 Exhibit 226, Law Society of British Columbia – Education of the Profession, para 25 [Education of the Profession].

139 The Law Society’s website contains various materials and resources relevant to money laundering. For example, a page on the client identification and verification rules groups together a free webinar, checklists, sample forms, *Bencher’s Bulletins*, relevant rules, discipline advisories, Federation resources, and more: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-clients/client-id-verification/>.

140 As Mr. Avison explained, these “go out on a regular basis where there has been a consistent theme identified for the membership”: Transcript, November 19, 2020, p 33. Essentially, they are newsletters that update lawyers, articulated students, and the public on Bencher’s policy and regulatory decisions, committee and task force work, and Law Society programs and activities: Exhibit 226, Education of the Profession, para 8; see also paras 9–11 for a review of bulletins relating specifically to anti-money laundering.

141 D. Avison, Transcript, November, 19, 2020, pp 32–35. See also Exhibit 226, Education of the Profession, paras 19–22, for a review of a number of educational programs offered by the Law Society.

142 Evidence of C. Ferris, Transcript, November 19, 2020, pp 35–36.

143 Exhibit 193, Overview Report: Legal Professionals and Accountants Publications, Appendix A: *Guidance for a Risk-Based Approach: Legal Professionals* (FATF, 2019), para 153(e).

As noted, the Law Society does offer programs related to anti-money laundering and has produced a variety of educational materials. However, the average recorded attendance in courses relating to anti-money laundering between 2009 and 2017 was under 1 percent of practising lawyers, with a modest increase to 6 percent in 2019.<sup>144</sup>

Mr. Ferris doubted that it would be prudent to make such training mandatory for lawyers. He noted the duty on lawyers to be competent in the areas in which they practise and said he has seen no evidence that lawyers are not educating themselves about the rules when they are operating in high-risk areas. In his view, making such education mandatory for all BC lawyers would be too sweeping, and making it mandatory for specific practice areas would be challenging given that the Law Society does not currently regulate lawyers according to their area of specialization. He was also concerned that imposing such a requirement could lead to a “checkbox” approach where lawyers feel they are in the clear if they have done the education.<sup>145</sup> Ms. Bains similarly had doubts that mandatory anti-money laundering education would be the best approach, noting that the Law Society has found measures such as risk advisories to be effective.<sup>146</sup> Ms. McPhee added that the compliance audit program is intended to be educational as well.<sup>147</sup>

The above concerns are well taken. I agree that imposing a mandatory anti-money laundering education requirement on all members of the profession would be too sweeping. I also appreciate the potential difficulties of imposing it only on lawyers practising in particular areas. Nonetheless, I am of the view that those lawyers who are most at risk of facing money laundering threats should be subject to mandatory anti-money laundering training. This requirement should include, but need not be limited to, lawyers who engage in the following activities: the formation of corporations, trusts, and other legal entities; transactional work, including real estate transactions; some transactions that do not involve the transfer of funds (such as transfer of title); and litigation involving private lending. As I noted above, over half the referrals to the Law Society Investigations Group in 2019 related to potential breaches of the anti-money laundering rules. Further, the percentage of practising lawyers who have attended the specific anti-money laundering courses is very low, ranging from 1 to 6 percent between 2009 and 2019.

It is in keeping with a risk-based approach, in my opinion, to impose a mandatory education requirement on those lawyers who are most at risk of facing money

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144 Exhibit 237, Law Society of British Columbia, Briefing Note (October 7, 2020). Mr. Avison cautioned that these numbers only reflect participants who sought credit for the course. He explained that it did not account for lawyers who took the course but did not claim credit as they had already completed the annual education requirements, or lawyers who had participated in other educational opportunities that were not available for credit: Transcript, November 19, 2020, pp 40–44.

145 Transcript, November 19, 2020, pp 45–49. Mr. Ferris also expressed concerns about access to justice in the sense that increasing regulatory requirements has the potential to increase the cost and burden for certain practices and create impediments to marginalized people getting legal advice: Ibid, pp 57–58.

146 Transcript, November 19, 2020, pp 59–62.

147 Ibid, p 62.

laundering threats. As I discuss throughout this Report, money laundering is, by its nature, often difficult to detect; a proactive approach based on risk has great potential to at least deter the conduct. Moreover, the nature of money laundering means that it is constantly evolving, requiring professionals working in risky areas to continuously update their knowledge.

Overall, there is no dispute that lawyers are gatekeepers when it comes to money laundering, particularly in much solicitors' work, and I consider it essential for lawyers who practise in high-risk areas to be properly educated on the risks they face. This is not to doubt the sincerity of the concerns expressed by the Law Society witnesses or to suggest that their current measures are inadequate; rather, a mandatory education requirement appears to me to be the surest way that all or most lawyers who face the greatest money laundering risks are properly educated about them. I am therefore recommending that the Law Society implement mandatory anti-money laundering training for lawyers whose work puts them most at risk of facing money laundering threats. This training need not be an annual requirement, but it should be required before lawyers start engaging in such activities and at regular intervals thereafter.

**Recommendation 62:** I recommend that the Law Society of British Columbia implement mandatory anti-money laundering training for lawyers who are most at risk of facing money laundering threats. The education should be required, at a minimum, for lawyers engaged in the following activities:

- the formation of corporations, trusts, and other legal entities;
- transactional work, including real estate transactions;
- some transactions that do not involve the transfer of funds (such as transfer of title); and
- litigation involving private lending.

## Law Society and Federation Engagement with Government

Before leaving the topic of anti-money laundering measures by the Law Society and the Federation, I note that both bodies have been active in engaging with government about areas affecting the legal profession. The Law Society has provided comments on initiatives including the *Land Owner Transparency Act White Paper*.<sup>148</sup> Similarly, the Federation has made submissions to Senate committees, the House of Commons Standing Committee on Finance, the Department of Finance, and the Department of Innovation, Science and Economic Development.<sup>149</sup> I encourage the Law Society

<sup>148</sup> Exhibit 191, Overview Report: Anti-Money Laundering Initiatives of the LSBC and FLSC, Appendix A.

<sup>149</sup> Exhibit 191, Appendices C, H, I, and N.

and the Federation to continue bringing forward their perspectives when legislative measures are contemplated to ensure these measures do not have unintended consequences on affected populations.

## **Law Society Collaboration with Law Enforcement and Other Stakeholders**

I discussed in Chapter 27 how subjecting lawyers to a reporting regime would be challenging from a constitutional perspective. However, this does not mean that all information possessed by lawyers or the Law Society is automatically out of reach for law enforcement and other stakeholders. Other pathways to accessing that information exist, and it is crucial that they be used. First, the Law Society must continue its efforts to enter into and maintain information-sharing agreements with law enforcement and other regulators and stakeholders. Second, the Law Society must make better use of its ability to refer cases to law enforcement in appropriate circumstances. Third, law enforcement must appreciate that, although there are unique difficulties (such as privilege) when investigating lawyers, there are nonetheless ways for them to access the information they seek. Finally, information about the foregoing measures must be publicly disseminated to counter the perception that transactions conducted through a lawyer in furtherance of an unlawful aim are immune from detection.

Overall, all stakeholders must understand the roles played by each other and collaborate effectively. The Law Society has unparalleled access to its members' activities and must share that information as much as it is permitted. Meanwhile, law enforcement and other regulators and stakeholders must appreciate the role played by the Law Society and refer cases to it wherever appropriate.

## **The Need for a Shared Response**

It is easy to reason that, because money laundering is a crime, the best response is a law enforcement response. Law enforcement is undoubtedly crucial to the fight against money laundering. However, we must not assume that regulators do not materially contribute to the fight as well. This is especially true in the case of lawyers, given that the Law Society is uniquely placed to investigate lawyers while avoiding the difficulties of privilege and confidentiality.

Dr. Benson's research points out numerous advantages of a regulator response. These include the regulator's specialist knowledge and expertise, understanding of the profession, access to material that may not be available to law enforcement, and ability to impose a broad range of sanctions.<sup>150</sup> Blair Morrison, chief executive officer of the BC Financial Services Authority, testified that regulators can also adapt to changing threats

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<sup>150</sup> Evidence of K. Benson, Transcript, November 17, 2020 (Session 1), pp 156–57.

more quickly than government because their rule-making power allows them to be “more agile” in responding to new developments.<sup>151</sup>

Further, a broad range of regulatory sanctions can be imposed, including fines, conditions on practice such as supervision, suspension, and even disbarment. This range may allow a regulator to “more accurately target the problem identified and provide a more tailored and appropriate response.” Further, sanctions can be imposed to address professional misconduct falling short of criminal activity and can be imposed more quickly and cost efficiently than criminal sanctions.<sup>152</sup>

Dr. Benson concludes that a shared response is ideal, with regulatory and criminal justice responses addressing different kinds of conduct:

In certain cases, criminal prosecution and robust sanctions are appropriate; for example, cases where lawyers (or firms) have participated in “high-end” money laundering, involving the proceeds of serious economic crimes such as corruption or tax evasion, or provide services for multiple individuals or groups engaged in criminal activity. However, for those whose role in facilitating money laundering is less active or intentional, or is considered to be unwitting or based on poor judgment, a regulatory response would be both more practicable and proportionate. Regulatory action should not be the answer in all cases as it does not provide the same moral condemnation or signal the gravity of the offending in the same [way] as criminal prosecution and sanctions. Therefore, a shared and cooperative response to the suspected facilitation of money laundering is suggested, involving law enforcement and regulators working together when a legal professional is identified during the course of a financial investigation, for example, or potential involvement in money laundering is identified through the course of routine monitoring by the professional or regulatory bodies. An effective shared response would require, firstly, greater prioritisation of suspected “professional enablers” in criminal and financial investigations at the “ground level” of policing, not just in high-level rhetoric, and, secondly, effective communication and collaboration between regulators, police and prosecuting authorities.<sup>153</sup>

I agree with Dr. Benson that a shared response is desirable and necessary. In what follows, I highlight areas in which the Law Society, law enforcement, and other regulators collaborate already and how that collaboration can be more effective.

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151 Evidence of B. Morrison, Transcript, February 16, 2021, pp 28–29.

152 Exhibit 218, Katie Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response” (DPhil, University of Manchester, School of Law, 2016) [unpublished], p 190.

153 Exhibit 220, Katie Benson, *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and Its Control* (London and New York: Routledge, 2020), p 170.

## Information-Sharing Arrangements

The Law Society and the Federation consider information sharing to be essential. Ms. Bains testified that information sharing is “critical” to the Law Society’s investigations and that she spends a lot of time building relationships with other entities. She explained that the sharing of both general information (e.g., about new typologies) and more specific information (about particular files) is important.<sup>154</sup> Similarly, Ms. Wilson testified that law societies are “very interested” in information sharing, particularly with law enforcement “about specific circumstances that law societies might be able to do something about.”<sup>155</sup> Indeed, “even a name gives a law society something to go on. Even the suggestion or the question, have you looked at lawyer X, without any of the details is helpful because ... the power of law societies to go in and look at what lawyers are doing are extensive.”<sup>156</sup>

Various formal information-sharing arrangements exist in British Columbia. Since the early 2000s, the Law Society has had memoranda of understanding with all 11 municipal police forces and the RCMP “E” Division. These memoranda establish procedures for the Law Society to request information from police where it believes that law enforcement may have information relevant to an investigation, as well as terms and conditions for use of that information.<sup>157</sup> Ms. Bains testified that the Law Society has “very good relationships with law enforcement and the cooperation and communication and dialogue that we have with them is very helpful on our investigations.”<sup>158</sup> The Law Society notes that, in recent years, it has met with members of “the RCMP ‘E’ Division’s Financial Integrity Unit, the Vancouver Police Department’s Financial Integrity Unit, and with other law enforcement personnel, both directly and through ... meetings of the Association of Certified Fraud Examiners and the Association of Certified Anti-Money Laundering Specialists.”<sup>159</sup>

The Law Society has not tracked the number of requests it has made under its memoranda of understanding with law enforcement. However, a review of its records revealed that at least nine written requests have been made since 2018, and that these requests were made when an investigation had already been initiated by the Law Society.<sup>160</sup> As of September 2020, the Law Society and the RCMP were working to update their memorandum of understanding.<sup>161</sup>

The Law Society has also established protocols to obtain information from the Criminal Justice Branch at the BC Ministry of the Attorney General.<sup>162</sup> Since 2016,

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154 Transcript, November 19, 2020, pp 110–11.

155 Transcript, November 17, 2020 (Session 1), p 82.

156 Ibid, pp 82–83.

157 Exhibit 223, Investigations and Discipline Programs Summary, para 32; Exhibit 241, Memorandum from C. George to the Cullen Commission, Re Information-Sharing with Law Enforcement (September 24, 2020) [Information Sharing with Law Enforcement], p 2.

158 Transcript, November 19, 2020, pp 110–11.

159 Exhibit 241, Information Sharing with Law Enforcement, p 1.

160 Exhibit 243, Memorandum from C. George to the Cullen Commission, Re Information-Sharing with Law Enforcement (October 26, 2020) [Information Sharing with Law Enforcement #2], p 1.

161 Exhibit 241, Information Sharing with Law Enforcement, p 2.

162 Exhibit 223, Investigations and Discipline Programs Summary, para 33; Exhibit 241, Information Sharing with Law Enforcement, p 2.

the Law Society has delivered at least 27 written requests for information during an investigation.<sup>163</sup> Although the Law Society has no formal information-sharing agreement with the Public Prosecution Service of Canada, the Law Society engages with it on a case-by-case basis when a lawyer is charged with a federal offence.<sup>164</sup>

The Law Society has informal arrangements with other regulatory bodies including the BC Securities Commission and the US Securities and Exchange Commission.<sup>165</sup> Since 2018, the Law Society has delivered seven written requests for information to the BC Securities Commission, and the latter has referred six matters to the Law Society.<sup>166</sup> The Law Society also discussed information requests with the US Securities and Exchange Commission in a June 2019 meeting and encouraged the latter to refer matters to the Law Society.<sup>167</sup>

The Law Society is also an associate member of Counter Illicit Finance Alliance of British Columbia, which I discuss further in Chapter 39.<sup>168</sup>

## Referrals to the Law Society

The testimony before me made clear that the Law Society finds the referrals it receives from other agencies to be important and useful. Ms. Bains testified that she frequently encourages other agencies to refer matters involving lawyers to the Law Society and to provide as much information as possible. She noted that “at the end of the day we want to serve our public interest mandate and we want to uncover concerns about lawyer misconduct that otherwise may not come to our attention.”<sup>169</sup> Similarly, Mr. Avison noted that the Law Society has been engaging with other entities including the Ministry of the Solicitor General, the Ministry of the Attorney General, and the RCMP to explain its role and encourage referrals of matters involving lawyers.<sup>170</sup>

The Law Society has not tracked how many referrals it has received from government agencies. However, it notes that it has received referrals from Crown corporations, the Ministry of Justice Corrections Branch, the courts, and the Criminal Justice Branch when lawyers have been charged with criminal offences.<sup>171</sup> A review of the Law Society’s records from 2020 revealed 14 referrals from law enforcement.<sup>172</sup>

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163 Exhibit 243, Information Sharing with Law Enforcement #2, p 1.

164 Exhibit 223, Investigations and Discipline Programs Summary, para 33

165 Ibid, para 34.

166 Exhibit 243, Information Sharing with Law Enforcement #2, p 2.

167 Exhibit 243, Information Sharing with Law Enforcement #2, p 2.

168 Evidence of D. Avison, Transcript, November 18, 2020, p 55.

169 Transcript, November 19, 2020, pp 114–15. See also Evidence of F. Wilson, Transcript, November 17, 2020 (Session 1), p 83.

170 Transcript, November 19, 2020, pp 116–17. See also Exhibit 241, Information Sharing with Law Enforcement, p 2.

171 Exhibit 243, Information Sharing with Law Enforcement #2, p 2.

172 Ibid.

In its closing submissions, the Law Society noted that it “recognizes the unique regulatory responsibility it carries by virtue of its ability to audit and investigate lawyers in a manner unhindered by client confidentiality or privilege.”<sup>173</sup> I agree that the Law Society has a heightened responsibility to conduct stringent money laundering regulation and investigation given the lack of lawyer reporting and the difficulties posed by client confidentiality and privilege. It is crucial that potential lawyer wrongdoing be referred to the Law Society. I therefore recommend that the British Columbia Solicitor General direct law enforcement to refer matters involving lawyers to the Law Society where appropriate. I further recommend that the Law Society continue its advocacy with government, regulators, and other stakeholders in order to clarify its role and when matters should be referred to it.

**Recommendation 63:** I recommend that the British Columbia Solicitor General direct law enforcement to refer matters involving lawyers to the Law Society of British Columbia where appropriate, and that the Law Society continue its advocacy with government, regulators, and other stakeholders about its role and when referrals to the Law Society should be made.

## Law Society Referrals to Law Enforcement

Under the *Legal Profession Act*, the Law Society is not permitted to disclose information, files, or records that are confidential or privileged except as permitted by that statute or the Rules.<sup>174</sup> The Rules permit the Law Society’s executive director, with the consent of the Discipline Committee, to deliver to a law enforcement agency any information or documents that may be evidence of an offence.<sup>175</sup> In March 2020, the Law Society developed guidelines to assist the Discipline Committee when considering such a request by the executive director. They include the following considerations:

- The Committee should be satisfied that there are reasonable grounds to believe the information or documents in the Law Society’s possession are likely evidence of an offence.
- Absent exceptional circumstances, it will be in the public interest for the Executive Director to disclose information about a criminal offence to law enforcement.
- Disclosure to law enforcement will not be necessary if the conduct is already known to them.

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173 Closing submissions, Law Society of British Columbia, July 9, 2021, para 77.

174 *Legal Profession Act*, SBC 1998, c 9, s 88.

175 Rules 2-53(4), 3-3(5), 3-23(3), 3-46(5)(c), 4-8(5); Exhibit 241, Information Sharing with Law Enforcement.

- If there are reasonable grounds to believe that disclosure to law enforcement is necessary to prevent an imminent risk of death or serious bodily harm, which may include serious psychological harm, to any person then disclosure to law enforcement will generally be in the public interest.<sup>176</sup>

If the committee consents to disclosure, the executive director may prepare a summary or an outline to provide to law enforcement. The summary or outline cannot contain information subject to privilege unless it has been waived by the client.<sup>177</sup>

Since 1998, there have been four incidents in which the executive director sought to disclose information to law enforcement, and in each case, the Discipline Committee consented.<sup>178</sup> Four referrals in the span of 23 years is a very low number. It is not clear on the evidence before me why this number was so low. However, Mr. Avison testified that there had previously been processes that contemplated three different committees playing a role in these decisions. Given the role is now centralized to a single entity – the Discipline Committee – Mr. Avison expects it will be “somewhat easier to be able to accommodate” such requests.<sup>179</sup>

Mr. Avison also testified that “regular information sessions ... take place with entities like the RCMP and the financial integrity unit.” However, in his view, there is a “strain on the resources ... available to the RCMP to be able to engage in those kinds of exchanges to the extent that I think they would like to. That is an issue that comes up pretty consistently.”<sup>180</sup>

Whatever the reason, four referrals since 1998 is far too low a number. It is highly implausible that in 23 years the Law Society came across only four instances that warranted a referral to law enforcement. I recommend that the Law Society review and assess its approach to determining whether it is in possession of information or documents that may be evidence of an offence and, if so, whether the executive director should seek approval from the Discipline Committee to provide it to law enforcement.

**Recommendation 64:** I recommend that the Law Society of British Columbia review and assess its approach to determining whether it possesses information or documents that may be evidence of an offence, and, if so, whether the executive director should seek approval from the Discipline Committee to deliver the information or documents to law enforcement.

176 Exhibit 242, Law Society of British Columbia, Guidelines for Disclosing Information to Law Enforcement.

177 Ibid.

178 Exhibit 243, Information Sharing with Law Enforcement #2, p 3.

179 Transcript, November 19, 2020, pp 115–16.

180 Ibid, p 116.

## Tools Available to Law Enforcement

Law enforcement agencies certainly face challenges when investigating matters that involve lawyers, most notably the effects of solicitor-client privilege. However, they should not simply assume that, because a lawyer is involved, there is no way of getting the information sought. Below are some avenues that law enforcement should make use of in appropriate circumstances.

First, law enforcement can obtain a search warrant or production order for a lawyer's office in certain circumstances. To facilitate such searches while ensuring protection for solicitor-client privilege, the Law Society published guidelines for law office search warrants and procedures in 2013.<sup>181</sup> These were developed in consultation with the Public Prosecution Service of Canada, the Ministry of Justice (Criminal Justice Branch), and the British Columbia Association of Chiefs of Police. The process set out includes appointing a “referee” to execute the search warrant and maintain confidentiality, advising the Law Society of the search before carrying it out, and ensuring that reasonable efforts are taken to advise the lawyer of the search. The referee is tasked with obtaining the documents sought in the warrant, sealing them, and delivering them to the court so privilege claims can be resolved.

Second, law enforcement should keep in mind the crime exception to privilege. Under this exception, “no privilege attaches to communications criminal in themselves or intended to further criminal purposes.”<sup>182</sup> In other words, if a client seeks to use a lawyer to facilitate a crime, including money laundering, no privilege will attach to those communications. It does not matter if the lawyer is knowingly assisting in the facilitation of a crime or not.<sup>183</sup>

I am not suggesting that the crime exception will always be easy to establish. To rely on it, law enforcement needs more than a mere allegation that advice was sought to facilitate a crime and more than simply proof that a crime occurred and that the criminal consulted a lawyer beforehand.<sup>184</sup> Nonetheless, when it can be established, it is clearly a powerful investigative tool. When law enforcement has a reasonable basis to show that the exception should apply, it should seek to invoke the exception and gain access to that information.

Third, law enforcement can, in appropriate circumstances, seek the production of trust accounting records. In Chapter 27, I discuss difficulties in designing a reporting regime based on trust account records, as they would appear to be presumptively privileged. However, although disclosing such records as a matter of course poses complex constitutional issues, this does not mean that law enforcement is precluded

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181 Law Society of British Columbia, Guidelines: Recommended Terms for Law Office Search Warrants, online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/lawyers/search-warrants.pdf>; see also Exhibit 241, Information Sharing with Law Enforcement, pp 2–3.

182 *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para 10; *Descôteaux et al v Mierzwinski*, [1982] 1 SCR 860 [*Descôteaux*] at 881; *R v Campbell*, [1999] 1 SCR 565 [*Campbell*] at para 55.

183 *Solosky v The Queen*, [1980] 1 SCR 821 at 835; *Descôteaux* at 873.

184 *Campbell* at para 62.

from seeking access to trust account records on a case-by-case basis. Indeed, British Columbia courts have ordered production of redacted records, and the Supreme Court of Canada's case law would seem to allow for a process for judges to resolve claims of privilege. Indeed, the procedures I outlined above for law office searches would seem to be equally useful for trust account records, in that the materials could be sealed, privilege claims resolved, and the records passed on to law enforcement as appropriate.

## Public Awareness

As I have noted throughout the chapters on lawyers, it is important that the public be aware of measures available to the Law Society and law enforcement when investigating lawyers. Such awareness is crucial to countering any perception that transactions conducted through a lawyer in furtherance of an unlawful aim are immune from detection. Although aspects of the lawyer-client relationship – particularly solicitor-client privilege – pose complications when investigating lawyers, the challenges are not insurmountable. I therefore recommend that the Law Society and the provincial government work to increase public awareness of the measures I have just described.

**Recommendation 65:** I recommend that the Law Society of British Columbia and the Province work to increase public awareness of measures available to investigate wrongdoing involving lawyers, including:

- the limitations on the use of a lawyer's trust account;
- the information-sharing agreements that exist between the Law Society and government agencies;
- the ability of the Law Society to refer matters to law enforcement when there is evidence of a potential offence; and
- the pathways that exist for law enforcement to obtain information about lawyers during investigations.

## Conclusion

The involvement of lawyers in money laundering is a complex area. Clearly, lawyers possess the knowledge, skill, and scope of practice that would be of interest to criminals, and the practice of law inherently involves numerous money laundering risks. In this section of the Report, I have sought to outline the key areas of risk facing lawyers, without doing so exhaustively, and to recommend areas in which measures can be improved. I have also noted that research in this area is unfortunately relatively limited and expressed my hope that the AML Commissioner, academics, and

others will continue the research into lawyer involvement in and facilitation of money laundering. This would enable the Law Society, government, and law enforcement to apply their resources effectively to address key areas of risk.

In my view, the exclusion of lawyers from the *PCMLTFA* regime does not, contrary to dominant discourse, leave lawyers in British Columbia free of anti-money laundering regulation. The evidence before me suggests that lawyers will continue to be exempt from the *PCMLTFA*, and as I have explained, even a regime in which lawyers reported to the Law Society or another entity involves complex and challenging constitutional issues. Given this reality, it is imperative that the Law Society continue to maintain and enforce a robust anti-money laundering regime in British Columbia.

Although lawyers and indeed the Law Society are constrained in the extent to which they can disclose privileged information, it is important to recognize that this impediment does not constrain the Law Society in supervising and enforcing against lawyers. In fact, the Law Society has an advantage in that it does not face the same barriers as law enforcement: its officers can see everything in a lawyer's file, including privileged materials, and can use this information to inform their investigative and disciplinary powers.

It is clear to me that the Law Society, with the support of the Federation, has taken its role as the public interest regulator seriously. I find that it is engaged with anti-money laundering issues and continues to revisit its Rules to address emerging issues and risks. I trust that the Law Society will seriously consider my recommendations for ways in which the regime can be strengthened.

## Chapter 29

# British Columbia Notaries

British Columbia notaries are a unique profession in Canada. They are unlike both Quebec notaries, whose work under the civil law resembles that done by solicitors in other provinces and is subject to solicitor-client privilege, and notaries in other common law provinces, who have a narrower scope of practice.<sup>1</sup> Given their unique scope of practice and the effects of the Supreme Court of Canada's 2015 *Federation* decision,<sup>2</sup> BC notaries are, at the time of writing, the only legal service providers in Canada who are subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*).

In this chapter, I describe the scope of practice of British Columbia notaries, the regulation undertaken by the Society of Notaries Public of British Columbia (Society), and the application of the *PCMLTFA* to British Columbia notaries and notary corporations. I then discuss the money laundering risks involved in this sector, which relate primarily to BC notaries' role in real estate transactions. Finally, I consider how information sharing between the Society and others can be strengthened.

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- 1 As I understand it, the role of notaries in other provinces is largely limited to witnessing or certifying and attesting the execution of a document; certifying and attesting true copies of documents; and exercising the powers of a commissioner for taking affidavits: see, for example, *Notaries Act*, RSO 1990, c 6, s 3 (Ontario); *Notaries and Commissioners Act*, SA 2013, c N-5.5, s 4 (Alberta). However, the Quebec profession is distinct from the common law profession. It is governed by the *Notaries Act*, CQLR, c N-3, which specifies that a notary is a legal advisor and that professional secrecy (the civil law equivalent of solicitor-client privilege) attaches to their activities (ss 10, 14.1). The Supreme Court of Canada has noted that the role of Quebec notaries is very similar to that of solicitors in common law provinces: *Canada (Attorney General) v Chambre des notaires du Québec*, 2016 SCC 20 at para 42.
  - 2 *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 [*Federation*]. I discuss that decision in detail in **Chapter 27**. Briefly, it concluded that the application of the *PCMLTFA* to lawyers was unconstitutional because it interfered with constitutionally protected duties that lawyers and Quebec notaries owe to their clients.

## British Columbia Notarial Profession

The role of BC notaries can be traced back to the practice of notaries in England in the mid-1800s. Indeed, the oath taken by BC notaries is taken directly from the English *Public Notaries Act* of 1843.<sup>3</sup> The profession is governed by the *Notaries Act*, RSBC 1996, c 334. It refers to two categories of notary: members of the Society, and non-member notaries appointed by cabinet.<sup>4</sup>

### Members of the Society

Members of the Society can carry out the functions set out in section 18 of the *Notaries Act*. These include, but are not limited to:

- drawing instruments related to property that can be registered, recorded, or filed in a registry or public office;
- drawing and supervising the execution of certain kinds of wills;
- attesting or protesting commercial or other instruments; and
- drawing affidavits, affirmations, and statutory declarations.

John Mayr, chief executive officer of the Society, testified that, although the list in section 18 is long, most services provided by BC notaries are in real estate, personal planning,<sup>5</sup> and notarizing documents and contracts.<sup>6</sup> As Mr. Mayr put it, BC notaries' scope of practice is essentially "areas of non-contentious law."<sup>7</sup> Marny Morin, secretary of the Society, explained that, if a matter becomes contentious, it is referred to a lawyer or accountant.<sup>8</sup>

Mr. Mayr testified that BC notaries are legal service providers and that courts have determined they must meet the same standard of service as lawyers.<sup>9</sup> For example, like lawyers, notaries owe fiduciary duties to their clients.<sup>10</sup> Importantly, however, solicitor-client privilege does not attach to their work. Although BC notaries do owe a duty of confidentiality under the *Personal Information Protection Act*,<sup>11</sup> they can be obliged to produce materials to the RCMP, local police, and government agencies.<sup>12</sup>

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3 Opening statement of the Society of Notaries Public of British Columbia, Transcript, February 25, 2020, p 33.

4 *Notaries Act*, RSBC 1996, c 334, ss 15, 16.

5 "Personal planning" refers to representation agreements, powers of attorney, and wills: Evidence of J. Mayr, Transcript, March 5, 2021, pp 19–20.

6 Transcript, March 5, 2021, p 19.

7 Ibid.

8 Transcript, March 5, 2021, pp 29–30.

9 Transcript, March 5, 2021, p 19.

10 Ibid, p 20.

11 SBC 2003, c 63.

12 Evidence of J. Mayr, Transcript, March 5, 2021, pp 20–21.

Members of the Society can practise on their own or through notary corporations.<sup>13</sup> Mr. Mayr testified that, as of March 2021, there were 404 members and that, although notary corporations exist, the vast majority of members are sole practitioners with zero to four staff members.<sup>14</sup>

Becoming a member of the Society involves applying to the British Columbia Supreme Court, passing examinations, and satisfying other requirements set by the Society.<sup>15</sup> The Society requires applicants to have a master's degree in applied legal studies.<sup>16</sup> The registrar of the BC Supreme Court maintains the Roll of Notaries Public.<sup>17</sup>

## Cabinet-Appointed Notaries

The second category of notaries contemplated in the *Notaries Act* are those appointed by cabinet for limited functions. Such notaries can only administer oaths; take affidavits, declarations, and acknowledgements; attest instruments; and give notarial certificates (section 15(2)). They are not members of the Society and cannot carry out the other roles that members can (sections 15(4), (18)).

The title “Notary Public in and for the Province of British Columbia” can be used only by members of the Society, cabinet-appointed notaries, and lawyers.<sup>18</sup> Section 17 of the *Notaries Act* sets out when a person is considered to act as a notary public, and section 48 states that a person must not act as or hold oneself out as a notary public unless authorized by the statute.

The remainder of this chapter will focus on notaries public who are members of the Society. For simplicity, I will refer to them as “notaries” or “members.”

## Regulation by the Society

The Society's powers to regulate its members are set out in the *Notaries Act* and the *Notaries Regulation*.<sup>19</sup> The Society has passed the *Rules of the Society of Notaries Public of British Columbia* (Rules), which regulate the conduct of its members.<sup>20</sup> I review some key powers of the Society and rules applying to members below.

<sup>13</sup> *Notaries Act*, ss 57–65.

<sup>14</sup> Transcript, March 5, 2021, pp 19, 82–83.

<sup>15</sup> *Notaries Act*, ss 5, 6, 11; *Notaries Regulation*, BC Reg 229/2004.

<sup>16</sup> Evidence of M. Morin, Transcript, March 5, 2021, p 3; Simon Fraser University, School of Criminology, “MA in Applied Legal Studies Program,” online: <https://www.sfu.ca/criminology/appliedlegalstudies.html>.

<sup>17</sup> *Notaries Act*, s 13.

<sup>18</sup> *Notaries Act*, s 16; *Legal Profession Act*, SBC 1998, c 9, s 14(3).

<sup>19</sup> BC Reg 229/2004.

<sup>20</sup> The Society of Notaries Public of British Columbia, *Rules of the Society* (April 2020), online: [https://snpbc.ca/wp-content/uploads/2020/07/SNPBC-Rules\\_Revised-\\_July\\_2020.pdf](https://snpbc.ca/wp-content/uploads/2020/07/SNPBC-Rules_Revised-_July_2020.pdf).

## General Duties of Notaries

Rule 2.01 specifies that every notary “shall in the public interest actively and independently pursue [their] profession.” Notaries have a general duty to their clients to “represent that client competently and with undivided loyalty to the client” (Rule 11.01). In this regard, various rules address conflicts of interest and dealings with unrepresented parties (Rules 11.02–11.06).

Notaries can give undertakings, defined in Rule 10.01 as “a written or implied absolute and irrevocable covenant and commitment to act without fail upon certain circumstances, facts, deeds, or evidence.” Notaries are personally responsible for undertakings, which can be released or altered only by the recipient (Rule 10.02). As I discuss below, undertakings frequently come into play during real estate transactions.

## Practice Inspections, Investigations, and Discipline

Notaries are subject to practice inspections. Mr. Mayr testified that a practice inspection involves a team of senior notaries (practice inspectors) that engage with the notary and conduct a comprehensive review of the notary’s practice, ranging from consideration of employment or partnership arrangements to a detailed examination of the member’s files.<sup>21</sup> Ms. Morin testified that practice inspectors receive annual training and use a standardized checklist that covers all areas of practice.<sup>22</sup>

Compliance with practice inspections is mandatory. Notaries must answer the inspectors’ questions, provide necessary information, and provide printed or electronic copies of documents (Rule 18.04). These inspections can identify deficiencies, lead to a requirement for re-inspection, require a member to enrol in a suitable education plan, or result in a referral to the Discipline Committee (Rule 18.05). Ms. Morin testified that all new notaries are inspected in their first year of practice. Following that, inspections occur randomly on a rotating four-year basis, targeting 25 percent of the membership (approximately 100 members).<sup>23</sup>

The *Notaries Act* empowers the Society to conduct audits of a member’s or former member’s books and accounts at any time. Ms. Morin testified that practice inspections and audits are separate processes, with trust account regulation largely addressed through audits.<sup>24</sup> If the audit discloses a contravention of the *Notaries Act*, *Notaries Regulation*, or the Rules, the directors may suspend the notary and direct an inquiry by the Discipline Committee.<sup>25</sup>

The Society also investigates complaints against notaries. Mr. Mayr testified that most complaints come from members of the public, but that they also come from

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21 Transcript, March 5, 2021, pp 12–13.

22 Transcript, March 5, 2021, pp 14–15.

23 Transcript, March 5, 2021, p 15.

24 Ibid, pp 15–16.

25 *Notaries Act*, s 25.

lawyers, real estate agents, and other notaries.<sup>26</sup> The Society prepared a chart for the Commission categorizing complaints it has received since 2017, showing that the numbers ranged from 17 to 26 per year.<sup>27</sup>

Mr. Mayr is the lead investigator. He does a preliminary investigation of all complaints before presenting them to the Discipline Committee. The committee can direct further investigation and determine how to advance the complaint.<sup>28</sup> It is composed of five notaries and one member of the public.<sup>29</sup> Mr. Mayr testified that all notaries on staff have undertaken the anti-money laundering training I describe below, but none are certified anti-money laundering specialists.<sup>30</sup>

As noted above, matters can be referred to the Discipline Committee based on practice inspections, audits, or complaints. The committee can inquire into whether a member or former member has been guilty of the following:

- misappropriation or wrongful conversion of money or other property entrusted to them;
- incompetence;
- other professional misconduct;
- a breach of the *Notaries Act*, the *Notaries Regulation*, the Rules, or the Society's bylaws; or
- conduct that is “contrary to the best interest of the public or the notarial profession or tends to harm the standing of the notarial profession.”<sup>31</sup>

The Discipline Committee reports to the directors of the Society, who make the ultimate determination of whether a notary is guilty of one of the above.<sup>32</sup> The directors may impose the following sanctions:

- a reprimand and fine of up to \$5,000;
- a suspension of a member's practice or conditions on a member's practice, as well as a fine of up to \$5,000; or
- termination of membership.<sup>33</sup>

<sup>26</sup> Transcript, March 5, 2021, p 8.

<sup>27</sup> Exhibit 683, SNPBC Complaints Summary.

<sup>28</sup> Evidence of J. Mayr, Transcript, March 5, 2021, pp 5–6.

<sup>29</sup> Ibid.

<sup>30</sup> Evidence of J. Mayr, Transcript, March 5, 2021, pp 7–8.

<sup>31</sup> *Notaries Act*, ss 27, 28.

<sup>32</sup> *Notaries Act*, ss 33, 35(1).

<sup>33</sup> *Notaries Act*, ss 35(2)(b) and (c).

Mr. Mayr testified that the *Notaries Act* is “fairly dated legislation,” noting that the maximum fine of \$5,000 is low and that there are no provisions for other sanctions.<sup>34</sup> Given the possibility of notaries’ being used to facilitate money laundering through, for example, the transfer of real property, I agree that the maximum fine should be raised to provide a meaningful deterrent for such misconduct. I recommend that the provincial government, in consultation with the Society, raise that maximum fine.

**Recommendation 66:** I recommend that the Province, in consultation with the Society of Notaries Public of British Columbia, raise the maximum fine that can be imposed when a member of the Society is guilty of misconduct as set out in the *Notaries Act*.

On petition by the Attorney General of British Columbia, the Society, or an aggrieved person, the BC Supreme Court may inquire into alleged breaches of the *Notaries Act*, *Notaries Regulation*, or Rules, or into the professional conduct or alleged incompetence, negligence, or fraud of a notary. Following an inquiry, the court may suspend or terminate the notary’s membership.<sup>35</sup>

The Society can apply to court to appoint a custodian of a notary’s property and to manage, arrange for the conduct of, or wind up a member’s practice in various circumstances, including if a notary’s membership has been suspended or terminated or “other sufficient grounds exist.” Mr. Mayr testified that the Society moves very quickly to determine if there is validity to complaints relating to conversion, fraud, or theft, and that a representative of the Society can be in court within a day or two seeking an order of custodianship.<sup>36</sup>

Notaries must immediately notify the Society of any judgment or determinations made by a discipline panel against them. They must also advise the Society if they are subject to: a summons, writ, or statement of claim; an investigation by another regulatory body or agency; or any proceeding, event, or development that might result in a claim against the notary’s professional liability insurance or the Society’s special fund.<sup>37</sup>

## Regulation of Trust Accounts

Like lawyers, notaries are permitted to operate trust accounts. However, because solicitor-client privilege does not apply to notaries’ work, the constitutional issues I outlined in Chapter 27 concerning privilege and trust accounts for lawyers do not arise, and notaries have reporting obligations under the *PCMLTFA*.

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<sup>34</sup> Transcript, March 5, 2021, pp 97–98.

<sup>35</sup> *Notaries Act*, s 38.

<sup>36</sup> Transcript, March 5, 2021, pp 98–99.

<sup>37</sup> Rules 2.16–2.17.

The *Notaries Act* provides that money received by a notary on someone's behalf is trust money and must be held in an accredited financial institution.<sup>38</sup> The account must bear interest, and the notary must instruct the financial institution to pay that interest to the Notary Foundation.<sup>39</sup>

Notaries are required to inform the Society within one month of opening a trust account (Rule 4.02(a)). They must, at all times, keep sufficient funds in the account to meet the gross trust liability and must report shortages to the Society within five days (Rule 4.13). They must reconcile their trust accounts every month and correct errors promptly (Rule 4.14). A notary cannot deposit more than \$2,500 into their trust account in the course of a single transaction

unless such money consists of guaranteed institutional draft(s), electronic transfer of funds by the financial institution, or sent or received pursuant to these rules, cheque(s) certified by Members themselves; or trust cheque(s) issued by a notary, solicitor or licensed real estate agent. [Rule 4.03]

There are also detailed rules governing online wire transfers (Rule 4.03(1)).<sup>40</sup>

Notaries must pay funds into their trust account no later than the next banking day following receipt, with the exception of mortgage funds that cannot be deposited until after completion (Rule 4.05). They must record trust transactions no later than one week after the transaction date (Rule 4.06). They must also keep up-to-date records showing and readily distinguishing funds belonging to clients and to the notary.<sup>41</sup>

Trust funds cannot be withdrawn unless they are paid to or on behalf of the client, used for payment of the notary's fees or disbursements, or paid into the account by mistake.<sup>42</sup> They cannot be withdrawn in connection with registration in a land title register before the registration is completed (Rule 4.11).

Notaries must complete self-audit reports and deliver completed "trust administration fee remittance forms" every month to the secretary of the Society, declaring the total number of trust transactions involving the receipt or disbursement of funds (Rules 4.22, 4.26). A trust transaction includes, but is not limited to, a conveyance transaction acting for a buyer or a seller, a conveyance transaction involving a mortgage refinance, or any other transaction requiring funds to be held in trust (Rule 4.26).

The directors of the Society can audit a member's or former member's accounts or require an investigation by a chartered professional accountant at any time.<sup>43</sup>

<sup>38</sup> *Notaries Act*, s 23(2).

<sup>39</sup> *Notaries Act*, s 54; Rule 4.02(b).

<sup>40</sup> Rule 4.03.1.

<sup>41</sup> *Notaries Act*, s 23(1); Rule 4.01.

<sup>42</sup> *Ibid*, s 23(3); Rule 4.09.

<sup>43</sup> *Notaries Act*, s 24(1); Rule 4.20.

The Society audits approximately 25 percent of its membership every year.<sup>44</sup> As I noted above, audits can lead to referrals to the Discipline Committee and to re-inspection.

## **Insurance and the Society’s Special Fund**

Every member of the Society must participate in the Society’s liability (errors and omissions) group insurance plan (Rule 7.01). Ms. Morin explained that all members must have \$16 million in insurance covering errors and omissions and that an excess insurance package worth \$23 million is available. The insurance provider, BC Notaries Captive Insurance Company, also offers a fidelity insurance program covering malfeasance, theft, and the like.<sup>45</sup> She testified that there are typically around 25 to 35 claims per year. In her experience, the Society has never needed to go into excess coverage with respect to errors and omissions. As for fidelity claims, she is aware of only a few over the course of 30 or so years.<sup>46</sup> However, she is aware of one large fidelity claim where a member was running her trust accounting improperly. The member was found to have been taking money from her clients and then left the country.<sup>47</sup>

The Society is required under the *Notaries Act* to maintain a special fund to reimburse losses that are caused by misappropriation or wrongful conversion by a member or former member of money that was entrusted to them. If a person makes a complaint for such a loss, the directors can conduct an inquiry and pay the claim out of the special fund.<sup>48</sup> Notably, Rule 6.12 provides that when a payment is made out of the special fund, the Secretary shall “turn information in the case over to the local police authorities or Crown counsel in the area where the offence occurred” and, unless the board otherwise directs, take steps toward having charges laid against the member.

## **The Society’s Anti–Money Laundering Activities**

Notaries are required to take 12 credits of continuing education every year. The Society approves the notary’s chosen content and assigns it a credit value.<sup>49</sup> The Society has worked with a consultant, ABC Solutions, to develop an optional, modular anti–money laundering online training course<sup>50</sup> for notaries and notary staff. It is provided to members through a subscription.<sup>51</sup> The training satisfies the obligations under the *PCMLTFA*. The training is not mandatory, but is accredited for continuing education.<sup>52</sup>

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44 Evidence of M. Morin, Transcript, March 5, 2021, p 15.

45 Ibid, p 17.

46 Ibid, p 18.

47 Ibid, pp 18–19.

48 *Notaries Act*, ss 20(1), (9), (10).

49 Evidence of M. Morin, Transcript, March 5, 2021, p 86.

50 See Exhibit 686, ABC Solutions Training Brochure (Redacted) and Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 6, A Guide for Developing a Notary Practice Risk Assessment Program – July 2018.

51 Evidence of M. Morin, Transcript, March 5, 2021, pp 75–76.

52 Ibid, pp 76, 85.

Ms. Morin testified that the Society used to hold the subscription and that approximately 300 to 350 members took the course annually. The subscription has since been taken over by the Notary Association, and Ms. Morin understands that around 200 members have taken the course since then. She noted that 200 is “quite a significant number given the size of our organization”<sup>53</sup> (around 400 members).

The Society also offers seminars on fraud generally, and it has invited auditors from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to attend seminars and conferences to discuss the audit process, common deficiencies, and related topics.<sup>54</sup> The Society has also worked with ABC Solutions to create a risk assessment workbook that can aid members in assessing the risk potential for their practice and in implementing mitigation tools.<sup>55</sup>

Mr. Mayr testified that every complaint the Society receives is evaluated to consider whether it might have a money laundering aspect. However, the Society has not received any complaints that would bear on money laundering or terrorist financing.<sup>56</sup> Ms. Morin indicated that the Society has not come across any money laundering indicators through practice inspections.<sup>57</sup>

## Application of the *PCMLTFA*

British Columbia notaries are reporting entities under the *PCMLTFA*. Ms. Morin testified that they are the “only 400 people in the country that are legal service providers that are reporting entities” under that regime.<sup>58</sup> The *PCMLTFA* regime applies to BC notaries public (defined to mean members of the Society) and BC notary corporations (defined to mean “an entity that carries on the business of providing notary services to the public in British Columbia in accordance with the *Notaries Act*”).<sup>59</sup> In particular, it applies to notaries and notary corporations when they:

- receive or pay funds or virtual currency, other than in respect of professional fees, disbursements, expenses, or bail;
- purchase or sell securities, real property or immovables, or business assets or entities;
- transfer funds, virtual currency, or securities by any means; or
- give instructions with respect to the above.<sup>60</sup>

<sup>53</sup> Ibid, pp 76, 81.

<sup>54</sup> Ibid, pp 79–80.

<sup>55</sup> Ibid, p 86.

<sup>56</sup> Ibid, pp 95–96, 100.

<sup>57</sup> Ibid, p 96.

<sup>58</sup> Ibid, p 21.

<sup>59</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 1(2).

<sup>60</sup> Ibid, s 38(1).

It does not apply when the notary or notary corporation engages in those activities as an employee.<sup>61</sup>

Notaries and notary corporations must also keep a receipt of funds record when they receive \$3,000 or more in respect of the above activities,<sup>62</sup> as well as large cash and large virtual currency transaction records when they receive \$10,000 or more in connection with these activities.<sup>63</sup> Ms. Morin testified that the Society's requirements for retaining records are longer than the periods required under the *PCMLTFA*.<sup>64</sup> For example, the Rules require notaries to retain documents relating to residential conveyances for 10 years after the state of title certificate is received (Rule 17).

British Columbia notaries and notary corporations are subject to the same reporting requirements as other reporting entities, namely:

- reporting large cash and large virtual currency transactions of over \$10,000 in respect of the above activities;<sup>65</sup> and
- reporting suspicious transactions where they have reasonable grounds to suspect that the transaction is related to the commission or attempted commission of a money laundering or terrorist financing offence.<sup>66</sup>

Notaries and notary corporations must also verify the identity of persons or entities involved in a large cash or large virtual currency transaction, or when they receive \$3,000 or more.<sup>67</sup> They must also take reasonable measures to verify the identity of every person or entity that conducts or attempts to conduct a suspicious transaction.<sup>68</sup> Ms. Morin testified that notaries have always been required to identify their clients because of conflict of interest rules. She noted that the Society's best practices require using government-issued identification even when the *PCMLTFA* offers other methods.<sup>69</sup> As of June 2021, notaries and notary corporations must also obtain information about beneficial ownership when verifying the identity of an entity.<sup>70</sup>

Notaries and notary corporations must implement a compliance program, which has five aspects:

- appointing a designated compliance officer responsible for implementing the program;

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61 Ibid, s 38(2).

62 *PCMLTF Regulations*, s 43.

63 Ibid, ss 41, 42.

64 Transcript, March 5, 2021, pp 23–24.

65 Ibid, ss 39, 40.

66 *PCMLTFA*, s 7.

67 *PCMLTF Regulations*, ss 84(a) and (b), 109(4)(a), 112(3)(a), 96(a), 105(7)(a).

68 Ibid, ss 85(1), 105(7)(c), 109(4)(b), 112(3)(b).

69 Transcript, March 5, 2021, pp 21–22.

70 *PCMLTF Regulations*, s 138(1).

- producing written policies and procedures that are kept up to date and, in the case of firms, approved by a senior officer;
- developing and applying policies and procedures to assess and document the risk of a money laundering or terrorist financing offence, taking into consideration organization-specific factors;<sup>71</sup>
- maintaining an ongoing compliance training program for employees and agents; and
- having an internal or external auditor carry out an effectiveness review of the policies and procedures, risk assessment, and training program every two years.<sup>72</sup>

Finally, notaries and notary corporations must monitor their business relationships with clients on an ongoing basis.<sup>73</sup>

The Financial Action Task Force’s 2016 mutual evaluation of Canada<sup>74</sup> noted that British Columbia notaries had filed very few reports of suspicious transactions at the time of the assessment. One such report had been filed in 2011–12 and another in 2014–15.<sup>75</sup> The mutual evaluation noted that the low reporting “raise[s] concern” and described the number as “very low,” while also observing that “FINTRAC is of the view that the quality of [suspicious transaction reports] is generally good and improving.”<sup>76</sup> The report also notes that notaries were examined 23 times between 2009 and 2015.<sup>77</sup> The mutual evaluation concluded that BC notaries are “not fully aware of the risk and their gatekeeper role in relation to real estate transactions. Like real estate agents, they consider that all risks have been mitigated by the bank whose account the funds originated from.”<sup>78</sup> It noted that FINTRAC had “identified several deficiencies in record-keeping procedures of BC notaries as well, especially with respect to the conveyancing of real estate.”<sup>79</sup>

The 2021 follow-up to the mutual evaluation<sup>80</sup> did not discuss notaries in particular, but noted that with respect to suspicious transaction reporting, the “deficiencies identified in the [mutual evaluation report] in relation to the scope of the *PCMLTFA*

71 These include the nature of the clients, business relationships, products, services, and delivery channels, and the geographic location of their activities: *PCMLTF Regulations*, s 156(c).

72 *PCMLTFA*, s 9.6; *PCMLTF Regulations*, s 156.

73 *PCMLTF Regulations*, s 123.1(b).

74 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016). See **Chapter 6** for a discussion of the mutual evaluation process. Mutual evaluations are essentially peer reviews in which members of the Financial Action Task Force evaluate other members’ anti-money laundering and counter-terrorist financing measures against the task force’s 40 recommendations.

75 *Ibid*, p 84.

76 *Ibid*, paras 30, 233.

77 *Ibid*, p 93.

78 *Ibid*, para 215.

79 *Ibid*, para 226.

80 Exhibit 1061, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures, Canada, 1st Regular Follow-up Report & Technical Compliance Re-Rating* (October 2021).

remain a minor deficiency.”<sup>81</sup> Mr. Mayr testified that he did not have the numbers readily available, but recalled that the numbers of suspicious transaction reports filed by notaries follow the pattern of the real estate market and were much higher in 2017.<sup>82</sup> To the best of his recollection, the numbers used to be fewer than 10 and the highest annual figure was just under 100.<sup>83</sup>

Mr. Mayr also expressed the view that the numbers of large cash transaction reports are concerning:

The large cash transaction reports do raise some concern because we have very strict cash acceptance rules ... [O]ur sense is that people [who] are trying to launder money, they know that notaries are subject to ... FINTRAC reporting and therefore don't necessarily go to a notary with a large cash transaction. Of course, lawyers have rules against accepting large cash amounts as well.

So it would be interesting to try to find out more about those circumstances and really whether it's confusion by notaries as to ... what is a large cash transaction report and when it's appropriate to submit one.<sup>84</sup>

Ms. Morin added that these may be *attempted* large cash transactions, but noted, “I can't really wrap my head around whether there would be any large cash transaction reports from our members.”<sup>85</sup>

## **Involvement of Notaries in Real Estate Transactions**

The evidence before me largely centred on notaries' involvement in real estate transactions, which is a key area of their practice and one in which money laundering risks can certainly arise. Moreover, in a similar manner to other “gatekeeper” professionals, such as lawyers and accountants, a notary's involvement in a transaction can provide an air of legitimacy that is attractive to criminals.<sup>86</sup>

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81 Ibid, p 3.

82 Transcript, March 5, 2021, p 94.

83 Ibid, p 95.

84 Ibid, pp 94–95.

85 Ibid, p 95.

86 An example of how an air of legitimacy may attach to a notary's work is the case of Rashida Samji. As explained in court cases and in testimony before me, Ms. Samji was a notary public who was found to have operated a Ponzi scheme over a period of nine years, which put approximately \$100 million from more than 200 investors at risk. She was found to have promoted false investments in an international wine distributor and told investors that their money would be held in her trust account, would not be at risk, and would not leave her account without their consent and instructions. She apparently told investors that they would receive a return of 6 percent every six months. However, according to published decisions, Ms. Samji did not in fact operate a trust account. The circumstances resulted in class actions, proceedings before the British Columbia Securities Commission, and criminal proceedings: Evidence of M. Morin, Transcript, March 5, 2021, pp 105–6; *Jer v Society of Notaries Public of British Columbia*, 2015 BCCA 257 at paras 6–9; *R v Samji*, 2017 BCCA 415 at paras 3, 8.

As noted above, Ms. Morin testified that notaries deal with non-contentious transactions. She explained that registration with the Land Title Office is the “ultimate goal.”<sup>87</sup> The Society provided a document setting out the various steps in a real estate transaction and the notary’s involvement,<sup>88</sup> which Ms. Morin thoroughly explained in her testimony. She testified that a notary usually becomes involved a few weeks before closing, when the realtor transfers funds to the notary to be held in trust as part of the closing funds.<sup>89</sup> The notary then advises the buyer how much money will be needed to complete the transaction, taking into account adjustments, such as expenses to be apportioned between buyer and seller, tax adjustments, mortgage funds, et cetera.<sup>90</sup> The remaining money is usually received into the notary’s trust account up to two days before closing, though mortgage funds typically come the day of.<sup>91</sup>

Ms. Morin explained that the notary receives a “mortgage advice” or “instructions” from the financial institution outlining the terms of the mortgage, which the client signs.<sup>92</sup> The mortgage funds are typically received by bank draft, as the Rules limit what kinds of funds can enter a notary’s trust account (see above).<sup>93</sup>

At closing, the notary uploads the necessary forms onto the Land Title and Survey Authority website, and the authority registers the mortgage on title.<sup>94</sup> After closing, the seller’s notary pays out the seller’s mortgages and any other charges or debts that were agreed upon. The notary pays their own account and then transfers the net sale proceeds to the client.<sup>95</sup> Within five days of closing, the seller’s notary must provide the buyer’s notary with proof of payment of the mortgage. Banks must provide a discharge of the mortgage within 30 days under the *Business Practices and Consumer Protection Act*, SBC 2004 c 2. If this is not done within 60 days, the notary must report to the Society’s Mortgage Discharge Centre.<sup>96</sup>

Ms. Morin testified that it can take up to six weeks after closing for title documents to show that the seller’s mortgage has been paid out. As a result, it might appear for some time that the seller still has a debt when in fact they do not. Both parties are relying on undertakings that the mortgage will be paid off.<sup>97</sup>

87 Transcript, March 5, 2021, p 30.

88 Exhibit 685, Conveyancing Cash Flow Charts v3 (October 2020).

89 Evidence of M. Morin, Transcript, March 5, 2021, pp 33–35.

90 Ibid, pp 36–37.

91 Ibid, pp 37–40.

92 Ibid, pp 41–43. This includes information such as the amount advanced, the interest rate, the parties, security, the property’s civic address and legal description, the amortization period, and the term.

93 Evidence of M. Morin, Transcript, March 5, 2021, pp 38–39.

94 Ibid, pp 62–66.

95 Ibid, pp 66–67.

96 SBC 2004 c 2; Evidence of M. Morin, Transcript, March 5, 2021, pp 70–73.

97 Evidence of M. Morin, Transcript, March 5, 2021, pp 69–70.

### ***Use of Trust Accounts***

As the above demonstrates, notaries are heavily involved in real estate transactions and frequently have closing funds pass through their trust accounts. Handling large sums of money on behalf of clients clearly poses money laundering risks. These risks are lessened somewhat in comparison to lawyers' trust accounts because solicitor-client privilege does not attach to notaries' work and because notaries are reporting entities under the *PCMLTFA*. Nonetheless, although the Society's regulation of trust accounts is relatively strong, there remain ways in which it can be improved.

Mr. Mayr testified that notaries are not required under the *PCMLTFA* to determine the source of a client's funds. As the lender is almost always a financial institution, the notary relies on the bank to do its due diligence before forwarding the funds.<sup>98</sup> Indeed, Ms. Morin testified that the notary will only see what is on the face of the bank draft – the name of the account holder or client, the financial institution, and the amount. They would, of course, also have information about the terms of the mortgage.<sup>99</sup>

Ms. Morin testified that, although there is no obligation under the *PCMLTFA* to make inquiries into the source of funds, the notary would likely make inquiries, such as asking about a client's occupation, in certain situations, including where a client: provides bank drafts from multiple financial institutions;<sup>100</sup> demonstrates any resistance to providing documentation or responding to questions; or lacks knowledge about the transactions. Further, as notaries are now required to make inquiries as a result of the *Land Owner Transparency Act*,<sup>101</sup> it would be clear if a client did not have adequate knowledge of the property.<sup>102</sup> Notaries would also see discrepancies between identification documents and what is recorded on mortgage applications. Ms. Morin testified that any such discrepancies would need to be investigated.<sup>103</sup>

Although I appreciate that a notary should, as a matter of best practice, make the inquiries Ms. Morin described, it strikes me that a rule in this regard would be beneficial. A rule would move beyond mere hope to require that, in all cases, a notary must make such inquiries. Having such a requirement would more effectively address the risks arising. As noted above, the Financial Action Task Force's mutual evaluation stated that notaries appeared to rely on due diligence undertaken by the financial institution and were insufficiently aware of their gatekeeper obligations. In the absence of an obligation under the *PCMLTFA* to inquire into the source of funds, I recommend that the Society fill that void and require its members to obtain, record, verify, and maintain that information. Although the Society is best placed to determine all the situations in which inquiries into source of funds should be required, these should include at least the situations where a lawyer is obliged to inquire into source of funds (see Chapter 28).

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98 Evidence of J. Mayr, Transcript, March 5, 2021, pp 90–91.

99 Evidence of M. Morin, Transcript, March 5, 2021, pp 39, 90–91.

100 Ibid, p 92.

101 SBC 2019, c 23.

102 Evidence of M. Morin, Transcript, March 5, 2021, p 93.

103 Evidence of M. Morin, Transcript, March 5, 2021, pp 89–90.

**Recommendation 67:** I recommend that the Society of Notaries Public of British Columbia require its members to obtain, record, and keep records of the source of funds from their clients when those members engage in or give instructions with respect to financial transactions.

### ***Private Lending***

I discuss private lending in more detail in Chapters 17 and 26. The risks inherent in private lending apply equally to notaries, although it appears that not many notaries are involved in transactions with private lenders. Ms. Morin testified that private lending is a “niche” area for notaries. Those who are involved in such transactions usually have a relationship with only one or two lenders. Further, whereas notaries can act for both a buyer and lender in a residential mortgage with a recognized financial institution, they cannot act for both a private lender and a buyer.<sup>104</sup>

Ms. Morin testified that the Society considers private lending to pose risks for clients, given that interest rates are substantially higher and the lender and buyer do not necessarily have the same interests:

And these are the reasons why notaries can't act for both borrower and lender in a private situation because the interests are a little different, whereas with a financial institution everybody ... wants the same thing. The buyer wants a house and the bank wants ... to lend the money, that they can pay back ... [Further,] the lending risks are lower with financial institutions than they are with private lenders. And that's just the nature of the beast when it comes to private lending.<sup>105</sup>

Ms. Morin noted that the consequences for missing a payment or an NSF cheque can be “quite high” with a private loan. Similarly, penalties for paying out a mortgage early are often much higher than they would be with a mainstream financial institution.<sup>106</sup> However, Mr. Mayr testified that the Society has not taken a position on whether private lending poses a money laundering risk:

[W]e have certainly not taken a position on it. Part of the rationale would be the funds that come to the notary are coming from a financial institution even if it's through a private lender. A client couldn't show up with a personal cheque or a bag full of cash and say ... here, I borrowed this money; I want you to put this ... into the transaction.<sup>107</sup>

The Society has not issued advisories, training modules, or other education to members on private lending specifically (though there are regular education seminars

<sup>104</sup> Ibid, pp 56–57.

<sup>105</sup> Ibid, p 60.

<sup>106</sup> Ibid, pp 59–60.

<sup>107</sup> Evidence of J. Mayr, Transcript, March 5, 2021, pp 60–61.

on mortgage transactions). Ms. Morin testified that there are few claims concerning private lending and that not many members are engaged in this work. She noted that practice inspections of notaries who engage in private lending would consider whether the notary is paying close attention to the risks and obligations and has specific procedures in place that are dependent on who the lender is.<sup>108</sup>

Although it appears that not many notaries are involved in private lending transactions, there are nevertheless money laundering risks inherent in such transactions (as outlined in Chapters 17 and 26), and it is important that notaries who are involved in such transactions are alive to those risks. While the Society’s representatives, in their evidence, focused on private lending by registered lenders, the ambit of private lending extends to unregistered entities and individuals who are operating outside the purview of regulators such as the Registrar of Mortgage Brokers. The potential for money laundering through mortgages exists equally where a mortgage is registered by a notary, and notaries should be aware of the vulnerabilities in this area.

Given the risks associated with private lending and the potential for notaries to be involved, I consider it important for the Society to be educating its members on the risks arising. As I discussed in Chapter 26, the Law Society of British Columbia and the Federation of Law Societies of Canada have both issued risk advisories to the profession regarding private lending. I recommend that the Society develop similar materials for its members.

**Recommendation 68:** I recommend that the Society of Notaries Public of British Columbia educate its members on the money laundering risks relating to private lending through educational materials or other means.

### ***Possible Indicators of Money Laundering in Real Estate Transactions***

The testimony before me outlined some possible indicators of money laundering that notaries may come across in their practice. Ms. Morin testified that the training she provides for notary students involves discussing what money laundering is, what it looks like, indicators of suspicion, the notary’s obligations, and risk assessment.<sup>109</sup> One possibly suspicious circumstance is a short closing period, when a client wants to close in a day or two and will pay high fees to do so. Ms. Morin testified that a notary would need to investigate such a situation.<sup>110</sup> Another possibly suspicious circumstance is the involvement of third parties, such as someone acting under a power of attorney or a realtor who is interpreting for the client. Ms. Morin testified that these could be perfectly legitimate scenarios but would “require some additional scrutiny” by the notary.<sup>111</sup>

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108 Evidence of M. Morin, Transcript, March 5, 2021, pp 61–62.

109 Ibid, pp 78–79.

110 Ibid, pp 87–88.

111 Ibid, pp 88–89.

Ms. Morin testified that the Society sometimes receives complaints when a client has prepared their own forms and wants the notary to sign them, but the notary refuses:

And that's one of the areas in which we get complaints from time to time, it's members of the public saying well, I prepared my own, and they refuse to sign it, and all they want is ... a fee. Well, that's not all they want. They can't provide a service if they haven't done the due diligence necessary to ensure that the party before them that is giving up that interest as a seller is getting what they're supposed to get. So, it's very difficult for a person to do their own real estate transaction documents and then just go out and try and get somebody to sign them for them.<sup>112</sup>

Such a situation, Mr. Mayr added, could lead to a requirement to file a suspicious transaction report. Further, with the introduction of the *Land Owner Transparency Act*, SBC 2019, c 23, there “has to be now a much deeper discussion about beneficial ownership.”<sup>113</sup>

In Ms. Morin's view, notaries are familiar with the circumstances that may indicate money laundering. This is because of their duty to know their clients and gather information in order to effect the transaction. She testified that she emphasizes to her students that “it's not people that are suspicious; it's their behaviour. And so you have to look at behaviour of the person in front of you and see if it adds up to the context of the transaction that they're involved in.”<sup>114</sup>

## Referrals and Information Sharing

The evidence before me demonstrated that the Society is eager to engage with other regulators and law enforcement in order to further its public interest mandate. Mr. Mayr expressed the view that the Society has a good relationship with the Vancouver Police and the RCMP and works closely with them in respect of complaints and allegations. He noted some complexity in terms of collaboration with other regulators:

When it comes to regulatory bodies, that tends to be a little more difficult to work around. We have a very good relationship with the Law Society, but their complaints and investigation do tend to be fairly siloed and segmented, and we generally find out when there's a complaint that involves a lawyer where there's a notary involved after they have completed discipline.

And certainly we are actually just in the process of developing a framework for lawyers and notaries, not only to work together, but hopefully get to a point where we can either share information more freely about different members and ... ideally I think combined investigations where you've got notary involvement with a lawyer would be an ultimate goal for us.<sup>115</sup>

112 Ibid, pp 84–85.

113 Evidence of J. Mayr, Transcript, March 5, 2021, p 85.

114 Evidence of M. Morin, Transcript, March 5, 2021, pp 93–94.

115 Evidence of J. Mayr, Transcript, March 5, 2021, pp 96–97.

Ms. Morin testified that she would like to see more communication between sectors. This is particularly so in real estate transactions given the various actors who are involved before the notary comes into the picture.<sup>116</sup>

As I have discussed throughout this Report, information sharing and collaboration are key to the fight against money laundering, given its clandestine nature and the evolving methods by which it is done. I encourage the Society to develop approaches to sharing information and collaborating with other regulators, such as through memorandums of understanding.

## **Conclusion**

In this chapter, I have reviewed the work of BC notaries, their regulation by the Society, and the application of the *PCMLTFA*, and the key money laundering risks that arise in this sector. Although the Society has fairly strong regulation in place, I have identified areas in which it can strengthen its anti-money laundering measures. Finally, I have highlighted ways in which information sharing and collaboration can be improved between the Society and other agencies.

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<sup>116</sup> Transcript, March 5, 2021, pp 101-2.

# Part VIII

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## Accountants

Section 4(1)(a)(vi) of my Terms of Reference requires me to make findings of fact regarding the “extent, growth, evolution and methods of laundering” in professional services, including the accounting sector.

This Part contains my findings in relation to the accounting sector and is divided into four chapters. Chapter 30 provides an overview of the applicable legal and regulatory framework. It also highlights the distinction between chartered professional accountants and non-regulated accountants, as well as the services offered by both in this province. Chapter 31 considers the nature and extent of money laundering risks facing accountants. In Chapter 32, I examine the regulation of chartered professional accountants undertaken by the Chartered Professional Accountants of British Columbia (CPABC) and how CPABC can supplement federal anti-money laundering measures applicable to accountants. Finally, Chapter 33 discusses anti-money laundering activities currently undertaken by CPABC and the Chartered Professional Accountants of Canada, as well as the potential for a “whistle-blower” regime that would permit reporting by chartered professional accountants without compromising their duty of confidentiality.

## Chapter 30

# Legal and Regulatory Framework

Accountants, like lawyers, are often described as “gatekeepers” to the financial system, possessing the knowledge and skill necessary to structure a client’s finances in a tax-efficient manner. The nature of accountants’ work provides them with opportunities to assist criminals – knowingly or unwittingly – in their money laundering activities. In recent years, there have been growing concerns about the involvement of accountants as facilitators in money laundering schemes.

There is, unfortunately, a lack of evidence on the precise nature and extent of accountants’ involvement in money laundering in British Columbia. Witnesses from the Chartered Professional Accountants of British Columbia (CPABC) and the Chartered Professional Accountants of Canada (CPA Canada) repeatedly expressed the view that this dearth of evidence suggests there is no money laundering problem with respect to chartered professional accountants (CPAs) in this province.

With respect, I do not interpret the lack of data in the same manner. I agree that the dearth of evidence is problematic and leaves government, regulators, and law enforcement without sufficient data to inform their decisions when implementing anti-money laundering regulation. My hope is that more research will be undertaken in this area. However, the lack of data should not be equated with an absence of risk. The nature of accountants’ work renders them vulnerable to being sought out by criminals to assist in money laundering activity. It is crucial that strong preventive anti-money laundering measures be in place to guard against this risk.

In my opinion, anti-money laundering regulation of accountants in British Columbia is currently inadequate in three key ways. First, a large proportion of accountants are not regulated. Only CPAs, who represent approximately one-third of the accounting profession, are regulated. Further, only CPAs are subject to the *Proceeds*

of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17 (*PCMLTFA*); unregulated accountants are not. It is problematic that approximately two-thirds of the accountants in British Columbia can carry out many of the same activities as CPAs but are not regulated or subject to the *PCMLTFA*. This disparity raises the question of whether unregulated accountants should be subject to some form of regulation.

Second, while CPAs are subject to extensive regulation by CPABC for accounting purposes, CPABC maintains that its mandate does not, and should not, extend to anti-money laundering regulation. It considers that all such responsibility currently rests, and should continue to rest, with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). As I develop throughout these chapters, I respectfully disagree with CPABC's position. In my view, both FINTRAC and CPABC have responsibility for anti-money laundering regulation, and CPABC must begin to fulfill this aspect of its public interest mandate.

Finally, the *PCMLTFA* captures only limited activities undertaken by CPAs. Combined with CPABC's position that its mandate does not extend to anti-money laundering regulation, this restriction leaves several activities that pose money laundering risks without any anti-money laundering regulation. Further, compliance with the *PCMLTFA* appears to be low, and FINTRAC conducts few compliance examinations. These issues underscore the importance of CPABC conducting anti-money laundering regulation in parallel with FINTRAC.

## The Accounting Profession in British Columbia

The term “accountant” is not protected in British Columbia in the same way as the term “lawyer” or “doctor.” In this province,<sup>1</sup> accountants include CPAs, a regulated profession with a protected title, and other persons who identify as accountants but are not CPAs.

Non-CPAs are not regulated or subject to any form of statutory oversight. Under the *Chartered Professional Accountants Act*, SBC 2015 c 1 (*CPA Act*), CPABC is tasked with regulating the CPA profession in British Columbia. Subject to certain activities that can be performed only by CPAs (discussed below), the *CPA Act* expressly preserves the right of unregulated accountants to practise accounting in this province.<sup>2</sup>

According to the 2016 Census, approximately 89,000 individuals worked in British Columbia as accountants across all industries in that year. Of these, approximately two-thirds (around 58,000) were unregulated accountants.<sup>3</sup>

1 As my mandate is limited to British Columbia, I have not made findings on the accounting profession in Canada more broadly. However, given the harmonizing role played by CPA Canada, there are sound reasons to believe that accountant regulation occurs similarly across Canada.

2 Section 46 of the *CPA Act* states that “[s]ubject to section 47, this Act does not affect the right of a person who is not a member to practice as an accountant or auditor in British Columbia.”

3 Cited in Exhibit 391, Overview Report on the Accounting Sector in British Columbia (December 17, 2020), para 3.

As of March 31, 2020, CPABC had 37,317 members and admitted 1,326 new members in the 2019–20 fiscal year.<sup>4</sup> Lisa Liu, vice-president of public practice regulation at CPABC, testified that approximately 20 percent of CPABC’s members are in public practice, while the rest work in industry, academia, and government.<sup>5</sup>

## Accounting Services

The common understanding of accountants’ work involves finance-related tasks such as preparing and maintaining financial records, preparing tax returns and advising on tax matters, and performing audits or reviews of a company’s financial statements.

As I develop below, the *PCMLTFA* applies to “accountants” (defined essentially to mean CPAs) and “accounting firms.” An accounting firm is defined as “an entity that is engaged in the business of providing accounting services to the public and has at least one partner, employee or administrator that is an accountant.”<sup>6</sup>

The Financial Action Task Force’s (FATF) accounting guidance<sup>7</sup> states that accounting services include the following tasks:

- a) Audit and assurance services (including reporting accountant work in initial public offerings);
- b) Book-keeping and the preparation of annual and periodic accounts;
- c) Tax compliance work;
- d) Tax advice;
- e) Trust and company services;
- f) Internal audit (as a professional service), and advice on internal control and risk management;
- g) Regulatory and compliance services, including outsourced regulatory examinations and remediation services;
- h) Company liquidation / insolvency / receiver-managers / bankruptcy related services;
- i) Advice on the structuring of transactions;
- j) Due diligence in relation to mergers and acquisitions;

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4 Ibid, p 8, para 28.

5 Transcript, January 12, 2021, pp 6–7.

6 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 1, “accountant” and “accounting firm.”

7 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix B, FATF, *Guidance for a Risk-Based Approach: Accounting Profession* (Paris: 2019) [*FATF Accounting Guidance*].

- k) Succession advice;
- l) Advice on investments and custody of client money; and
- m) Forensic accounting.<sup>8</sup>

Section 47 of the *CPA Act* states that certain accounting services in British Columbia can be provided *only* by CPAs:

- performing an audit engagement and issuing an auditor’s report in accordance with the standards of professional practice published by CPA Canada;
- performing any other assurance engagement and issuing an assurance report in accordance with the standards of professional practice published by CPA Canada; and
- issuing any form of certification, declaration, or opinion with respect to information related to a financial statement, and performing specified auditing procedures, in accordance with standards published by CPA Canada.<sup>9</sup>

FATF’s accounting guidance identifies the following areas of vulnerability for money laundering in accountants’ work:

- financial and tax advice;
- company and trust formation;
- buying or selling property;
- performing financial transactions;
- gaining introductions to financial institutions;
- maintenance of incomplete records by clients; and
- preparation, review, and auditing of financial statements.<sup>10</sup>

CPABC submits that “many” of the above services cannot be performed by CPAs in British Columbia.<sup>11</sup> In particular, CPABC and CPA Canada state that CPAs are prohibited from setting up legal structures such as companies and trusts and from providing real estate services.<sup>12</sup> I discuss these activities in turn.

Beginning with the formation of corporations, trusts, and other legal arrangements, CPABC and CPA Canada state that CPAs in British Columbia are not permitted to

<sup>8</sup> Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 20.

<sup>9</sup> *CPA Act*, s 47(a).

<sup>10</sup> Exhibit 391, Appendix B, *FATF Accounting Guidance*, paras 22–23.

<sup>11</sup> Closing submissions, CPABC, para 44; Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021) [CPABC McGuire Review], p 2–3.

<sup>12</sup> Closing submissions, CPABC, para 43.

incorporate companies, establish trusts and partnerships, or prepare and maintain corporate records because these tasks are considered the practice of law.<sup>13</sup> I agree that these activities constitute the practice of law and are therefore not performed by accountants in this province.<sup>14</sup>

That said, while accountants do not take the final step of creating corporations, trusts, and other similar legal entities, there is no doubt that they routinely provide advice about structuring a client's finances, including through the use of such legal entities. As I elaborate in Chapters 31 and 32, by providing advice about and preparing for the creation of legal entities, accountants are exposed to significant risks of being used to facilitate money laundering, and they are well placed to observe activity on the part of their clients that could qualify as suspicious. Therefore, a singular focus on whether accountants incorporate companies or establish trusts themselves misses the bigger picture and risks failing to recognize a money laundering vulnerability.

CPABC also notes that CPAs are restricted in their ability to provide real estate services by the *Real Estate Services Act*.<sup>15</sup> There are limited circumstances under that statute that would permit an accountant to provide real estate services,<sup>16</sup> and the *PCMLTFA* includes, as triggering activities, the “purchase or [sale of] securities, real property or immovables or business assets or entities” and giving instructions with respect to these activities.<sup>17</sup> I accept that it is relatively uncommon in British Columbia for accountants to be involved in these activities.<sup>18</sup> However, to the extent they are, these activities certainly pose money laundering risks.

On the whole, I disagree with CPABC that “many” of the accounting services identified by the Financial Action Task Force are not performed by CPAs in British Columbia. With respect, this submission is an overstatement and unfairly minimizes the involvement of accountants in activities that carry a money laundering risk. Although there is some nuance regarding the creation of legal entities and real estate transactions, accountants in this province engage in the remaining activities identified by FATF. I do, however, agree with CPABC that many of these services can be performed by *both* CPAs and unregulated accountants,<sup>19</sup> as the latter can perform all accounting

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13 Ibid; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 143.

14 *Legal Profession Act*, SBC 1998, c 9, ss 1 (“practice of law”) and 15; *Law Society of British Columbia v Siegel*, 2000 BCSC 875 at paras 3, 24–29; Law Society of British Columbia, “What Is Unauthorized Practice of Law?” online: <https://www.lawsociety.bc.ca/custodianships-unauthorized-practice/unauthorized-practice-of-law/what-is-unauthorized-practice-of-law/>.

15 Closing submissions, CPABC, para 43.

16 Subsection 3(3) of the *Real Estate Services Act*, SBC 2004, c 42, allows certain individuals to provide real estate services without a licence, including individuals acting under the authority of a court or as a trustee in bankruptcy. A guidance document from FINTRAC recognizes that accountants can act as receivers, trustees in bankruptcy, and other similar roles: FINTRAC, Interpretation Notices, No 7, online: <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2011-02-17-eng>. Therefore, accountants are authorized to provide real estate services when acting in these roles.

17 *PCMLTF Regulations*, ss 47(b) and (d).

18 Evidence of M. McGuire, Transcript, January 11, 2021, pp 35–36.

19 Exhibit 403, CPABC McGuire Review, pp 3–4; Closing submissions, CPABC, para 40.

services except those identified in section 47 of the *CPA Act* (essentially audit and assurance engagements).

CPABC further submits that it is relatively rare for its members to engage in triggering activities under the *PCMLTFA*. It notes that only about 20 percent of its members work in public practice and points to an informal survey suggesting that more than 85 percent of the respondents did not engage in triggering activities.<sup>20</sup> As I discuss further in Chapter 33, there are several significant limitations with that survey. These limitations prevent me from concluding that it is rare for members to engage in triggering activities or that it is rare enough to justify the almost non-existent *PCMLTFA* reporting by accountants (see Chapter 32).

Overall, I am not persuaded that accounting services in British Columbia, and the associated money laundering risks, are as limited as CPABC suggests. I elaborate on the risks facing accountants in this province in Chapter 31.

## CPA Regulation in British Columbia

CPABC was created in 2015 following the amalgamation of the professional accounting profession.<sup>21</sup> Its mandate is set out in section 3 of the *CPA Act* and is worth reproducing in full, given that the scope of CPABC's mandate is at issue:

- 3 The CPABC has the following objects:
  - (a) to promote and maintain the knowledge, skill and proficiency of members and students in the practice of accounting;
  - (b) to establish qualifications and requirements for admission as a member and continuation of membership, and for enrolment and continuation of enrolment of students;
  - (c) to regulate all matters, including competency, fitness and professional conduct, relating to the practice of accounting by members, students, professional accounting corporations and registered firms;
  - (d) to establish and enforce professional standards;
  - (e) to represent the interests of members and students.

In Chapter 32, I discuss the scope of CPABC's mandate and whether it does, or should, include anti-money laundering regulation. For present purposes, I highlight that

<sup>20</sup> Closing submissions, CPABC, paras 40, 47.

<sup>21</sup> Section 2(1) of the *CPA Act* explains that three previous bodies are amalgamated and continued as CPABC: the Certified General Accountants Association of British Columbia, the Certified Management Accountants Society of British Columbia, and the Institute of Chartered Accountants of British Columbia. As I understand it, a similar amalgamation occurred in the profession across Canada.

section 3(c) refers to the regulation of *all* matters relating to members' practice, including competency, fitness, and professional conduct.

CPABC is overseen by a board of directors that must have at least nine members and up to three non-members.<sup>22</sup> The board is empowered to pass bylaws on various matters, including admission, classes of members, membership requirements, designations, practice reviews, investigations, hearings, and extraordinary suspensions.<sup>23</sup> CPABC has accordingly passed the *Chartered Professional Accountants of BC Bylaws*, the *Chartered Professional Accountants of BC Bylaw Regulations*, and the *Chartered Professional Accountants Code of Professional Conduct* (CPA Code),<sup>24</sup> with which all members and firms must comply. CPABC has various committees that include, but are not limited to, the executive, membership, public practice, investigation, and disciplinary committees.<sup>25</sup>

Part 7 of the bylaws sets out various licences that are available to CPAs. Bylaw 700(2) explains that members may not provide services included in public practice unless they hold a current licence or are exempted from licensing under the regulations. Bylaw 703(1) sets out four categories of licences, which are defined in Regulation 706/1. An audit licence is the broadest, with the review licence, compilation licence, and other regulated services licence being progressively more restricted in scope.

Bylaw 100 defines “public accounting services” as any services included in an audit, review, or other assurance engagement; a certification, declaration, opinion, or report with respect to standards published by CPA Canada or the equivalent; or a compilation engagement. Meanwhile, “other regulated services” are defined as any services not constituting public accounting services that involve summarization, analysis, advice, counsel, or interpretation; forensic accounting and financial litigation support services; tax returns; or other services.

### **CPABC's Code of Professional Conduct**

The CPA Code sets out the principles that guide CPABC's members, firms, students, and applicants. It applies to all members, students, and firms irrespective of the services provided.<sup>26</sup> CPABC's rules are to be read and applied in light of the CPA Code, *CPA Act*, and bylaws; therefore, compliance with the CPA Code is mandatory.<sup>27</sup>

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22 *CPA Act*, s 4.

23 *Ibid*, Division 2; Bylaws 200–10.

24 The bylaws, regulations, and CPA Code can be found in full in Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendices C [CPABC Bylaws], D [CPABC Regulations], and E [CPA Code], respectively.

25 CPABC Bylaws, Part 3.

26 CPA Code, Preamble, “Application of the Code.” Mr. Tanaka testified that the rules apply regardless of the kind of work a CPA is doing. Some provisions relate to specific activities, but otherwise the Code applies broadly. It even applies to some conduct that is not specifically related to work; for example, if a CPA is convicted of any offence, it is still a professional conduct matter: Transcript, January 12, 2021, pp 18–19.

27 CPA Code, Preamble, “Application of the Code.”

The CPA Code is comprehensive in scope, practical in application, and illustrative of high ethical standards. It is a “guide not only to the profession” but also “a source of assurance of the profession’s concern to serve the public interest.”<sup>28</sup> Members of CPABC have “a fundamental responsibility to act in the public interest.”<sup>29</sup>

The CPA Code is structured around five “fundamental principles of ethics”:

- **Professional behaviour:** CPAs “conduct themselves at all times in a manner which will maintain the good reputation of the profession and serve the public interest,” including avoiding action that would discredit the profession.
- **Integrity and due care:** CPAs “perform professional services with integrity and due care,” which includes being straightforward, honest, and fair in their professional relationships and acting diligently and in accordance with technical and professional standards.
- **Objectivity:** CPAs “do not allow their professional or business judgment to be compromised by bias, conflict of interest or the undue influence of others.” This principle is meant to ensure public confidence in the objectivity and integrity of members.
- **Professional competence:** CPAs “maintain their professional skills and competence by keeping informed of, and complying with, developments in their area of professional service.”
- **Confidentiality:** CPAs “protect confidential information acquired as a result of professional, employment and business relationships and do not disclose it without proper and specific authority, nor do they exploit such information for their personal advantage or the advantage of a third party.”<sup>30</sup>

Like individual members, accounting firms are bound by the CPA Code. Depending on the circumstances, individual members of a firm may share responsibility for a firm’s failure to comply with the CPA Code.<sup>31</sup>

The above provisions are relevant to the question of CPABC’s mandate. In my view, the CPA Code’s broad principles relating to members acting in the public interest, avoiding conduct that would discredit the profession, and maintaining competence in their practice areas support a conclusion that CPABC’s mandate is broad enough to encompass anti-money laundering regulation and oversight. I return to this subject in Chapter 32.

Rule 102.1 of the CPA Code, entitled “Illegal activities,” requires members to notify CPABC of any conviction, violations of securities legislation, or violations of tax

<sup>28</sup> Ibid, “Introduction.”

<sup>29</sup> Ibid, “Fundamental Principles Governing Conduct.”

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, Preamble, “Principles Governing the Responsibilities of Firms.”

legislation involving dishonesty. Subsection (a) notably refers to convictions for a variety of finance-related offences, including money laundering.

Under Rules 102.2, 102.3, and 102.4, members must promptly notify CPABC in relation to adverse findings<sup>32</sup> in a disciplinary or similar process with any other provincial CPA body or other regulatory bodies. A “professional regulatory body” is defined as follows:

A “professional regulatory body” is a body that sets and maintains standards of qualification, attests to the competence of the individual practitioner, develops skills and standards of the profession, sets a code of ethical standards and enforces its professional and ethical standards. Examples of professional regulatory bodies include, but are not limited to, bodies that regulate the accounting, legal, actuarial, investment, real estate, engineering and financial planning professions.<sup>33</sup>

Meanwhile, a “regulatory body” is defined as follows:

A “regulatory body” is a body that has the power to compel a person to appear and answer to charges relating to compliance with its requirements. In this context, such a regulatory body’s requirements include legislation that it is empowered to enforce, whether against its own members or the public generally, codes of ethics, bylaws, regulations, professional or practice requirements and similar standards. Examples of regulatory bodies include, but are not limited to, bodies that regulate competition, elections, gaming, human rights, environmental protection and health and occupational safety.<sup>34</sup>

Edward Tanaka, CPABC’s vice-president of professional conduct, testified that members would be required, under Rule 102, to report a finding by FINTRAC that a member has not complied with the *PCMLTFA*.<sup>35</sup> This conclusion is not obvious to me. FINTRAC seems unlikely to constitute a “professional regulatory body” according to the definition above, given that it does not attest to the competence of practitioners or set professional and ethical standards. It could potentially qualify as a “regulatory body”; however, that term is also a poor fit given that FINTRAC cannot compel individuals to appear before it and answer charges.

I consider it important that CPAs be required to report findings of non-compliance by FINTRAC (including that a CPA has not complied with the *PCMLTFA* and/or has been sanctioned under that regime) to CPABC. The obligation to report is unclear and has the

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32 These rules refer to findings of “guilt” or being found “guilty.” These terms are defined broadly to include findings by a regulatory body of a contravention, breach, violation, or infringement in relation to failures to comply with requirements: CPA Code, Guidance 8 to Rule 102.

33 Ibid, Guidance 5 to Rule 102.

34 Ibid, Guidance 7 to Rule 102.

35 Transcript, January 12, 2021, pp 17–21.

potential to confuse members.<sup>36</sup> I accordingly recommend that CPABC amend the CPA Code to specify that FINTRAC is captured by Rule 102.

**Recommendation 69:** I recommend that the Chartered Professional Accountants of British Columbia (CPABC) amend its *Code of Professional Conduct* to specify that members must report to CPABC a finding by the Financial Transactions and Reports Analysis Centre of Canada that a member has not complied with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Rule 201 deals with the maintenance of the profession's reputation. Guidance 1 notes that provincial and federal legislation often requires licensing and may govern activities. Guidance 2 specifies that members “should be cognizant of and comply with the provisions of any legislative requirements pertaining to any of the registrant's professional services.”<sup>37</sup> This guidance would appear to capture compliance with the *PCMLTFA*.

Guidance 10 to Rule 201 notes that an auditor should not voluntarily cease to act on behalf of a client after starting an audit engagement except for good and sufficient reason. One such reason is the “inducement by a client to perform illegal, unjust or fraudulent acts.” The CPA Code also contains extensive rules ensuring independence for audits and assurances.<sup>38</sup>

Rule 205, entitled “False or misleading documents and oral representations,” states that a member shall not

- a) sign or associate with any letter, report, statement, representation or financial statement which the registrant knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility, nor
- b) make or associate with any oral report, statement or representation which the registrant knows, or should know, is false or misleading.

Relatedly, Rule 213, “Unlawful activity,” states that members must not associate with activity that they know or should know is unlawful.

These rules and the associated guidance are consistent with CPABC having a role to play in ensuring that its members do not become associated with or facilitate unlawful activity, including money laundering.

In Chapter 33, I review concerns raised by CPABC and CPA Canada witnesses relating to the duty of confidentiality. They emphasize that it is a strict duty with few exceptions and that it may prevent members from reporting suspicious activity that they come

<sup>36</sup> Evidence of M. McGuire, Transcript, January 11, 2021, pp 96–97.

<sup>37</sup> Guidance 1 and 2 to Rule 201.

<sup>38</sup> Rule 204.

across in their practice. Accordingly, it is worth reviewing the CPA Code’s provisions on confidentiality in some detail.

Rule 208.1 sets out the general rule and circumstances where confidential information can be disclosed:

**208.1** A registrant shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer except when:

- a) properly acting in the course of carrying out professional duties;
- b) such information should properly be disclosed for purposes of Rules 101, 211 or 302<sup>39</sup> or under the Act or bylaws;
- c) such information is required to be disclosed by order of lawful authority or, in the proper exercise of their duties, by the Board, or a committee, officer or other agent of CPABC;
- d) justified in order to defend the registrant or any associates or employees of the registrant against any lawsuit or other legal proceeding or against alleged professional misconduct or in any legal proceeding for recovery of unpaid professional fees and disbursements, but only to the extent necessary for such purpose; or
- e) the client, former client, employer or former employer, as the case may be, has provided consent to such disclosure.

The CPA Code defines “confidential information” as follows:

Information acquired in the course of a professional services relationship with a party. Such information is confidential to the party regardless of the nature or source of the information or the fact that others may share the knowledge. Such information remains confidential until the party expressly or impliedly authorizes it to be divulged.<sup>40</sup>

Guidance 2 to Rule 208 notably states that the duty of confidentiality does not excuse a member from complying with a legal requirement to disclose information. However, it advises members to bring the duty to the attention of the courts and to seek legal advice when there is doubt as to the legitimacy or scope of a claim for disclosure. Subject to certain exceptions, members and firms have a duty to report any information concerning an apparent breach of the CPA Code or any information raising doubt as to the competence, integrity, or capacity of another member or applicant.<sup>41</sup>

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<sup>39</sup> Rule 101 refers to non-compliance with the *CPA Act*, bylaws, regulations, CPA Code, and orders and resolutions of the board and requires CPAs to report breaches to CPABC in some circumstances.

Rule 211 refers to a CPA’s responsibility to report non-compliance by another member. Finally, Rule 302 refers to information that a CPA must communicate to a successor CPA.

<sup>40</sup> CPA Code, Definitions, “Confidential Information.”

<sup>41</sup> *Ibid*, Rule 211.

Finally, Rule 212 speaks to the handling of property belonging to others – for example, as a trustee, receiver, guardian, or administrator. A member who receives, handles, or holds money or other property in such a capacity must do so in accordance with the terms of the engagement and maintain records to account for it. Further, money held in trust must be held in a separate trust account.<sup>42</sup> The guidance to Rule 212 specifies, among other things, that trust relationships should be documented in writing; that withdrawals or disbursements from the trust account should be limited to funds properly required for payment to or on behalf of the client or required for payments of the CPA’s fees or disbursements; and that CPAs should be able to account at all times for the trust funds or property together with any income, dividends, or gains generated to any person who is entitled to such accounting.<sup>43</sup> It also states that CPAs may hold property rather than funds in trust, in which case “[a]ppropriate safeguards and controls should be established over these properties including, if applicable, the safekeeping of securities or other negotiable instruments.”<sup>44</sup>

## Investigations and Enforcement by CPABC

CPABC has two main avenues of investigation and enforcement: practice reviews and investigations.

### Practice Reviews

A “practice review” is a review of a CPA’s professional practice for the purpose of identifying deficiencies, fitness, or professional conduct, and taking appropriate follow-up or remedial action.<sup>45</sup> Practice reviews consider whether an office complies with generally accepted accounting principles and audit/review standards as well as the CPA Code; whether it is maintained at a sufficiently high standard; and whether it should be pre-approved for the training of CPA students. The applicable standards include those set out in the CPA Code and the *CPA Canada Handbook*, the International Financial Reporting Standards, and accounting standards for private enterprises and not-for-profit organizations.<sup>46</sup>

Ms. Liu testified that practice reviews are concerned with “reviewable” services – assurance services, audit reviews, compilation services, and tax services.<sup>47</sup> Bylaw 1000(3) specifies that members who hold a licence under Part 7 (reviewed above) are subject to practice reviews. During the 2019–20 fiscal year, CPABC conducted 810 practice reviews, with an overall pass rate of 94 percent.<sup>48</sup>

<sup>42</sup> Ibid, Rule 212.1.

<sup>43</sup> Guidance 2 to Rule 212.

<sup>44</sup> Guidance 4 to Rule 212.

<sup>45</sup> *CPA Act*, s 51(2); Bylaws, Part 10; Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix I, Chartered Professional Accountants Common Practice Inspection Deficiencies [CPA Inspection].

<sup>46</sup> Evidence of L. Liu, Transcript, January 12, 2021, p 129; Bylaw 1003.

<sup>47</sup> Transcript, January 12, 2021, p 65.

<sup>48</sup> Exhibit 391, Appendix I, CPA Inspection.

Practice reviewers have important powers at their disposal. These include the ability to make requests of members, students, and firms; to interview members or students; to enter a practising office; and to copy documents.<sup>49</sup> Members are required to co-operate with CPABC’s regulatory processes.<sup>50</sup> They must comply with requests for information or documents and, should they fail to do so, CPABC can apply for a court order requiring compliance.<sup>51</sup>

The *CPA Act* specifies that a member or a student cannot refuse to comply with a request for information or for documents based on the duty of confidentiality.<sup>52</sup> However, section 69 states that any facts, information, and records obtained under the *CPA Act* must remain confidential, with limited exceptions. The ability of CPABC to see all aspects of a member’s practice, including confidential material, is significant and renders CPABC well placed to conduct robust anti-money laundering regulation of its members.

The practice review group has three associate directors and 12 contractors, all of whom are CPAs with extensive experience in the areas they inspect.<sup>53</sup> Ms. Liu testified that reviewers receive extensive training on how to conduct practice reviews and assess firms for compliance with the standards, as well as on the kinds of remedial consequences that may be recommended. This training is ongoing to ensure that reviewers maintain technical knowledge of the standards.<sup>54</sup>

Accounting offices are typically reviewed on a three-year risk-adjusted cycle. Priority is given to offices with newly licensed members, those requesting pre-approval to train CPA students, and those that received a “non-comply” in their last review and require a follow-up review.<sup>55</sup> Risk factors that may result in a more frequent inspection include:

- registration with the Canadian Public Accountability Board or US equivalent;
- a change in the profile of a firm (for example, new partners or a merger);
- disciplinary decisions by CPABC or another regulator;
- a weak history of practice review results; and
- other negative information coming to CPABC’s attention.<sup>56</sup>

Michele Wood-Tweel, vice-president of regulatory affairs at CPA Canada, testified that practice reviews do not include any anti-money laundering review. Their focus is on professional standards – generally accepted accounting and audit assurance

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49 Bylaw 1002(2).

50 CPA Code, Rule 104.

51 *CPA Act*, ss 51(5) and (6).

52 *Ibid*, s 51(9).

53 Evidence of L. Liu, Transcript, January 12, 2021, pp 65–66, 127–28.

54 *Ibid*, pp 128–29.

55 *Ibid*, pp 66–67.

56 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 50.

standards.<sup>57</sup> Accordingly, practice reviews do not consider, for example, whether members or firms provide services that bring them within the scope of the *PCMLTFA* or whether they have complied with their obligations under that regime.<sup>58</sup>

Ms. Liu testified that anti-money laundering compliance issues could arise in the context of a client's compliance with laws and regulations, noting that auditors are expected to ask their clients whether they comply with all laws and regulations.<sup>59</sup> I review some CPA Canada auditing standards that address anti-money laundering below.

### ***Investigations***

The *CPA Act* states that an investigation can be done into a member's conduct to determine if grounds exist for disciplinary action.<sup>60</sup> A practice review can lead to a report to the investigations committee.<sup>61</sup> Investigations can also be started based on complaints from a client, employer, member of the public, or another regulatory body. In addition, matters can be referred for investigation from another CPABC department or initiated on the investigation committee's own initiative following, for example, a media report.<sup>62</sup> When CPABC becomes aware of people who are not actually CPAs but are using the protected CPA designation, it investigates such matters.<sup>63</sup>

The investigations department has five full-time members: currently, Mr. Tanaka, two other CPAs, and two non-CPAs. The department also engages six contract investigators, who are all CPAs.<sup>64</sup> Mr. Tanaka testified that he is not aware of any of the team members being a certified anti-money laundering specialist, although one is a certified fraud examiner.<sup>65</sup>

Mr. Tanaka testified that investigators have considerable powers. He noted that Rule 104 of the CPA Code requires members to co-operate with the investigations team. Further, investigators have the same powers as practice reviewers under the *CPA Act* with respect to requiring information and documents (as outlined above).<sup>66</sup>

An investigator's report is presented to the investigations committee, which decides whether grounds exist for disciplinary action.<sup>67</sup> The investigations committee must make a recommendation of disciplinary action (such as a reprimand, a requirement to take courses, or a fine) or issue a statement of complaint stating the grounds for

<sup>57</sup> Transcript, January 13, 2021, pp 69–70.

<sup>58</sup> Evidence of L. Liu, Transcript, January 12, 2021, p 69.

<sup>59</sup> *Ibid*, pp 129–30.

<sup>60</sup> *CPA Act*, s 51(3).

<sup>61</sup> Bylaw 1006.

<sup>62</sup> Evidence of E. Tanaka, Transcript, January 12, 2021, pp 56–58; Bylaws 1101(2), 1103.

<sup>63</sup> Evidence of E. Tanaka, Transcript, January 12, 2021, p 11.

<sup>64</sup> *Ibid*, p 52.

<sup>65</sup> *Ibid*, p 53.

<sup>66</sup> *Ibid*, pp 53–54; *CPA Act*, ss 51(5)–(9).

<sup>67</sup> Bylaw 1106.

disciplinary action.<sup>68</sup> The member can accept the recommendation, refuse it, or request referral to a discipline committee.<sup>69</sup>

Mr. Tanaka testified that CPABC has never received a complaint about a member or a firm related to money laundering issues and that, as a result, there has never been a discipline case relating to money laundering.<sup>70</sup> CPABC and CPA Canada submit that this shows there is no money laundering problem among CPAs. With respect, I do not agree that the fact of there being no complaints means there is no money laundering concern. Money laundering by its nature is clandestine, and if a client seeks the assistance of a CPA to launder funds, they can hardly be expected to make a complaint. Given what we know about the nature of modern mid- and high-level money laundering, it would be naive not to acknowledge the obvious risk of accountants becoming involved in or being used to facilitate transactions in furtherance of money laundering.

When asked about the extent to which investigators look for indicators of money laundering during their investigations, Mr. Tanaka testified that it depends on the nature of the complaint.<sup>71</sup> As for what investigators would do if they came across indicators of illegality, he testified that, because of the CPABC's obligation of confidentiality under the *CPA Act*, they would "very rarely" refer the matter to law enforcement.<sup>72</sup> I return to this matter in Chapter 33.

In 2019–20, CPABC closed 53 investigations, including 15 referrals made to the discipline committee, and received 103 new complaints.<sup>73</sup>

### ***Discipline***

As noted above, a discipline committee can be convened on receipt of a statement of complaint issued by an investigation committee.<sup>74</sup> Such proceedings can end in a resolution by agreement or may require a hearing.<sup>75</sup>

A discipline committee decides whether to dismiss or confirm a statement of complaint in whole or in part and must give reasons. If it confirms the statement of complaint, it can make a variety of orders, including a reprimand, suspension with or without conditions, cancellation of membership, imposing conditions on membership, a fine, and/or costs.<sup>76</sup>

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68 Bylaw 1106(5).

69 Bylaw 1106(9).

70 Transcript, January 12, 2021, pp 57, 63–64.

71 *Ibid*, p 54.

72 *Ibid*, pp 55–56.

73 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 77.

74 Bylaw 1201.

75 Bylaws 1205 and 1206.

76 *CPA Act*, s 53(4).

## Continuing Professional Development

Ms. Liu testified that becoming a CPA requires a rigorous education program, a final exam, and a 30-month practical experience term.<sup>77</sup> Bylaw 600(1) states that the CPABC board of directors must establish a program prescribing compulsory continuing education requirements for members. In turn, members must deliver an annual compliance report certifying their compliance with the mandatory professional development. Failure to comply can result in suspension.<sup>78</sup>

Since 2017, CPABC has offered some professional development courses relating in whole or in part to money laundering, though training in this area is not mandatory. I review these courses further in Chapter 33.

## CPA Canada

CPA Canada is the national “umbrella” organization of the CPA profession in Canada. Membership is mandatory for provincially regulated CPAs,<sup>79</sup> and the organization represents around 220,000 members across Canada.<sup>80</sup>

CPA Canada collaborates with provincial CPA regulatory bodies to harmonize ethical requirements, practice standards, and investigative and disciplinary processes. It also monitors and responds to international developments in rules of ethics and standards, and provides guidance to the provincial bodies about accounting standards and the impact of business issues on the profession.<sup>81</sup>

CPA Canada maintains a model Code of Conduct for the CPA profession, which the provincial regulators develop together. Each provincial regulator can adjust provisions of the model code to suit its unique needs and regulatory framework. However, the model code is largely harmonized across Canada, as are the practice review programs.<sup>82</sup> Provincial and territorial CPA regulators co-ordinate through the public trust committee, which “provides leadership and oversight in establishing policies, strategies and processes to assist in maintaining the integrity of the profession and the confidence and trust of the public.”<sup>83</sup>

Importantly, CPA Canada is not a regulator; rather, the provincial CPA bodies regulate their respective members. Nor does CPA Canada have any governance or oversight role over the provincial CPA bodies. Their relationship is collaborative.<sup>84</sup>

<sup>77</sup> Transcript, January 12, 2021, p 7.

<sup>78</sup> Bylaws 600(2), 602(1).

<sup>79</sup> Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 7.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid, p 8.

<sup>82</sup> Closing submissions, CPA Canada, paras 13–14; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 9; Evidence of E. Tanaka, Transcript, January 12, 2021, p 107; Evidence of L. Liu, Transcript, January 12, 2021, p 108.

<sup>83</sup> Closing submissions, CPA Canada, para 13.

<sup>84</sup> Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 7–8, 69; Evidence of E. Tanaka, Transcript, January 12, 2021, pp 105–6.

CPA Canada is a member of the International Federation of Accountants (IFAC). Ms. Wood-Tweel testified that IFAC “brings together the global profession to look at the issues associated with the profession” and “supports the independent standard-setting boards that establish the accounting standards and the audit and assurance standards and ethical standards that evolve internationally.” Each member country of IFAC then tries to adopt harmonized standards.<sup>85</sup>

CPA Canada also participates in the International Ethics Standards Board for Accountants (IESBA), an independent standard-setting board supported by IFAC. CPA Canada participates as the national standards setter for Canada.<sup>86</sup> As I discuss in Chapter 33, CPA Canada participated in issuing an IESBA alert to the profession in 2020 relating to COVID-19 and money laundering risks.

IFAC member bodies are required to comply with the Statements of Membership Obligations (SMOs). SMO 4 requires the CPA profession to maintain codes of ethics that are at least as stringent as the *IESBA Code* unless there are legal, regulatory, or public interest reasons to differ in members’ respective countries.<sup>87</sup>

The *IESBA Code* notably states that, in the course of carrying out their professional activities, professional accountants might encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations that are “recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization’s financial statements.”<sup>88</sup> They may also encounter or become aware of non-compliance or suspected non-compliance that does not have such a direct effect but “compliance with which might be fundamental to the operating aspects of the employing organization’s business, to its ability to continue its business, or to avoid material penalties.”<sup>89</sup> Examples of laws and regulations that are captured include (but are not limited to) those relating to money laundering, terrorist financing, and proceeds of crime.<sup>90</sup>

In the words of the *IESBA Code*, a “distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest.”<sup>91</sup> The objectives of a professional accountant, when confronted by non-compliance or suspected non-compliance, are to comply with the principles of integrity and professional behaviour, alert management of the employing organization where appropriate to address or deter non-compliance, and to “take such further action as appropriate in the public interest.”<sup>92</sup> The *IESBA Code* also notes that non-compliance can result not only in fines, litigation,

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85 Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 13–14.

86 Ibid, pp 14–15.

87 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 13.

88 International Ethics Standards Board for Accountants, *International Code of Ethics for Professional Accountants [IESBA Code]*, s 260.3(a), online: <https://www.iesbaecode.org/2021/part/2/260>.

89 Ibid, s 260.3(b).

90 Ibid, s 260.5 A2.

91 Ibid, s 260.4

92 Ibid.

or other consequences for the employing organization, but also in wider public interest implications such as potentially substantial harm to investors, creditors, employees, or the general public.<sup>93</sup> It advises professional accountants to understand any requirements they may have under legal or regulatory provisions to report the matter to an appropriate authority, as well as any prohibitions on alerting the relevant party.<sup>94</sup>

The *IESBA Code* also speaks to situations in which professional accountants may hold client money or assets, directing them to make inquiries about the source of the assets and to consider related legal and regulatory obligations.<sup>95</sup> It notes that inquiries about client assets might reveal they were derived from illegal activities, such as money laundering, and that, in such a case, the provisions I reviewed above relating to non-compliance with laws and regulations apply.<sup>96</sup>

CPA Canada's *Canadian Standard on Quality Control* requires audit firms to establish policies and procedures "for the acceptance and continuance of client relationships and specific engagements, designed to provide the firm with reasonable assurance that it will only undertake or continue relationships and engagements where the firm ... has considered the integrity of the client, and does not have information that would lead it to conclude that the client lacks integrity." The explanatory note lists various things that a firm should consider, including indications that the client might be involved in money laundering or other criminal activities.<sup>97</sup>

Three of CPA Canada's Canadian Auditing Standards (CAS) contain references to money laundering: CAS 240, "The auditor's responsibilities relating to fraud in an audit of financial statements"; CAS 260, "Communication with those charged with governance"; and CAS 250, "Consideration of laws and regulations in an audit of financial statements."<sup>98</sup> For example, CAS 250 states that

if the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether law, regulation, or relevant ethical requirements:

- a) require the auditor to report to an appropriate authority outside the entity;
- b) establish responsibilities under which reporting to an appropriate authority outside the entity may be appropriate in the circumstances.<sup>99</sup>

93 Ibid, s 260.5 A3.

94 Ibid, s R260.6.

95 Ibid, s R350.4, online: <https://www.iesbaecode.org/2021/part/3/350>.

96 Ibid, s 350.4A.1.

97 CPA Canada, *Canadian Standard on Quality Control* (2009), cited in Exhibit 394, *Report on Accountants, Money Laundering, and Anti-Money Laundering*, prepared by the amlSHOP (October 31, 2020, and updated December 31, 2020) [McGuire Report], para 70.

98 Exhibit 394, McGuire Report, para 71.

99 Ibid.

## The *PCMLTFA*

The *PCMLTFA* applies to accountants and accounting firms. However, it does not apply to *all* accountants or *all* their activities. As I discuss in Chapter 31, witnesses before me expressed concern about the limited scope of accountants' obligations under the *PCMLTFA*.

### Application of the *PCMLTFA* Regime to CPAs and Accounting Firms

Accountants and accounting firms are reporting entities under the *PCMLTFA*. The regulations define “accountant” as a “chartered accountant, a certified general accountant, a certified management accountant or, if applicable, a chartered professional accountant.”<sup>100</sup> Essentially, since the various accounting professions were united into one, the term refers to CPAs.<sup>101</sup> Importantly, that definition does *not* include unregulated accountants. An “accounting firm,” meanwhile, is defined as “an entity that is engaged in the business of providing accounting services to the public and has at least one partner, employee or administrator that is an accountant.”<sup>102</sup>

CPABC has no prescribed role, duties, or functions under the *PCMLTFA*. Nor does CPA Canada, although it does participate in the federal government's Federal Advisory Committee on Money Laundering and Terrorist Financing (see Chapter 33).

### Activities Captured by the Regime

The *PCMLTFA* regime applies to CPAs and accounting firms only when they conduct certain activities, often referred to as “triggering activities.” Specifically, the regime applies only when CPAs or firms carry out or give instructions with respect to the following activities:

- receiving or paying funds or virtual currency;
- purchasing or selling securities, real property or immovables, or business assets or entities; or
- transferring funds, virtual currency, or securities by any means.<sup>103</sup>

FINTRAC has issued guidance specifying that CPAs or firms are subject to these requirements regardless of whether they receive fees or have a formal letter of engagement to do so.<sup>104</sup>

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100 *PCMLTF Regulations*, s 1(2), “accountant.”

101 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 79; evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 25.

102 *PCMLTF Regulations*, s 1(2), “accounting firm.”

103 *Ibid*, s 47(1).

104 FINTRAC, Guidance and Resources for Businesses (reporting entities), “Accountants” (July 12, 2021), online: <https://www.fintrac-canafe.gc.ca/re-ed/accts-eng>.

It is clear from the limited list of triggering activities that the *PCMLTFA* regime does not apply to many services that CPAs and firms provide, including services that could associate them with money laundering or expose them to a money laundering risk (see Chapters 31 and 32). Further, even when a CPA or a firm is engaged in triggering activities, there are circumstances where the reporting is not required.

First, a CPA or a firm that engages in triggering activities in the following contexts is not subject to the regime: on behalf of an employer; in the course of an audit, review, or compilation agreement; or when acting solely as a trustee in bankruptcy.<sup>105</sup>

Second, the obligations under the *PCMLTFA* do not apply when a CPA or a firm is providing only *advice* with respect to triggering activities, rather than “giving instructions” with respect to them. FINTRAC’s guidance explains that “giving instructions” means directing the movement of funds, while providing advice (making recommendations or suggestions) is not giving instructions.<sup>106</sup>

Finally, FINTRAC does not consider the following services to be “providing accounting services to the public”:

- acting as a receiver pursuant to a court order or by way of a private letter appointment pursuant to the terms of a security interest;
- acting as a trustee in bankruptcy; and
- acting as a monitor under the provisions of the *Companies’ Creditors Arrangement Act*, RSC 1985 c C-36, or any other proceeding that results in the dissolution or restructuring of an enterprise or individual and to which the firm, individual, or insolvency practitioner serves as an officer of the court or an agent to a creditor (or creditors) or the debtor.<sup>107</sup>

## CPAs’ and Firms’ Obligations Under the Regime

If a CPA or a firm is performing a triggering activity and does not otherwise fall under an exception, it is subject to various requirements. These include, but are not limited to, client identification and verification measures, suspicious and large cash transaction reporting, and implementation of a compliance program. As with other reporting entities, these requirements do not apply where the client is a financial entity or a public body.

CPAs or firms that receive \$3,000 or more in a single transaction in connection with a triggering activity must keep a “receipt of funds record.” They must also ascertain the identity of the person conducting the transaction and confirm information about every

<sup>105</sup> *PCMLTF Regulations*, ss 47(2) and (3).

<sup>106</sup> FINTRAC, Guidance and Resources for Businesses (reporting entities), “Accountants” (July 12, 2021), online: <https://www.fintrac-canafe.gc.ca/re-ed/accts-eng>.

<sup>107</sup> FINTRAC, Interpretation Notices, No 7, online: <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2011-02-17-eng>.

person, corporation, or other entity on whose behalf it is conducted.<sup>108</sup> As of June 1, 2021, they must also take reasonable steps to verify the beneficial ownership of entities involved in the transaction.<sup>109</sup> Where there is a “business relationship,”<sup>110</sup> CPAs and firms must also conduct ongoing monitoring of the relationship to detect suspicious transactions, keep client information up to date, reassess the level of risk associated with the client’s transactions and activities, and determine whether transactions and activities are consistent with the information obtained about the client, including a risk assessment.<sup>111</sup>

CPAs and firms must report large cash transactions of \$10,000 or more in a single transaction or, in relation to a triggering activity, within a 24-hour period.<sup>112</sup> They must also ascertain the identity of the person conducting the transaction.<sup>113</sup> Further, they are required to keep large cash transaction records in respect of these activities.<sup>114</sup>

Suspicious transaction reporting requirements also apply to CPAs and firms. Specifically, they must file a suspicious transaction report for every financial transaction that is attempted in the course of a triggering activity where there are reasonable grounds to suspect that the transaction is related to the commission or attempted commission of a money laundering or terrorist financing offence.<sup>115</sup> They must also take reasonable measures to verify the identity of every person or entity that conducts or attempts to conduct a suspicious transaction.<sup>116</sup>

Finally, CPAs and firms must implement a compliance program. This program must include the development and application of policies and procedures for assessing the risk of money laundering or terrorist financing in their activities.<sup>117</sup> There are five aspects of the compliance program:

- appointing a designated compliance officer responsible for implementing the program;
- producing written policies and procedures that are kept up to date and, in the case of firms, approved by a senior officer;
- developing and applying policies and procedures to assess and document the risk of a money laundering or terrorist financing offence, taking into consideration organization-specific factors;<sup>118</sup>

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108 *PCMLTF Regulations*, ss 52(a), 100, 112(3)(i).

109 *Ibid*, s 138.

110 The regulations explain that a business relationship is created at the earliest of several listed dates, including opening an account for a client and the second time a verification requirement occurs: *PCMLTF Regulations*, s 4.1.

111 *Ibid*, s 123.1.

112 *Ibid*, ss 48, 49, 126.

113 *Ibid*, ss 84(a), 109(4)(a), 112(3)(a).

114 *Ibid*, ss 50, 51.

115 *PCMTLFA*, s 7.

116 *PCMLTF Regulations*, ss 85(1), 105(7)(c), 109(4)(b), 112(3)(b), 154(4).

117 *PCMLTFA*, s 9.6.

118 These factors include the nature of the products, services, and delivery channels, and the geographic location of their activities: *PCMLTF Regulations*, s 156(c).

- maintaining an ongoing compliance training program for employees and agents; and
- having an internal or external auditor carry out an effectiveness review of the policies and procedures, risk assessment, and training program every two years.<sup>119</sup>

FINTRAC is empowered to conduct “compliance examinations” of reporting entities, which are reviews in which it examines the entity’s records and inquires into its affairs for the purpose of ensuring compliance. For this purpose, FINTRAC can enter premises, access computer records, and reproduce records.<sup>120</sup>

## Financial Action Task Force Recommendations

As I discuss further in Chapter 6, the Financial Action Task Force maintains a list of 40 recommendations<sup>121</sup> for its member countries to combat money laundering and terrorist financing. It is instructive to review the recommendations that relate to accountants. As I discuss further in Chapter 32, there was some debate before me as to whether Canada is compliant with the recommendations.

Recommendation 22 urges the imposition of customer due diligence and record-keeping obligations on accountants when they prepare for or carry out the following activities:

- buying and selling real estate;
- managing client money, securities, or other assets;
- managing bank, savings, or securities accounts;
- organizing contributions for the creation, operation, or management of companies; and
- creating, operating, or managing legal persons or arrangements, and buying and selling business entities.

Recommendation 23 states that accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to those activities. It further states that “[c]ountries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.”

Recommendation 28 states that accountants should be subject to effective systems for monitoring and ensuring compliance with their money laundering and terrorist

<sup>119</sup> *PCMLTF Regulations*, s 156(3).

<sup>120</sup> *PCMLTFA*, s 62.

<sup>121</sup> Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [*FATF Recommendations*].

financing obligations. The monitoring should be done on a risk-sensitive basis and may be performed by “a supervisor” or “an appropriate self-regulatory body, provided that such a body can ensure that its members comply with their obligations to combat money laundering and terrorist financing.” The supervisor or self-regulatory body must also take measures “to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function” and have “effective, proportionate, and dissuasive sanctions.”

A “supervisor” is defined as the “designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance” with anti-money laundering and counterterrorist financing measures. They should “have the power to supervise and sanction” those they supervise.<sup>122</sup> The FATF fourth mutual evaluation<sup>123</sup> notes that FINTRAC is the primary supervisor for all reporting entities in Canada, while noting that provincial regulators nonetheless have a role to play:

FINTRAC is the primary anti-money laundering / counter terrorist financing (AML/CFT<sup>124</sup>) supervisor for all [reporting entities] in Canada and is relied upon by provincial regulators to understand [money laundering / terrorist financing] risks within their population and to carry out AML/CFT specific supervision. Provincial supervisors integrate [money laundering / terrorist financing] risks into their wider risk assessment models and leverage off FINTRAC for their assessment of [money laundering / terrorist financing] risks as FINTRAC has responsibility for AML/CFT compliance supervision in Canada.

...

*The regulatory regime involves both federal and provincial supervisors. FINTRAC is responsible for supervising all [financial institutions] and [designated non-financial businesses and professions] for compliance with their AML/CFT obligations under the PCMLTFA. Other supervisors may incorporate AML/CFT aspects within their wider supervisory responsibilities although the assessment team found that in instances where an AML/CFT issue arose, the primary regulator would refer the issue to FINTRAC. [Emphasis added.]<sup>125</sup>*

Although the FATF mutual evaluation suggests that FINTRAC is the primary anti-money laundering supervisor for reporting entities, the above passages show that

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122 Exhibit 4, Appendix E, *FATF Recommendations*, p 124.

123 Exhibit 4, Overview Report: FATF, Appendix N: FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016) [*FATF Fourth Mutual Evaluation*]. See **Chapter 6** for a discussion of the mutual evaluation process. Mutual evaluations are essentially peer reviews in which members of FATF evaluate other members’ anti-money laundering and counterterrorist financing measures against the 40 recommendations.

124 FATF often uses the terms “counter-terrorist financing” (CTF) and “combating the financing of terrorism” (CFT) interchangeably.

125 Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, paras 248, 252.

its supervisory role is limited to ensuring compliance with the *PCMLTFA* and that provincial supervisors should also be involved in anti-money laundering supervision “within their wider supervisory responsibilities.” In my view, this involvement lends support to the idea that CPABC does or should have an anti-money laundering mandate.

## **Conclusion**

This chapter has reviewed the legal and regulatory framework applicable to accountants in British Columbia and shown that a significant number are unregulated altogether. Although professional accountants are heavily regulated, there was significant debate before me about the role of CPABC in regulating its members for anti-money laundering purposes. The discussion above has highlighted some reasons why I believe CPABC does have this responsibility, and I return to this subject in Chapter 32. Before addressing this subject, however, I turn to the money laundering vulnerabilities in the accounting profession.

## Chapter 31

# Money Laundering Risks in the Accounting Profession

Accountants are frequently referred to as “gatekeepers” to the financial system. They have expertise in often complex financial matters and lend an air of legitimacy to the activities they undertake. There is certainly a risk that criminals will seek out accountants to assist them, knowingly or unwittingly, in their money laundering activities. Indeed, those looking to conceal proceeds of crime may seek assistance with bookkeeping or advice about how to use corporations or other legal entities.

While it is not difficult to see the inherent risks in this sector, there is unfortunately a lack of evidence on which I can determine the precise nature and extent of accountant involvement in money laundering in this province. This dearth of evidence must not, however, be confused with an absence of risk. In this regard, I am unable to accept submissions by CPABC and CPA Canada that the lack of evidence about CPA involvement in money laundering means it is not occurring in the accounting sector. In keeping with the risk-based approach, the Province and CPABC (which represents only chartered professional accountants and therefore about a third of the accountants in the province) must ensure that adequate preventive measures are in place to address the inherent risks facing accountants.

In this chapter, I consider key areas of risk facing accountants in British Columbia. In the next chapter, I turn to various issues with the *PCMLTFA* regime that were canvassed before me, including its narrow scope, apparently low compliance by CPAs and firms, and few compliance examinations by FINTRAC. Although these issues also play into the risks facing accountants, I have dedicated a separate chapter to them, given the volume of evidence on these matters.

Another issue related to the risks is the fact that CPABC currently does not engage in anti-money laundering regulation of its members, given its view that its mandate does not capture such regulation (see Chapter 32). The lack of anti-money laundering regulation by CPABC, combined with the apparently low compliance with the *PCMLTFA* and few compliance examinations by FINTRAC, suggests that accountants in this province have been largely free of any meaningful anti-money laundering oversight. In my opinion, this lack of oversight increases the risk in this sector.

## A “Common Sense” Approach to Risk

The risks facing accountants, like those applicable to lawyers,<sup>1</sup> seem to be common sense. Accountants have special knowledge of their clients’ finances, understand potentially complex financial transactions, and lend an air of legitimacy to the activities they undertake. Matthew McGuire, a fellow of the Chartered Professional Accountants of Ontario with expertise in money laundering, testified that accountants’ involvement in money laundering can take different forms:

- **Self-laundering:** the accountant commits a fraud, theft, or other offence and launders the proceeds for his or her own benefit.
- **Unknowing involvement:** the accountant commits an unknowing fraud by, for example, giving advice to a client ostensibly about tax efficiency but in reality to help move proceeds of crime abroad.
- **Knowing complicity:** the accountant may knowingly be involved in commingling legitimate and illegitimate proceeds, such as by making financial statements believable for tax purposes.<sup>2</sup>

These different roles reveal that the capacity in which an accountant is acting may call for different responses. An accountant who self-laundered is essentially a primary offender. The main “responder” would therefore be law enforcement, although the regulator would also have an interest in addressing unethical conduct. An accountant who is unknowingly involved in money laundering by clients would likely benefit from increased education from the regulator. Finally, an accountant who is knowingly complicit in a client’s money laundering activities requires responses from both law enforcement and the regulator.

## Limitations in Assessing Risk

In assessing areas of risk facing accountants, we must keep in mind the limitations on evidence relating to their involvement in money laundering. In a report prepared for the Commission, Mr. McGuire and his colleague Monika Cywinska addressed

1 See Chapter 26.

2 Transcript, January 11, 2021, pp 23–24.

the nature and extent of accountant involvement in money laundering domestically and internationally, the effectiveness of current measures in place, and areas of improvement.<sup>3</sup> To determine the nature and extent of accountant involvement, they relied on authoritative sources, including guidance from FATF, FINTRAC, law enforcement, and academia. Based on that review, they conclude:

*The role of accountants in money laundering internationally has been escalating since the adoption of anti-money laundering standards. This is due to the complexity of money laundering at scale, the nature of their expertise, and the credibility that the collective reputation of the profession brings. Without additional controls, the role of the accountant and professional money launderer will continue to gain prominence to keep pace with the enhancements to global anti-money laundering measures and their more consistent application worldwide.*

The extent of accountant involvement in money laundering changes based on the sophistication of the organization for which they are laundering funds and the degree to which the organization's activities are illegal. Accountant expertise becomes more critical as organizations become more sophisticated and geographically diverse, and as they accumulate capital from excess criminal profits. The most prevalent money laundering techniques used by accountant, wittingly and not, and those that are causing the greatest international concern generally include:

- a) the exploitation of the opacity of beneficial ownership
- b) trade based money laundering<sup>4</sup>
- c) the use of new and alternative payment systems

The crimes from which those funds derive range from corruption to tax evasion, securities fraud, narcotics offences and human trafficking. [Emphasis added.]<sup>5</sup>

They further note that “credible research has pointed to accountant involvement in money laundering since it was criminalized” and that the absence, until recently, of an element of recklessness in the *Criminal Code* offences, combined with generally low enforcement levels in Canada, has led to few reported criminal cases of money laundering involving accountants.<sup>6</sup>

Although these conclusions are presented firmly in the report, Mr. McGuire candidly acknowledged some caveats in his testimony. First, many of the sources

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3 Exhibit 394, *Report on Accountants, Money Laundering, and Anti-Money Laundering*, prepared by the amlSHOP (October 31, 2020 and updated December 31, 2020) [McGuire Report], para 4(a-c).

4 I discuss trade-based money laundering in Chapter 38.

5 Exhibit 394, McGuire Report, paras 77-78.

6 Ibid, para 79.

he and Ms. Cywinska examined do not reference specific cases or even narratives to back up their statements.<sup>7</sup> Second, none of the sources refer specifically to Canadian CPAs or suggest that CPAs are systematically involved in money laundering in Canada.<sup>8</sup> Finally, he agreed that some of the accounting skills and knowledge presumably needed for complex money laundering skills could be held by unregulated accountants.<sup>9</sup> Given these limitations, Mr. McGuire agreed that the conclusions in his report are ultimately a hypothesis that has not been proven by actual convictions.<sup>10</sup>

I review the sources referenced in Mr. McGuire and Ms. Cywinska's report below. I agree that they do have several limitations, as Mr. McGuire acknowledged. In particular, many include broad statements that accountants are increasingly involved in money laundering without discussing particular cases or evidence, and there are few studies on the subject. Further, many sources do not discuss the situation in British Columbia or even Canada specifically. On the available evidence, I am unable to make firm findings about the precise nature and extent of accountants' involvement in money laundering in this province. However, the sources are nonetheless useful to consider in that they reveal areas of accountants' practice that raise particular risk.

Of particular interest are the Canadian cases that Mr. McGuire and Ms. Cywinska identified in which an accountant appeared to be implicated in money laundering. Mr. McGuire explained that they used a simple methodology to identify the cases: searching keywords in published cases on the Canadian legal database CanLII. They identified 10 cases meeting those criteria between 1992 and 2020. Mr. McGuire acknowledged that, as not all cases are published on CanLII and given the general lack of prosecution of money laundering, the sample is not representative or indicative of all accountant involvement in money laundering. However, it can serve as an indicator of what money laundering can look like.<sup>11</sup> I agree that the sample cases are illustrative of ways in which accountants may be involved in money laundering, and I refer to some of them below. However, I am mindful of the small sample size and am unable to draw firm conclusions about accountant involvement in money laundering in this province from the sample cases.

I am also mindful of the submissions of CPABC and CPA Canada expressing concerns with these cases. First, they assert that only one case (*Neilson*<sup>12</sup>) involves a CPA since the unification of the profession. Second, they point out that two of the four BC cases pre-date the *PCMLTFA*, one involves an unregulated bookkeeper, and one references an accounting firm without indicating that it did anything illegal.<sup>13</sup> Third,

7 Evidence of M. McGuire, Transcript, January 11, 2021, p 45.

8 Ibid, pp 114–15, 118–19, 129.

9 Ibid, pp 32, 38, 111–12.

10 Ibid, pp 138–39.

11 Exhibit 394, McGuire Report, para 30; Evidence of M. McGuire, Transcript, January 11, 2021, pp 46–47.

12 *R v Neilson*, 2020 ABQB 556.

13 Closing submissions, CPABC, para 61; Closing submissions, CPA Canada, para 73.

they highlight that there were relatively few cases in a 28-year period.<sup>14</sup> Overall, CPABC submits that these cases “do not provide credible support for the assertion that there is a systemic problem – or any problem – relating to professional accountants in British Columbia or Canada being engaged in or helping to facilitate money laundering or terrorist financing.”<sup>15</sup>

While I appreciate these concerns, as I noted above, I am considering these cases as illustrations rather than relying on them to draw specific conclusions about the extent to which CPAs in British Columbia are involved in money laundering. I agree that the cases do not support a finding of a *systemic* problem of CPA involvement in money laundering in British Columbia. However, I am not persuaded that the fact that several cases pre-date the *PCMLTFA* and the unification of the accounting profession renders them less significant. Again, compliance with the *PCMLTFA* appears to be low and, despite the unification of the accounting profession, CPABC does not currently engage in anti-money laundering regulation. Therefore, I respectfully disagree with CPABC’s attempt to minimize the issues raised in these cases.

Mr. McGuire and Ms. Cywinska also reviewed professional and disciplinary cases between 2017 and 2020 from the Chartered Professional Accountants of Ontario and CPABC and found that none related to compliance with anti-money laundering or counterterrorist financing or sanctions legislation.<sup>16</sup> As practice reviews in British Columbia do not include anti-money laundering within their scope, it is not surprising that there is a dearth of disciplinary cases addressing activity related to money laundering.

In what follows, I consider the main areas of risk facing accountants, mindful of the limitations in the evidence I have identified. I have found it useful to organize my discussion broadly in line with the areas of risk discussed by FATF:<sup>17</sup>

- financial and tax advice;
- bookkeeping;
- company and trust formation;
- buying or selling property;
- performing financial transactions;
- preparation, review, and auditing of financial statements; and
- the lack of regulation of non-CPAs in this province.

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14 Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021), p 5.

15 Ibid.

16 Exhibit 394, McGuire Report, para 61.

17 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix B, FATF, *Guidance for a Risk-Based Approach: Accounting Profession* (Paris, 2019) [FATF Accounting Guidance], paras 22–23.

## Areas of Money Laundering Risk in the Accounting Profession

### Financial and Tax Advice

The FATF guidance states that “criminals may pose as individuals seeking financial or tax advice to place assets out of reach in order to avoid future liabilities.”<sup>18</sup> As I expand in the next chapter, providing advice is not considered to be a triggering activity under the *PCMLTFA*. However, there was no dispute in the evidence before me that accountants frequently provide advice on financial and tax affairs. Indeed, in Mr. McGuire’s view, accountants provide advice with respect to transactions more frequently than they conduct the transactions themselves.<sup>19</sup>

In his paper entitled “The Role of Accounting in Money Laundering and Money Dirtying,” Frédéric Compin developed a vertical and hierarchical approach organizing accountant involvement in money laundering based on the sophistication of criminal players.<sup>20</sup> The vertical model looked at three “levels” of crime that progressively increase in sophistication, namely unorganized crime, organized crime, and organized crime networks. Mr. Compin argues that accountants’ services become more important as the crime becomes more sophisticated, as there is increased capital accumulation and a desire to maintain tax compliance to avoid scrutiny by tax authorities.<sup>21</sup>

Mr. McGuire explained why criminals need assistance with tax compliance:

[T]ax compliance is one of the weak spots of any organized crime network ... Because, you know, the point of a good money laundering scheme is to ... have the absence of the most oversight. So, less scrutiny paid to the activities and the identities of the people involved and the ultimate sources and use of the money. And so, the moment you fall afoul of tax rules, you attract that scrutiny and those audits which can uncover identities and purposes and means. And, you know, the tax powers are quite significant when it comes to the power to seize and gather information.<sup>22</sup>

Thus, in considering the areas of risk below, it is important to keep in mind that accountants provide advice with respect to them, even if they do not necessarily conduct the activity themselves. In providing advice, accountants clearly gain knowledge about a client’s financial affairs and are well placed to observe suspicious circumstances. Therefore, there are significant money laundering risks associated with the provision of financial and tax advice.

<sup>18</sup> Ibid, para 22(a).

<sup>19</sup> Evidence of M. McGuire, Transcript, January 11, 2021, p 40.

<sup>20</sup> Frédéric Compin, “The Role of Accounting in Money Laundering and Money Dirtying” (2008) 19(5) *Critical Perspectives on Accounting*, p 593.

<sup>21</sup> Ibid; Exhibit 394, McGuire Report, para 17; Evidence of M. McGuire, Transcript, January 11, 2021, pp 28–29.

<sup>22</sup> Transcript, January 11, 2021, p 30.

## Bookkeeping

The FATF guidance notes that “maintenance of incomplete records by clients as revealed during the accounting/bookkeeping services provided by accountants can be an area of higher risk.”<sup>23</sup> It further states that criminals may seek to engage an accountant to provide a sense of legitimacy to falsified accounts:

Criminals may abuse services provided by accountants to provide a sense of legitimacy to falsified accounts in order to conceal the source of funds. For example, accountants may review and sign off such accounts for businesses engaged in criminality, thereby facilitating the laundering of the proceeds.<sup>24</sup>

Dr. Katie Benson, a professor of criminology at Lancaster University, notes that accountants may be involved in preparing accounts that hide or falsify transactions (e.g., hiding income or misdescribing money coming out of a business) or providing a public, legitimate face to a business.<sup>25</sup>

In Chapter 26, I review a 2004 study by Stephen Schneider, professor of criminology at St. Mary’s University in Halifax, in which he analyzed 149 cases from RCMP proceeds of crime case files in an attempt to analyze how proceeds are laundered through Canada’s legitimate economy. He concluded that “[b]ecause the vast majority of the [proceeds of crime] cases examined in this study involved the use of at least one sector of the legitimate economy, it was inevitable that the accused or an accomplice came in contact with a professional working in one of these industries.”<sup>26</sup> Accountants did not, however, figure prominently in the cases he analyzed. He found that an accountant had come into contact with proceeds of crime in approximately 9 percent of cases.<sup>27</sup> He testified that “[n]ot that many [accountants] came up in my study ... I have not come across a large number of cases that involved accountants.”<sup>28</sup>

Professor Schneider described the necessity of involving an accountant in money laundering as follows:

Although criminal organizations parallel legitimate businesses in many ways, they are unique in that few companies conduct business entirely in

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23 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 23.

24 *Ibid*, para 30.

25 Exhibit 218, Katie Benson, “The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response” (DPhil, University of Manchester, School of Law, 216) [unpublished], p 121.

26 Exhibit 7, Stephen Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, Nathanson Centre (Toronto: 2004), p 1. In 138 of the 149 cases examined (92.6 percent), the accused or accomplice conducted a transaction with a company in the legitimate economy and would therefore encounter a professional, most commonly professionals working in deposit institutions, lawyers, insurance agents or brokers, and real estate professionals: *ibid*, p 3.

27 Exhibit 6, Stephen Schneider, *Money Laundering in British Columbia: A Review of the Literature* (May 11, 2020), p 102.

28 Evidence of S. Schneider, Transcript, May 26, 2020, p 22.

cash. A principal job of an accountant working for a successful criminal enterprise is to keep track of the volumes of cash generated and spent. In those police cases where accountants were implicated in laundering money, they were used to provide accounting services for both the personal and company-related finances of criminal entrepreneurs.<sup>29</sup>

Elsewhere he explains:

As with a legitimate company, criminal entrepreneurs need to keep track of their revenue and expenses, as well as assets and liabilities. Ideally, this job is best carried out by a bookkeeper or accountant. A principal job of an accountant working for a successful criminal enterprise is to keep track of the volumes of cash generated and spent.<sup>30</sup>

Professor Schneider reviews some sample cases involving accountants. He notes that in one instance, a Hells Angels affiliate would collect bags of cash for cocaine purchases. Police eventually confiscated about \$5.5 million in cash, along with accounting spreadsheets, and overheard a criminal talking about how he would give his accountant cash to launder.<sup>31</sup> Another case involved a drug dealer who held multiple companies. Police seized correspondence indicating the use of accountants, including comprehensive financial statements.<sup>32</sup>

It is important to keep in mind that Professor Schneider's study is somewhat dated, relying on cases concluded between 1993 and 1998.<sup>33</sup> I am also mindful of the relatively few cases involving accountants in his study and the fact that no differentiation is made between CPAs and non-CPAs. Nonetheless, the cases are illustrative of the fact that criminals may seek the assistance of accountants in bookkeeping.

Another study illustrating the potential for misuse of bookkeeping services is one done by Melvin Soudijn, a member of the National Crime Squad of the Netherlands Police Agency.<sup>34</sup> Mr. Soudijn analyzed the involvement of "financial facilitators" in money laundering, referring to professionals of various backgrounds who assist a criminal in a key way with money laundering.<sup>35</sup> He put the cases into two categories:

29 Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 73.

30 Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 108.

31 Ibid.

32 Ibid, pp 109–10.

33 Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 8.

34 Melvin R.J. Soudijn, "Removing Excuses in Money Laundering" (2012) 15(2) *Trends in Organized Crime* p 146. Dr. Benson notes that Soudijn's study is one of the few empirical studies that have been done on professionals' involvement in money laundering: Exhibit 218, p 14.

35 He adopted this approach as the criminal law notion of a "facilitator" is not necessarily someone from a legitimate professional society. For example, a janitor who provides their access pass to an airport's restricted area to someone involved in human smuggling would be acting in the capacity of a facilitator. Soudijn therefore added the qualifier that the person's involvement must be essential to narrow the potentially broad category of facilitators and the qualifier of a financial facilitator to narrow the discussion to professionals, such as lawyers, accountants, bank employees, and the like: Melvin R.J. Soudijn, "Removing Excuses in Money Laundering" (2012) 15(2) *Trends in Organized Crime*, p 148.

those where the involvement centred on cash and those whose work involved the documentation required to lend an air of legitimacy to activities.<sup>36</sup>

The latter category revealed instances of accountant involvement in money laundering. For example, he came across a bookkeeper whose job was to reconcile the profits of a café that was used to launder proceeds of heroin sales. Mr. Soudijn notes that research indicates criminals have a preference for small businesses for such work as they are more vulnerable economically, and criminal clients are less likely to be turned away.<sup>37</sup>

Another case revealed a bookkeeper who regularly deposited large amounts of money at a local bank on behalf of two owners of a garage. The bank reported the activity to the financial intelligence unit. It turned out that the garage owners were involved in a wholesale cocaine business and mixed their illegitimate funds with the garage's profits. The bookkeeper maintained that it was not his job to notice discrepancies in the books, one of which was the fact that the garage would have had to be open six days a week and operating at full capacity to even approach the profits it was reporting.<sup>38</sup>

A final case involved a money transfer company that misused the identities of people who had sent legitimate transfers in order to launder proceeds of narcotics trafficking. The police investigation showed that an accountant had drawn up fraudulent annual financial statements concealing the true owner of the money transfer company, who was a trafficker in narcotics. Ultimately, his statements to police were used as evidence against the trafficker.<sup>39</sup>

Because Mr. Soudijn's paper does not expand on its methodology, it is unclear how these cases were identified or what countries they are from. Nonetheless, the case studies are again illustrative of ways in which bookkeeping services can be misused for money laundering purposes.

## **Company and Trust Formation**

The FATF guidance states that criminals may attempt to confuse or disguise the links between the proceeds of a crime and the perpetrator by forming corporate vehicles or other complex legal arrangements including trusts and companies:

Criminals may seek the opportunity to retain control over criminally derived assets while frustrating the ability of law enforcement to trace the origin and ownership of the assets. Companies and often trusts and other similar legal arrangements are seen by criminals as potentially useful vehicles to achieve this outcome. While shell companies, which do not

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36 Ibid, p 150.

37 Ibid, p 154.

38 Ibid.

39 Ibid, pp 154–55.

have any ongoing business activities or assets, may be used for legitimate purposes such as serving as a transaction vehicle, they may also be used to conceal beneficial ownership, or enhance the perception of legitimacy. Criminals may also seek to misuse shelf companies, which can be formed by accountants, by seeking access to companies that have been “sitting on the shelf” for a long time. This may be in an attempt to create the impression that the company is reputable and trading in the ordinary course because it has been in existence.<sup>40</sup>

The guidance recognizes that accountants in some countries are involved in forming companies and other legal entities, while in others they provide advice at least in relation to initial corporate, tax, and administrative matters.<sup>41</sup> The guidance further states that criminals will sometimes seek to involve accountants in the management of companies or trusts to provide respectability and legitimacy to the company or trust and its activities. Similarly, criminals might seek to have accountants hold shares as a nominee. The guidance recognizes, however, that professional rules in some countries prohibit or restrict those activities.<sup>42</sup>

As I discussed in Chapter 30, I accept that the incorporation of companies and the establishment of trusts or other legal entities in this province requires a lawyer. Nonetheless, accountants provide advice with respect to these matters and require knowledge of the client’s financial circumstances to do so. In providing advice on these matters, therefore, accountants are well placed to observe suspicious circumstances.

## Buying or Selling Property

The FATF guidance states that criminals sometimes use property transfers to disguise transfers of illegal funds or as an investment following the laundering process.<sup>43</sup> Relatedly, Canada’s 2015 national risk assessment states that real estate transactions can involve accountants as facilitators:

The real estate sector is integrated with a range of other sectors, and the purchase and sale of real estate involves a variety of facilitators, including real estate agents, lawyers, accountants, mortgage providers and appraisers ... Although real estate transactions are typically done face-to-face, third parties can be used to conduct the transactions and there is opportunity to put in place complex ownership structures to obscure the beneficial owner and the source of funds used for the purchase.<sup>44</sup>

40 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 27.

41 *Ibid*, para 26.

42 *Ibid*, paras 28–29.

43 *Ibid*, para 22.

44 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015), p 41.

As noted in Chapter 30, the *PCMLTFA* includes as triggering activities the “purchase or [sale of] securities, real property or immovables or business assets or entities.”<sup>45</sup> It also specifies that accountants are covered by the regime whether they conduct the transaction or give instructions with respect to it. Such a purchase or sale clearly gives rise to money laundering risks. Purchasing property is a key way in which criminals may seek to disguise or legitimize ill-gotten gains. To the extent that accountants in this province are engaged in these activities, they raise money laundering risks.

## Performing Financial Transactions

The FATF guidance states that “criminals may use accountants to carry out or facilitate various financial operations on their behalf (e.g. cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers, etc.).”<sup>46</sup> The triggering activities under the *PCMLTFA* accordingly cover performing or providing instructions with respect to the receipt or payment of funds or virtual currency or the transfer of funds, virtual currency, or securities by any means.<sup>47</sup>

CPA Canada’s *Guide to Comply with Canada’s Anti-Money Laundering (AML) Legislation*<sup>48</sup> provides examples in which accountants may be involved in financial transactions:

- a) Your Accounting Firm performs bookkeeping services and has signing authority over the account of a not-for-profit organization client and pays invoices from that account on its behalf.
- b) A client issues a cheque to you as a sole practitioner Accountant in an amount equal to their income tax payable and your accounting fees. You then deposit the cheque and wire the income tax payable to the Canada Revenue Agency from your account.
- c) A client instructs their vendor to settle their invoice by remitting funds to your Accounting Firm and then asks that your firm issues a cheque for the difference between the value of the wire and your outstanding fees.
- d) A client requests assistance in transferring funds from a sanctioned country into Canada, in respect of which an Accountant arranges for Canadian accounts and wire transfers through intermediate countries.<sup>49</sup>

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45 *PCMLTF Regulations*, s 47(1)(b).

46 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 22(d).

47 *PCMLTF Regulations*, s 47(1).

48 Exhibit 393, CPA Canada, *Guide to Comply with Canada’s Anti-Money Laundering (AML) Legislation*, prepared by MNP LLP (2014). This guide was prepared to help CPA Canada’s members and accounting firm understand amendments to the *PCMLTFA* and their obligations: Preface.

49 *Ibid*, pp 4–5.

Mr. McGuire testified that it much more common for accountants to perform financial transactions than real estate transactions. In his experience, the smaller the firm is, “the more likely it is that an accountant is trusted by an individual to perform financial transactions on their behalf, to open bank accounts or to assist in references to opening bank accounts, to assist with making payments, to make out cheques, in preparing the documentation related to those things.”<sup>50</sup>

Some Canadian cases illustrate how accountants’ involvement in financial transactions may raise money laundering risks. In *Neilson*,<sup>51</sup> a certified general accountant (one of the precursors to the CPA designation) was convicted of multiple counts of fraud, theft, and money laundering. He had convinced various individuals to invest in two businesses that he controlled by showing them fraudulent banking and financial statements and making fraudulent representations about the potential and actual results of the businesses.<sup>52</sup> He admitted to defrauding nine investors and a lender of approximately \$2.3 million in total.<sup>53</sup>

The *PacNet* case<sup>54</sup> involved an entity that was sanctioned by the US Office of Foreign Asset Control as a “significant transnational criminal organization” based on its involvement in fraudulent mailings. The BC director of civil forfeiture learned that a bank draft was about to be delivered from PacNet Services’ account in the United Kingdom to an unnamed accounting firm in British Columbia (referred to as “ABC Accounting”) and its principal (referred to as “John Doe #4”); the firm had provided external accounting services to PacNet for many years.<sup>55</sup> PacNet had asked ABC Accounting and John Doe #4 to hold the funds in trust and later disburse them.<sup>56</sup>

*PacNet* did not question the propriety of ABC Accounting and John Doe #4 receiving the funds. Indeed, CPABC submits that there is no indication that the accounting firm did anything illegal.<sup>57</sup> I agree that the case does not focus on the legality or propriety of the firm’s or its principal’s actions. Even so, the case illustrates that accountants and firms may be called upon to hold funds in trust and should be aware that such funds could be illegitimate. I discuss accountants’ trust accounts in Chapter 33.

The *Loewen* case<sup>58</sup> was an appeal of a conviction of two counts of attempting to launder money. The charges were brought following an undercover sting operation. The case mentions a chartered accountant who met with the undercover police agent and agreed to launder bags of cash derived from drug trafficking for a 5 percent commission. The accountant apparently laundered the cash by transferring it to

50 Evidence of M. McGuire, Transcript, January 11, 2021, p 36.

51 *R v Neilson*, 2020 ABQB 556 [*Neilson*].

52 *Neilson* at para 5.

53 *Neilson* at para 8.

54 *British Columbia (Director of Civil Forfeiture) v PacNet Services Ltd*, 2019 BCSC 1658 [*PacNet*].

55 *PacNet* at paras 26, 45.

56 *PacNet* at para 50.

57 Closing submissions, CPABC, para 61.

58 *R v Loewen*, 1999 CanLII 18745 (MB CA) [*Loewen*].

bank accounts in Vancouver on the undercover officer’s instructions. Mr. Loewen participated in the scheme by taking cash to various financial institutions, arranging to obtain money orders and the like. The funds were eventually consolidated into a bank account in Manitoba that Mr. Loewen controlled and forwarded to the Vancouver bank accounts.<sup>59</sup> Although the case does not detail how the accountant transferred the funds, it demonstrates one way in which an accountant’s ability to perform financial transactions can be misused.

Finally, *Joubert*<sup>60</sup> involved a scheme whereby two individuals used a lawyer’s trust account to launder large amounts of cash. The case mentions that a chartered accountant was aware of the transactions in the trust account. Although there is little detail about the accountant’s involvement, it shows that accountants have special knowledge of a client’s financial affairs.

As these cases illustrate, accountants can face money laundering risks with respect to financial transactions, whether they provide advice, conduct the transactions, or give instructions with respect to the transactions. For this reason, as I elaborate in Chapter 32, I am of the view that anti–money laundering regulation must focus not only on transactions; it should encompass advice as well.

## **Preparation, Review, and Auditing of Financial Statements**

The FATF guidance notes that the preparation, review, and auditing of financial statements may be susceptible to misuse where there is no oversight by a professional body or required use of accounting and auditing standards.<sup>61</sup> As I elaborate in Chapter 32, I am satisfied that there is robust regulation in place in British Columbia applicable to auditing services, which significantly mitigates the money laundering risks associated with these activities.

## **CPABC and CPA Canada’s Positions Regarding Risks in the Sector**

CPABC and CPA Canada strongly dispute that there is a money laundering problem in British Columbia with respect to CPAs. They submit that there is “no evidence before the Commission” of CPAs being involved in or enabling money laundering.<sup>62</sup> Instead, there is a “dominant” and “unproven” assumption, which was adopted by Mr. McGuire, that, because money laundering is increasing in complexity, criminals must be enlisting the help of accountants.<sup>63</sup>

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<sup>59</sup> *Loewen* at paras 10–13.

<sup>60</sup> *R v Joubert*, 1992 CanLII 1073 (BCCA) [*Joubert*].

<sup>61</sup> Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 23.

<sup>62</sup> Closing submissions, CPABC, para 6; Closing submissions, CPA Canada, para 71.

<sup>63</sup> Closing submissions, CPA Canada, para 71.

I agree that the available evidence has limitations and that it would not be prudent to come to firm conclusions about the nature and extent of accountant involvement in money laundering in this province based on it. However, I respectfully disagree with CPABC and CPA Canada insofar as they state that there is *no* evidence of CPA involvement.

To begin with, some of the cases reviewed above do involve CPAs and their precursors. More generally, however, I am not prepared to accept that the limited state of the evidence means CPAs are not involved in money laundering. It may be that cases are difficult to prove or that cases involving accountants are generally not investigated, as Dr. Benson's research suggests.<sup>64</sup> It may also be the case that law enforcement and prosecutors prefer to use accountants as witnesses in cases relating to primary offenders, as Dr. Benson's research also suggests and as appears to have occurred in some of the cases I reviewed above. Finally, the fact that CPABC does not consider anti-money laundering to be within its mandate or the scope of its practice reviews and does not otherwise investigate anti-money laundering can readily be seen as a factor going into the lack of disciplinary cases. The international experience, the limited evidence available about the Canadian context, and common sense provide a sufficient basis to conclude that there is a significant risk of accountants being used to facilitate money laundering, and that the services they provide give them insight that could allow them to identify suspicious activity.

CPABC and CPA Canada further submit that, if there is a risk of money laundering in this sector, it lies with unregulated accountants. This is because unregulated accountants are not subject to CPABC's Code or regulatory jurisdiction and are not covered by any *PCMLTFA* regime.<sup>65</sup> As CPABC explains:

Accountants are unlike many of the other professionals who are often labeled as possible "enablers," "facilitators," or "gatekeepers." Unlike lawyers, notaries, or real estate professionals, the majority of people working in the accounting sector in BC are not registered or licensed by any regulatory body, but rather are unregulated accountants who are not subject to any professional regulation, oversight or accountability at the provincial level.

...

Since unregulated accountants operate outside of CPABC's regulatory jurisdiction and oversight, CPABC generally has no contact with them and no direct knowledge of who they are. However, to the extent there may be any money laundering risk relating to the provision of accounting services, that risk clearly applies to unregulated accountants who provide many of the same services, but without being subject to CPABC's educational and training requirements, the ethical obligations of the CPA profession, or CPABC's regulatory oversight.<sup>66</sup>

64 See Chapter 26.

65 Closing submissions, CPABC, para 83; Closing submissions, CPA Canada, para 71.

66 Closing submissions, CPABC, paras 18, 21.

With respect, I do not agree that the fact of CPAs being regulated and subject to the *PCMLTFA* means that any risk in the sector lies solely with unregulated accountants. As I expand in the next chapter, compliance among CPAs and firms with the *PCMLTFA* appears to be low. Further, CPABC acknowledges that it does not regulate for anti-money laundering purposes. Thus, I do not consider that CPABC's regulation or the fact of the *PCMLTFA* applying to accountants has significantly lessened the risk of CPA involvement in money laundering. It may be that unregulated accountants pose an even greater risk, but I do not accept that provincial regulation that explicitly does not consider anti-money laundering lessens the risks facing CPAs.

CPABC and CPA Canada point to various factors that lessen the risk among CPAs. The first is that many activities identified by FATF involving significant risk (i.e., company and trust formation, real estate) are beyond their practice.<sup>67</sup> As I have said, whether CPAs actually incorporate a company, create a legal entity, or perform a particular kind of transaction, they provide advice with respect to those activities and thus are exposed to risks.

A second factor said to decrease risk is that FATF states that the preparation, review, and auditing of financial statements may be susceptible to misuse by criminals only “where there is a lack of professional body oversight or required use of accounting or auditing standards.”<sup>68</sup> CPABC does provide significant oversight, as do others such as the Canadian Public Accountability Board and the Public Company Accounting Oversight Board.<sup>69</sup> As I elaborate in the next chapter, I agree that auditing is already heavily regulated and accept that further anti-money laundering regulation is not necessary in this regard.

A third factor said to decrease risk is that CPABC understands that the use of trust accounts and acceptance of cash by its members is low.<sup>70</sup> I return to this subject in Chapter 33. However, I note here that this understanding by CPABC is based on a survey with significant limitations and therefore does not provide a strong basis to conclude that such use is low. CPABC must do more to understand its members' activities in this regard.

Finally, CPABC and CPA Canada point out that the 2015 national risk assessment said that accountants (without differentiating between CPAs and unregulated accountants) have a “medium vulnerability” rating and that only one of the 21 distinct sectors had a lower risk rating.<sup>71</sup> This is true. However, given the relatively scarce discussion of accountants in the risk assessment, I find it difficult to rely on it to conclude that accountants pose a low risk.

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67 Ibid, para 78.

68 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 23.

69 Closing submissions, CPABC, para 79.

70 Closing submissions, CPABC, para 80; Closing submissions, CPA Canada, para 76.

71 Closing submissions, CPABC, para 81; Closing submissions, CPA Canada, para 75.

On the whole, I agree with CPABC and CPA Canada that evidence is lacking on accountant involvement in money laundering. However, with respect, I do not agree with their subsequent reasoning. They essentially reason that, because there is little direct evidence of CPA involvement in money laundering, there is no problem. In my view, the more likely explanation is that insufficient law enforcement, regulatory, and academic attention has been paid to the subject.

## **Conclusion**

This chapter has reviewed the money laundering risks in the accounting profession, while noting that evidence is generally lacking on the precise nature and extent of accountant involvement in money laundering. While I am unable to make definitive findings about the nature and extent of accountant involvement in money laundering in British Columbia, it is clear that accountants are at a significant *risk* of being used to facilitate money laundering. This risk must be addressed both by the *PCMLTFA* and by CPABC. In the next two chapters, I discuss ways in which anti-money laundering regulation of accountants can be strengthened to address these risks.

## Chapter 32

# Limitations of the *PCMLTFA* and the Need for Additional Provincial Measures

In order to evaluate money laundering vulnerabilities and recommend improvements in the accounting sector in British Columbia, I must consider the current state of regulation, compliance, and oversight of accountants in this province. Significant evidence was led before me relating to the scope of the federal *PCMLTFA* and the level of compliance by chartered professional accountants (CPAs) and accounting firms with the reporting and other requirements mandated by that legislation. Witnesses endorsed expanding the scope of the regime, and evidence put before me suggests that the understanding and compliance of CPAs and firms with the *PCMLTFA* regime is low. Despite this low level of understanding and compliance, FINTRAC has conducted few compliance examinations of CPAs and accounting firms.

As a provincial commissioner, my jurisdiction is limited to recommending changes that fall within the provincial domain; I am not permitted to make recommendations to the federal government. However, in evaluating the money laundering risks facing the accounting sector in British Columbia and recommending improvements to the provincial government, it is essential that I analyze the current state of anti-money laundering regulation of accountants in this province and evaluate its sufficiency. As this regulation is at present contained almost entirely within the *PCMLTFA*, this cannot be accomplished without discussing the current scope of the *PCMLTFA* and the level of compliance by CPAs and accounting firms with their obligations. It is important to understand what form of anti-money laundering regulation of accountants currently occurs in order to consider what further provincial measures should be put in place, including what kind of regulation CPABC should undertake.

In what follows, I first explain why, in my view, CPABC's mandate is broad enough to encompass anti-money laundering regulation and why it should engage in this work. I then review evidence highlighting limitations with the current state of anti-money laundering regulation of accountants with a view to strengthening provincial measures in the accounting sector. I also examine the limited reach of the *PCMLTFA* and its impact in this province, which will allow the provincial government to decide whether to request that the federal government amend the *PCMLTFA*. Finally, I discuss the apparently low compliance by CPAs with the *PCMLTFA* regime.

## CPABC's Mandate

Witnesses from CPABC and CPA Canada expressed the view before me that CPABC's mandate does not extend to anti-money laundering regulation of its members. In their view, this regulation properly falls to FINTRAC, and it would be duplicative for CPABC to engage in such regulation as well.

I respectfully disagree with this position for two reasons. First, in my view, CPABC's mandate, as it currently stands, is broad enough to encompass anti-money laundering regulation, as CPABC is mandated to regulate all aspects of members' practice in the public interest. Second, as I discuss later in this chapter, the anti-money laundering regulation of accountants provided for in the *PCMLTFA* is insufficient to address the risk in the accounting sector. The fact that CPAs and accounting firms are subject to the *PCMLTFA* does not mean that FINTRAC is or should be the sole anti-money laundering regulator for accountants.

It is convenient to begin with CPABC's mandate, as articulated in the *CPA Act*:

### 3 The CPABC has the following objects:

- (a) to promote and maintain the knowledge, skill and proficiency of members and students in the practice of accounting;
- (b) to establish qualifications and requirements for admission as a member and continuation of membership, and for enrolment and continuation of enrolment of students;
- (c) to regulate all matters, including competency, fitness and professional conduct, relating to the practice of accounting by members, students, professional accounting corporations and registered firms;
- (d) to establish and enforce professional standards;
- (e) to represent the interests of members and students.<sup>1</sup>

<sup>1</sup> *Chartered Professional Accountants Act*, SBC 2015, c 1 [*CPA Act*], s 3.

Subsection (c) states that one of CPABC’s objects is to regulate *all* matters relating to a CPA’s practice and refers to the competency, fitness, and professional conduct of its members. Mr. Tanaka testified that courts have recognized the protection of the public as the “transcendent purpose of CPABC” and that “we regulate in that fashion ... our paramount object or mandate is the protection of the public.”<sup>2</sup>

CPABC further notes that it has “general authority under the *CPA Act* to regulate all matters relating to the practice of accounting by its members” and that “[a]lthough the *CPA Act* does not give CPABC a specific mandate over money laundering, CPABC may use these regulatory tools, as appropriate, to respond to money laundering-related concerns.”<sup>3</sup> It submits that the CPA Code is “nimble and flexible enough to respond to a wide range of potential issues in an ever-changing business environment.”<sup>4</sup> Indeed, Mr. Tanaka testified that several sections of the CPA Code are broad enough to prohibit or encompass money laundering conduct, namely:

- Rule 102, which requires members to self-report convictions and regulatory offences;
- Rule 201, which requires members to abide by the *CPA Act*, the Bylaws, the Regulations, and the CPA Code;
- Rule 205, which prohibits members from being involved in false or misleading statements;
- Rule 211, which requires members to report non-compliance by other members; and
- Rule 213, which prohibits involvement in unlawful activity.<sup>5</sup>

Despite the foregoing, CPABC takes the position that all anti-money laundering regulation falls to FINTRAC. It notes that “FINTRAC is the regulatory and oversight authority for Canada’s [anti-money laundering] regime” and that “CPABC does not have any specific [anti-money laundering] mandate under its governing legislation” nor is it given a role under the *PCMLTFA*.<sup>6</sup> Accordingly, CPABC has focused on education and providing resources to assist its members in meeting their *PCMLTFA* obligations.<sup>7</sup>

It is important to recognize what exactly FINTRAC does. Canada created FINTRAC to fill the role of a “financial intelligence unit” as outlined by the FATF recommendations. Recommendation 29 describes the function of a financial intelligence unit:

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2 Evidence of E. Tanaka, Transcript, January 12, 2021, p 122. See also Evidence of L. Liu, Transcript, January 12, 2021, p 96; Closing submissions, CPABC, para 23, citing *McPherson v Institute of Chartered Accountants of British Columbia*, 1988 CanLII 3106 2589 (BCSC) at para 31, *aff’d* 1991 CanLII 800 (BCCA).

3 Closing submissions, CPABC, para 4.

4 *Ibid*, paras 26–27.

5 Transcript, January 12, 2021, pp 16–18, 20–21.

6 Closing submissions, CPABC, paras 34, 36, 93–94. See also Evidence of E. Tanaka, Transcript, January 12, 2021, p 26; Evidence of L. Liu, Transcript, January 12, 2021, p 29; Closing submissions, CPA Canada, para 80.

7 Evidence of E. Tanaka, Transcript, January 12, 2021, pp 26–27; Evidence of L. Liu, Transcript, January 12, 2021, p 29.

Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative, and law enforcement information that it requires to undertake its functions properly.<sup>8</sup>

The financial intelligence unit's role is therefore to gather intelligence and information, distribute it to law enforcement and other bodies, and monitor compliance with the *PCMLTFA*. This kind of supervision is qualitatively different from that undertaken by self-regulatory bodies like CPABC, which is mandated to regulate *all* aspects of members' conduct and to ensure high standards of work, professionalism, and ethics. Further, FINTRAC lacks the same access to reporting entities as regulators, who can view all parts of their members' files (even confidential information), compel information, and impose important sanctions.

The volume of reporting entities under FINTRAC's supervision also renders it unable to undertake the same detailed supervision of reporting entities as a regulator like CPABC. As set out in FATF's 2016 mutual evaluation, FINTRAC supervised 26,000 designated non-financial businesses and professions and had a total staff of 79 members in 2014–15.<sup>9</sup> As a practical matter, the volume of reporting entities that FINTRAC supervises, combined with its relatively small team, provides it with far less capacity to regulate every reporting entity than a regulator like CPABC can do. Moreover, FATF evaluators noted that FINTRAC's "understanding of the different sectors and business models and of how [anti-money laundering / counterterrorist financing] obligations apply taking into account materiality and context is somewhat limited," and that, although FINTRAC had increased its understanding of the different sectors, it "is a challenge given the large number and diverse range of entities it supervises."<sup>10</sup> In contrast, regulators have particular knowledge of the populations they regulate.

As the above demonstrates, CPABC has a broad public interest mandate and authority over all aspects of its members' practice. The CPA Code already contains provisions that are broad enough to address intentional or unwitting involvement by CPAs in money laundering. In my view, CPABC's public interest mandate is broad enough to encompass anti-money laundering, and CPABC should begin regulating its members for this purpose. Notably, the Law Society of British Columbia has a similarly broad public interest mandate and has long held the view that regulating in

8 Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [*FATF Recommendations*], p 22, recommendation 29.

9 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016) [*FATF Fourth Mutual Evaluation*], paras 179, 253.

10 *Ibid.*, para 253.

the public interest necessitates conducting anti-money laundering regulation (see Chapters 27 and 28).

I accept that FATF describes FINTRAC as the anti-money laundering “supervisor” in its fourth mutual evaluation report. However, it also notes that provincial regulators have a role to play. In my view, it is essential that *both* FINTRAC and self-regulatory agencies play roles in anti-money laundering regulation based on their respective mandates and powers. It is insufficient for CPABC to proceed on the footing that FINTRAC is the regulator and to limit its involvement to education and support. This is not to say that CPABC must duplicate measures in place under the *PCMTLFA*; to the contrary, as I set out below and in Chapter 33, CPABC should play a complementary role and address matters that are not covered by the *PCMLTFA*.

## **Exclusion of Unregulated Accountants from the *PCMLTFA***

As I noted in Chapter 30, the *PCMLTFA* defines “accountant” as “a chartered accountant, a certified general accountant, a certified management accountant or, if applicable, a chartered professional accountant.”<sup>11</sup> This definition excludes unregulated accountants. In other words, unregulated accountants have no obligations under the *PCMLTFA*, even if they conduct triggering activities.

In their report for the Commission, Mr. McGuire and Ms. Cywinska adopt broad definitions of “accountant” and “accounting firm” to include both CPAs and unregulated accountants.<sup>12</sup> Mr. McGuire testified that they did so because they consider it to be consistent with the FATF approach, which does not differentiate based on the designation of an accountant. He explained:

[R]egardless of what designation you hold, if you have the skills, wherever gained, and you perform these services or help somebody to prepare for performing these services, you pose the same threat as someone who’s designated.<sup>13</sup>

CPABC expressed concerns with Mr. McGuire and Ms. Cywinska’s approach of defining these terms broadly. It notes that the 2016 Census indicates that, of the approximately 89,000 individuals working as accountants in British Columbia, only around 31,000 are CPAs. It submits:

By adopting a broad definition of accountants and failing to make any distinction between CPAs and unregulated accountants throughout the analysis, the McGuire Report disregards:

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11 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 1(1).

12 Exhibit 394, *Report on Accountants, Money Laundering, and Anti-Money Laundering*, prepared by the amlSHOP (October 31, 2020 and updated December 31, 2020) [McGuire Report], para 11.

13 Transcript, January 11, 2021, p 20.

- The extensive education and training of CPAs;
- That CPAs are the only accountants in British Columbia subject to regulatory oversight, including CPABC’s ethical and professional standards; and
- The fact that only CPAs are subject to Canada’s anti-money laundering regime and that unregulated accountants are not.<sup>14</sup>

I accept that failing to distinguish between CPAs and unregulated accountants when identifying money laundering vulnerabilities in the accounting sector risks blending two groups with quite different levels of regulation and oversight. I am mindful of the distinction between the two groups and have considered this distinction where it is relevant to my analysis. That said, I agree with Mr. McGuire that the activities of *all* accountants should be considered when evaluating risk, measures currently in place, and opportunities for improvement. Apart from the activities listed in section 47 of the *CPA Act*, all other accounting activities can be undertaken by both CPAs and unregulated accountants in this province. Regulation may lessen the money laundering risks, but it is the services rendered (whether by a CPA or an unregulated accountant) that are of interest to criminals.

Mr. McGuire and Ms. Cywinska urge that the definition of “accountant” in the *PCMLTFA* should be amended to include all those who perform FATF-specified accounting services, rather than focusing on professional designations.<sup>15</sup> CPABC and CPA Canada support an extension of the *PCMLTFA* regime to capture unregulated accountants.<sup>16</sup> As I noted in Chapter 31, CPABC submits that any risks in the sector rest with unregulated accountants; it therefore states that any new regulatory measures should be focused on unregulated accountants rather than CPAs.<sup>17</sup>

Although, as I explained in Chapter 31, I do not agree that *all* risks in the accounting sector lie with unregulated accountants, it is problematic that approximately two-thirds of accountants in this province are not regulated or subject to the *PCMLTFA*. As a result, the majority of those offering accounting services that money launderers may require have no supervision or obligations to report suspicious activity or collect client identification and verification information. With respect to the *PCMLTFA* specifically, it seems anomalous that any number of accountants may be performing the same activities as CPAs and yet have no obligations under that regime. From a risk-based perspective, there would appear to be no less risk (and possibly even more risk) if a non-designated accountant performs certain services compared with a designated one.

14 Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021) [CPABC McGuire Review], pp 1–2.

15 Exhibit 394, McGuire Report, para 86.

16 Exhibit 403, CPABC McGuire Review, p 18; Closing submissions, CPABC, paras 66, 105–7; Closing submissions, CPA Canada, para 69.

17 Closing submissions, CPABC, paras 63–64.

The decision by the BC Legislative Assembly (and, as I understand it, every province) to allow unregulated accountants to perform most accounting services without any supervision or oversight is not a matter that is squarely before me. I have not heard evidence about why this is the case or what unintended consequences could arise from a decision to subject all accountants to regulation. The issue also touches on matters extending beyond my mandate. Accordingly, I am not prepared to make a recommendation that unregulated accountants should be subject to regulation by CPABC or some other body. However, I consider it essential that the Government of British Columbia better understand the kind of work being performed by unregulated accountants in this province, given that many of the same money laundering risks arise whether a service is provided by a professional or unregulated accountant. I accordingly recommend that the Province study the unregulated accounting sector in this province and consider whether to subject unregulated accountants to some form of anti-money laundering regulation and oversight.

**Recommendation 70:** I recommend that the Province study the nature and scope of work performed by unregulated accountants in British Columbia to determine where they work, what clientele they service, what services they provide, whether those services engage a significant risk of facilitating money laundering, and, if so, what some form of anti-money laundering regulation and oversight is warranted.

## Limited Triggering Activities

As I explained in Chapter 30, the *PCMLTFA* currently applies to CPAs and accounting firms only when they complete the following “triggering activities”:

- receiving or paying funds or virtual currency;
- purchasing or selling securities, real property or immovables, or business assets or entities; or
- transferring funds, virtual currency, or securities by any means.<sup>18</sup>

FATF’s fourth mutual evaluation of Canada in 2016 noted that the *PCMLTFA* regime does not apply to “all relevant activities of accountants.”<sup>19</sup> FATF Recommendations 22 and 23 state that accountants should be subject to customer due diligence measures and suspicious transaction reporting requirements when they engage in the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;

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<sup>18</sup> *PCMLTF Regulations*, s 47.

<sup>19</sup> Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, p 161.

- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.<sup>20</sup>

Recommendation 23 also “strongly encourages” countries to extend these measures to “the rest of the professional activities of accountants, including auditing.”<sup>21</sup>

The FATF fourth mutual evaluation report found that Canada was not technically compliant with the FATF recommendations relating to accountants, in part because several of the above accounting services were not included as triggering activities in the *PCMLTFA*.<sup>22</sup>

In Mr. McGuire’s view, the limited scope of triggering activities ultimately deprives FINTRAC of important data, which is problematic given that “it’s generally accepted that financial intelligence is the way to defeat money laundering and so accountants have a front seat to these transactions.”<sup>23</sup> Further, on a practical level, Mr. McGuire testified that the current *PCMLTFA* scheme results in a lack of clarity for the profession given the various exceptions. For this reason, while preparing CPA Canada’s anti-money laundering guide,<sup>24</sup> he included a “waterfall diagram” that asked a series of questions CPAs could use to determine if their activities fell under the *PCMLTFA* regime.<sup>25</sup> In describing the “waterfall diagram” he explained the difficulties for the profession as follows:

So if you don’t provide those accounting services to the public, then you are not covered. So that’s an important point ... you could be providing [triggering] activities ... and not be an accounting firm and have no obligation under the legislation. That is why I’m a big fan of approaches that look to the services you provide and not necessarily what designation you have.

And then the next question is [even if you are providing] ... accounting services to the public, [do you] ... have an employee who is professionally designated with a Canadian designation? So picture, if you will ... a bookkeeping firm where the individual at the helm of the bookkeeping firm is a foreign trained chartered accountant [for example] ... a US CPA. Well, that firm would not qualify once we get to this point in the table

<sup>20</sup> Exhibit 4, Appendix E, *FATF Recommendations*, p 18, Recommendation 22(d).

<sup>21</sup> *Ibid*, pp 18–19, Recommendation 23.

<sup>22</sup> *Ibid*, pp 159–62, finding Canada non-compliant with Recommendations 22 and 23 in part because of the scope of accountants’ activities.

<sup>23</sup> Transcript, January 11, 2021, p 41.

<sup>24</sup> Exhibit 393, CPA Canada, *Guide to Comply with Canada’s Anti-Money Laundering (AML) Legislation*, prepared by MNP LLP (2014).

<sup>25</sup> *Ibid*, pp 8–11.

because they don't have at least one of their folks who are professionally designated with a Canadian professional designation.

So then you get to the next point and you say, well, do you perform transactions or give instructions that involve triggering activities, otherwise known as qualifying activities. Those are those three there: receiving, paying, or transferring funds; purchasing, selling property, business assets, or entities; [and] purchasing, transferring, selling securities. So you see the problem here is that ... this is performing the transactions ... or giving instructions, not advice. So if you get to this point in the diagram and you realize ... that [if] you're only giving advice with respect to these things, you're still ... not covered.

Let's say that you are covered. And then the next question is are you only doing those things with respect to [an] insurance engagement or trustee in bankruptcy appointments. And if the answer is yes, again you're not covered.

So ... in this guide together with CPA Canada we've spent ... nearly four pages just to try to explain to a person or a firm whether or not they even have obligations. And ... I think you can see as we go through the waterfall diagram that it gets narrower and narrower to the point where it might not capture all the concepts that the FATF say are subject to a money laundering threat by the sorts of services accountants provide.<sup>26</sup>

CPABC and CPA Canada are opposed to any recommendation that would expand the scope of triggering activities under the *PCMLTFA*. CPA Canada submits that the nature and extent of money laundering risks can be answered by the scope of the Act. In other words, the "risks arise when an accountant is acting as an intermediary in the financial system," which is reflected in the triggering activities.<sup>27</sup> It explains:

These triggering activities reflect how the *PCMLTFA* has been intentionally sculpted to target the risk posed by the direct involvement of a CPA or Accounting Firm in a transaction that actually interfaces with the financial system. When directing the transaction or providing instructions, the CPA or Accounting Firm is directly interacting with the financial system and so is scoped into the regime, unlike when they are merely providing advice and have no involvement in the transaction itself.<sup>28</sup>

José Hernandez, a CPA who formerly represented CPA Canada at the Department of Finance's Public-Private Advisory Committee on Money Laundering and Terrorist Financing,<sup>29</sup> similarly testified that the current triggering activities are those in which

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26 Transcript, January 11, 2021, pp 60–62.

27 Closing submissions, CPA Canada, para 36.

28 Ibid, para 38.

29 See Chapter 33.

accountants “are actually transacting in a way that is having an impact on the financial system.”<sup>30</sup> Ms. Wood-Tweel added that this kind of activity is “not core necessarily to the business that we do, which is public accounting. It can happen, but it’s not as common as one might think.”<sup>31</sup>

With respect, I do not agree that the analysis can begin and end with what activities are included in the *PCMLTFA*. It may be that the intention was to include only activities directly implicating the financial system, but that is a different question from whether other activities that do not “directly” implicate the financial system also pose a risk.

In what follows, I review the various accounting services flagged by the FATF as presenting money laundering risks and consider whether additional anti-money laundering regulation is necessary. From this review, I arrive at the following conclusions and recommendations.

First, the Province of British Columbia should advocate for amendments to the *PCMLTFA* to include the preparation for and the provision of advice with respect to triggering activities.

**Recommendation 71:** I recommend that the provincial Minister of Finance urge her federal counterpart to introduce amendments to the *Proceeds of Crime (Money Laundering) and Financing of Terrorism Act* so that accountants’ reporting and other obligations arise when they prepare for and provide advice about triggering activities.

Second, CPABC should impose client identification and verification measures for high-risk activities, namely the provision of advice with respect to financial transactions and tax affairs, as well as private sector bookkeeping. These measures should include a requirement to verify a client’s source of funds, in line with the provisions in the Code of the International Ethics Standards Board for Accountants on handling the property of others and determining source of funds.<sup>32</sup> It is important that CPABC impose such measures because expanding the scope of triggering activities in the *PCMLTFA* will not, on its own, address the risks in the accounting sector. As I have discussed throughout this Report, particularly in Chapter 7, a repeated criticism of the *PCMLTFA* regime is that it generates a high volume of low-quality reports and that intelligence is not shared with law enforcement and other stakeholders as often as would be desirable. Further, as I discuss below, CPAs appear to have a poor understanding of, and have demonstrated low compliance with, the *PCMLTFA* regime. All of this underscores that CPABC must undertake its own anti-money laundering regulation.

<sup>30</sup> Transcript, January 13, 2021, p 26.

<sup>31</sup> Transcript, January 13, 2021, p 53.

<sup>32</sup> Ms. Wood-Tweel testified that CPA Canada is doing a “mapping project” in which it is comparing all the Canadian provisions with the IESBA provisions: Transcript, January 13, 2021, p 38.

**Recommendation 72:** I recommend that the Chartered Professional Accountants of British Columbia implement client identification and verification requirements, as well as requirements to verify a client’s source of funds, that apply, at a minimum, when a chartered professional accountant engages in the following activities:

- preparing for and providing advice with respect to financial transactions, including real estate transactions;
- preparing for and providing advice with respect to the use of corporations and other legal entities; and
- private-sector bookkeeping.

Finally, as I discuss further in Chapter 8, the AML Commissioner should be responsible for monitoring anti-money laundering measures put in place by CPABC going forward.

## Preparation for Transactions and Advice

The FATF recommendations state that accountants should be subject to reporting obligations both when they execute and prepare for transactions.<sup>33</sup> In contrast, the Canadian regime applies only when a CPA or firm engages in or gives instructions with respect to triggering activities. Thus, the Canadian regime is narrower than the FATF recommendations insofar as it excludes preparation for triggering activities.

The FATF recommendations do not specify what is meant by “preparing for” transactions. However, it seems logical that it would include the provision of advice. FINTRAC has issued an interpretation notice distinguishing between “giving advice” and “giving instructions”:

When you **give instructions** for any of the [triggering] activities, it means that you actually direct the movement of funds. By contrast, when you **provide advice** to your clients, it means that you make recommendations or suggestions to them. Providing advice is not considered to be giving instructions.

**Example of giving instructions:** “Based on my client’s instructions, I request that you transfer \$15,000 from my client’s account, account number XXX, to account number YYY at Bank X in Country Z.”

**Example of providing advice:** “For tax purposes, we recommend that you transfer your money into a certain investment vehicle.”<sup>34</sup>

<sup>33</sup> FATF’s Recommendation 22 states that accountants should be subject to customer due diligence and record-keeping obligations when they *prepare for or carry out* listed activities: Exhibit 4, Appendix E, *FATF Recommendations*, p 18.

<sup>34</sup> FINTRAC Interpretation Notices, No 2, “Accountants – Giving Instructions Versus Providing Advice” (July 8, 2008), <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2008-07-08-eng>.

Therefore, FINTRAC does not consider giving advice to constitute “giving instructions.” As the *PCMLTFA* refers to engaging in triggering activities or giving instructions with respect to them, providing advice is not covered. Mr. McGuire testified that this omission is problematic given that, in his experience, accountants provide advice far more often than they engage in or give instructions with respect to transactions:

[F]ar less often does an accountant provide specific instructions for a particular financial activity than does an accountant provide advice about how to structure affairs in a tax-efficient manner. For instance, the advice is far more common an activity and, in my view, just as threatening from a money laundering perspective as conducting the instructions themselves.

[I]n fact, if I saw an accountant conducting transactions through one of the accounts we monitor for a client, it would arouse far more suspicion than if the client conducted it themselves, and I wouldn't know about the advice behind the scenes, for instance. And so, as I say, only the actual instructions themselves are covered by Canadian law.<sup>35</sup>

He added that preparation and advice about the use of corporations and other legal entities are services that are routinely provided by accountants.<sup>36</sup>

Ms. Wood-Tweel testified that advice is not included as a triggering activity under the *PCMLTFA* because that would be contrary to the intent of the legislation, which is focused on interactions with the financial system:

It's been sculpted in a way to look at the risk posed by the involvement of an accountant in a transaction that actually interfaces with the financial system, and the provision of advice doesn't. However, clearly what has been made clear is that if you are providing instructions and you are directing, then that is the same thing as being actually involved in the direct transaction. So there's a differentiation being made between advice and between instructions.<sup>37</sup>

In my view, it is problematic that the provision of advice and preparation for transactions are not covered by the *PCMLTFA*. When providing advice on financial matters or helping a client prepare for transactions, an accountant needs to have a good understanding of the client's financial affairs. In doing so, the accountant is well placed to observe suspicious circumstances, yet currently has no obligation to report the suspicious activity. Further, it appears that accountants provide advice much more frequently than they engage in triggering activities.

For this reason, I have recommended above that the Province seek amendments to the *PCMLTFA* to include the provision of advice and preparation for triggering activities.

<sup>35</sup> Transcript, January 11, 2021, p 40.

<sup>36</sup> Ibid, p 34. See also Exhibit 394, McGuire Report, p 20, footnote 13.

<sup>37</sup> Transcript, January 13, 2021, pp 26–27.

I have also recommended that CPABC implement client identification and verification measures that will apply when a CPA prepares for or provides advice on financial transactions and the use of corporations and other legal entities.

## Bookkeeping

Ms. Wood-Tweel testified that bookkeeping likely does not constitute a triggering activity under the *PCMLTFA*:

The keeping of books is basically – I say this with respect – a paper process. So it is not the movement of assets and it is not the movement of money. It is the recording of transactions on paper and is not anything that ends up leading to a financial transaction itself with the financial system.<sup>38</sup>

Mr. Hernandez added that the “nostalgic view of an accountant actually booking the revenues and the expenses” is “not really true for most corporations” today, given that many use compartmentalized and automated services around the world.<sup>39</sup>

While I take the point that the nature of bookkeeping may have changed over the years, I consider that private sector bookkeeping nonetheless presents opportunities for accountants to come across suspicious activity relating to money laundering. Indeed, several cases I reviewed in Chapter 31 related to private sector bookkeeping.

It is also interesting to consider the situation in the United Kingdom. Ms. Wood-Tweel testified that, whereas a suspicious transaction report in Canada requires a transaction or attempted transaction, the United Kingdom uses “suspicious activity reports” that do not necessarily require a transaction; rather, “circumstances may be observed, seen or arise where suspicion is formed.” She gave the example that an accountant might observe that the possessions of an individual were inconsistent with their overall income, which may in some situations arouse suspicion that needs to be reported.<sup>40</sup> Although I am mindful that the two systems are structured differently, the UK model seems to recognize that suspicions can arise in circumstances not involving financial transactions.

In my view, it is crucial to impose some form of anti-money laundering regulation on private sector bookkeeping activities. As the *PCMLTFA* focuses on transactions, it is not surprising that its reporting and other requirements do not extend to bookkeeping services. Given this context, I have concluded that anti-money laundering regulation over private sector bookkeeping performed by CPAs in this province ought to be done by CPABC. I have therefore recommended above that CPABC implement client identification and verification requirements that would apply when a CPA engages in private sector bookkeeping activities.

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38 Ibid, p 27.

39 Transcript, January 13, 2021, pp 28–29.

40 Transcript, January 13, 2021, pp 141–42.

## Auditing and Assurance Services

FATF strongly recommends, but does not require, that auditing be included as a triggering activity.<sup>41</sup> Mr. McGuire and Ms. Cywinska express the view that auditing should be included as a triggering activity under the *PCMLTFA*.<sup>42</sup> However, CPABC and CPA Canada take the opposite view, noting that there are various reasons why the exception for audits, review, and compilation agreements exist and should continue to exist:

- They do not involve interaction with the financial system, which is the approach taken in the *PCMLTFA*. Their exclusion aligns with the goal of targeting activities that involve financial intermediation.<sup>43</sup>
- Auditing activities are already heavily regulated, being “subject to the requirements of the profession and, depending on the circumstances, the Canadian Public Accountability Board and Public Company Accounting Oversight Board.” Further, the Canadian Auditing Standards apply.<sup>44</sup>
- The Canadian Auditing Standards already state that if a CPA comes across information suggesting non-compliance with laws and regulations, including money laundering, they should escalate the issue with management. If the issue cannot be resolved, they are encouraged to seek legal advice and may need to resign.<sup>45</sup>
- Auditing was not noted as an area of deficiency in the 2016 FATF mutual evaluation.<sup>46</sup>
- On the whole, “[c]ompliance with the FATF Recommendations must be interpreted within the legislative and regulatory context of each member country. In Canada, these services are adequately regulated, and scoping into the federal regime is not needed.”<sup>47</sup>

As I noted in Chapter 30, three of the Canadian Auditing Standards (CAS) deal with money laundering. This includes CAS 250, which states that auditors who identify or suspect non-compliance with laws and regulations must determine if they are required to report to an appropriate authority and potentially seek legal advice and resign if the issue cannot be resolved.

In my view, the auditing regulation currently in place by CPABC is sufficiently rigorous that additional anti-money laundering regulation of these services is not

41 FATF’s Recommendation 23(a) states that “[c]ountries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing”: Exhibit 4, Appendix E, *FATF Recommendations*, p 18.

42 Exhibit 394, McGuire Report, para 88; Mr. McGuire testified that he is “less convinced that professional accountants are complicit in the preparation of assurance statements for those that they know are laundering money”; rather, the point is that reviewing and auditing financial statements is an opportunity to observe potential crime and money laundering: Transcript, January 11, 2021, p 37.

43 Closing submissions, CPA Canada, paras 41, 78.

44 Ibid, paras 41, 78; Closing submissions, CPABC, para 104.

45 Closing submissions, CPA Canada, para 42.

46 Ibid, para 44.

47 Ibid, para 78.

necessary. When conducting auditing and assurance services, CPAs are held to a very high standard of conduct and are subject to extensive regulation by CPABC and other independent boards. Further, the Canadian Auditing Standards already address the possibility of coming across indicators of illegality including money laundering in the course of an audit and set out recommended actions for auditors. Therefore, I am satisfied that, from an anti-money laundering perspective, additional regulation for auditing and assurance services is not necessary.

## Insolvency and Related Activities

As I noted in Chapter 30, FINTRAC does not consider the following activities to be “providing accounting services to the public”:

- Acting as a receiver pursuant to a Court order or by way of a private letter appointment pursuant to the terms of a security interest;
- Acting as a trustee in bankruptcy; and
- Acting as a monitor under the provisions of the *Companies’ Creditors Arrangement Act* [RSC 1985, c C-36], or any other proceeding that results in the dissolution or restructuring of an enterprise or individual and to which the firm, individual or insolvency practitioner serves as an officer of the Court or agent to a creditor(s) or the debtor.<sup>48</sup>

The policy rationale for these exclusions is that there is a very low risk of money laundering with respect to these activities, given the extensive court oversight and the reporting obligations that already exist under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.<sup>49</sup>

In my view, given the extensive court supervision and highly regulated nature of insolvency proceedings, there is a very low risk of these activities being misused for money laundering purposes. Accordingly, I am satisfied that further anti-money laundering regulation in this area is not necessary.

## Compliance Issues

The evidence before me suggests that compliance by CPAs and accounting firms with the *PCMLTFA* is low, and that, despite this low reporting, FINTRAC conducts few compliance examinations of CPAs or firms.

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48 FINTRAC, Interpretation Notices, No 7, online: <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2011-02-17-eng>.

49 Evidence of M. McGuire, Transcript, January 11, 2021, pp 64–65; Closing submissions, CPA Canada, paras 45, 79.

## Low Reporting

The 2016 FATF fourth mutual evaluation report indicates that, between 2011 and 2015, only one suspicious transaction report was filed by an accountant or accounting firm in Canada.<sup>50</sup> The report accordingly noted that “accountants’ level of awareness of [anti–money laundering / counterterrorist financing] obligations is quite low” and that the “fact that no [suspicious transaction reports] have been filed by accountants ... raise[s] concern.”<sup>51</sup>

It is curious that the number of suspicious transaction reports filed by accountants and firms between 2001 and 2007 was somewhat higher, ranging from seven to 40 per year, for a total of 119 reports.<sup>52</sup> Nevertheless, the evaluators who conducted the third mutual evaluation in 2008 characterized those numbers as “relatively low” even though accountants and firms had been subject to outreach from FINTRAC.<sup>53</sup>

Mr. McGuire testified that there are, in his view, three principal reasons why CPAs and firms are not reporting suspicious transactions:

- They lack an understanding of their obligations.
- The triggering activities are so narrowly defined that even when accountants do observe suspicious activity, they need not report it.
- There are no consequences for a failure to report, given the low numbers of examinations conducted by FINTRAC and the complete absence of any administrative penalties being applied to any accounting firms (both discussed below).<sup>54</sup>

He also highlighted that suspicious activity report figures in the United Kingdom were much higher than in Canada: roughly 5,000 were filed in 2019, around 25 percent of which indicated suspected accountant involvement.<sup>55</sup> I am mindful of differences between the two regimes, including (as noted above) that suspicious activity reports in the United Kingdom do not require a transaction and that it appears that accountants there are permitted to incorporate companies,<sup>56</sup> unlike accountants in this province. Nonetheless, the difference between 5,000 suspicious activity reports and numbers of suspicious transaction reports ranging from one to 40 in a year (as outlined above) is stark.

In 2015, CPA Canada’s Anti–Money Laundering and Terrorist Financing Committee<sup>57</sup> invited FINTRAC to give a presentation on its role and accountants’ obligations under

<sup>50</sup> Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, para 232.

<sup>51</sup> *Ibid*, paras 214, 30.

<sup>52</sup> Exhibit 4, Overview Report: Financial Action Task Force, Appendix L, FATF, *Third Mutual Evaluation on Anti–Money Laundering and Combating the Financing of Terrorism, Canada* (Paris: FATF, 2008) [*FATF Third Mutual Evaluation*], para 1254.

<sup>53</sup> *Ibid*, para 1255.

<sup>54</sup> Transcript, January 11, 2021, pp 89–91.

<sup>55</sup> *Ibid*, p 142.

<sup>56</sup> Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 144–45.

<sup>57</sup> See Chapter 33.

the *PCMLTFA*. FINTRAC's presentation<sup>58</sup> noted the deficiencies observed in compliance examinations with respect to several requirements, including the obligations to conduct a two-year review, implement a training program, and conduct risk assessments. The presentation also noted that the level of awareness appeared to be low and that many accountants did not realize they were covered by the regime.<sup>59</sup>

The presentation also said, however, that FINTRAC considered the accounting sector to be low risk.<sup>60</sup> Mr. McGuire testified that he found this surprising, given that the 2015 national risk assessment called the sector at least medium risk and that a 2014 study by Grant Thornton had assessed the sector as highest risk along with real estate. In his view, FINTRAC did not seem to be prioritizing the sector, despite expressing frustration at the level of compliance.<sup>61</sup>

Ms. Wood-Tweel testified that we must be careful in considering the statistics on suspicious transaction reporting because only a fraction of the CPA membership actually engages in triggering activities. She explained that if accountants are “fastidious” about how they enter into business with clients, they may never come across a suspicious transaction. She testified that she personally has not come across a suspicious transaction in her practice.<sup>62</sup> She further noted that triggering activities are not part of the “core” of a CPA's practice.<sup>63</sup>

CPA Canada accordingly submits that “the fact that low numbers of [suspicious transaction reports] are filed in the accounting sector does not necessarily point to a compliance issue, since few CPAs engage in the type of activity that would trigger a reporting obligation. Of the approximately 200,000 CPAs in Canada, only around 20 percent are in public practice. Of those, only a fraction are likely to be involved in triggering activities.”<sup>64</sup> Therefore, “[d]ue to the narrower scope of practice in Canada, it is entirely possible that a CPA would not encounter any reportable transactions over the course of their career,” and “[o]ne of the reasons that few [suspicious transaction reports] are filed by the accounting sector may be that CPAs' services are not being used to carry out money laundering transactions.”<sup>65</sup> CPABC agrees that it is “not surprising” that the levels of reporting are “relatively low,” noting that “Canada's AML regime is designed to focus on interaction with the financial system, and CPAs' reporting obligations are triggered only in narrow circumstances.”<sup>66</sup>

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58 Exhibit 408, FINTRAC Presentation – Anti-Money Laundering and Anti-Terrorism Financing in Canada (CPA Canada), March 4, 2015.

59 Exhibit 395, Email from Marial Stirling re Materials for AMLATF Committees conference call, July 13, 2015, p 3; Evidence of M. McGuire, Transcript, January 11, 2021, p 82.

60 Exhibit 395, Email from Marial Stirling re Materials for AMLATF Committees conference call, July 13, 2015, p 3.

61 Transcript, January 11, 2021, pp 82–83.

62 Transcript, January 13, 2021, pp 76–78.

63 Ibid, p 53.

64 Closing submissions, CPA Canada, para 54.

65 Ibid, para 55.

66 Closing submissions, CPABC, para 86.

Notably, neither CPABC nor CPA Canada gathers statistics on the numbers of its members who engage in triggering activities.<sup>67</sup> While I accept that CPA Canada and CPABC are speaking from experience when they say that it is relatively uncommon for a CPA to be engaged in triggering activities, I am not prepared to make such a finding in the absence of some formal evidence confirming that such is the case. As I elaborate in Chapter 33, I consider it essential that CPABC begin to collect reliable data on its members' activities in order to have an accurate picture.

On the whole, the reporting numbers of CPAs and firms are concerning. Although it may be that it is less common for CPAs to engage in triggering activities than other accounting services, I find it unlikely that only one CPA or firm encountered a suspicious transaction across Canada between 2011 and 2015. Rather, it is more likely that CPAs and firms have a low level of understanding and, therefore, compliance. As I elaborate in the next chapter, it is essential that CPABC and CPA Canada continue to provide guidance and education to their members on their obligations under the *PCMLTFA*.

## **FINTRAC Compliance Examinations**

Despite the low reporting numbers I have just discussed, FINTRAC has conducted few compliance examinations of CPAs and firms. FATF's third mutual evaluation of Canada noted that FINTRAC had conducted 26 compliance examinations between 2004 and 2007. The evaluators expressed the view that this was far too low:

Quite obviously, such a limited number of on-site examinations made by FINTRAC compared with the number of potential reporting entities cannot be considered as sufficient to ensure an effective monitoring of compliance even if FINTRAC targets its examinations based on a comprehensive risk assessment. It should be completed by interventions of provincial regulators or [self-regulatory organizations]. However, these institutions are not in charge of ensuring [anti-money laundering / counterterrorist financing] compliance and, as for the other sectors examined above, their level of involvement in that area, the regulatory basis on which they rely and the methodology adopted may strongly differ from one province or sector to another.<sup>68</sup>

The fourth mutual evaluation notes that, between 2009 and 2015, FINTRAC conducted 114 compliance examinations of CPAs and accounting firms. This constitutes 2 percent of the total number of examinations conducted for designated non-financial businesses and professions in that same period (114 of 5,434).<sup>69</sup>

Perhaps because of the increase from 26 to 114 examinations, the FATF's fourth mutual evaluation was less harsh in its critiques. It noted that FINTRAC is applying its supervisory program to designated non-financial businesses and professions

67 Closing submissions, CPA Canada, para 54; Evidence of L. Liu, Transcript, January 12, 2021, p 31; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 36, 68.

68 Exhibit 4, Appendix L, *FATF Third Mutual Evaluation*, para 1315.

69 Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, para 256.

(including accountants) on a risk-based approach. In other words, it is “conducting more examinations in higher-risk sectors and using assistance, outreach, and compliance questionnaires to a large extent in sectors that it sees as lower-risk.”<sup>70</sup>

Since the fourth mutual evaluation, the number of compliance examinations has decreased again, with FINTRAC conducting only seven examinations between 2016 and 2020.<sup>71</sup> The compliance examinations done have revealed significant numbers of “structural deficiencies.” Such deficiencies are “anti–money laundering pillars,” namely, the requirements to have a designated officer, policies and procedures, training, a risk assessment and management plan, and a mechanism for evaluating compliance over time.<sup>72</sup> The following statistics indicate the percentage of firms cited for at least one structural deficiency between 2008 and 2014:

- 2008/2009 – 38% (8 of 21)
- 2009/2010 – 52% (25 of 48)
- 2010/2011 – 45% (9 of 20)
- 2011/2012 – no examinations
- 2012/2013 – 92% (23 of 25)
- 2013/2014 – 64% (7 of 11)<sup>73</sup>

Despite the foregoing, no CPA or accounting firm has ever received an administrative monetary fine under the *PCMLTFA*.<sup>74</sup>

It is concerning that there have been so few compliance examinations in view of the low reporting numbers and high numbers of structural deficiencies identified in the examinations that have been done. The low number of compliance examinations again points to the need for CPABC to be more involved in anti–money laundering regulation. As I discuss in the next chapter, CPABC should incorporate anti–money laundering considerations into its practice review program.

## Conclusion

This chapter has illustrated a number of ways in which anti–money laundering regulation of accountants in this province is currently inadequate. Of considerable

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70 Ibid, para 262.

71 Exhibit 630, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2017), p 21 (two examinations in 2016–17); Exhibit 448, 2018 FINTRAC’s Report to the Minister of Finance on Compliance and Related Activities (September 2018) (Redacted), p 6 (no examinations in 2017–18); Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2019), p 17 (four examinations in 2018–19); Exhibit 1021 (previously marked as ex. L) Overview Report: Miscellaneous Documents, Appendix 15, p 16 (one examination in 2019–20).

72 Evidence of M. McGuire, Transcript, January 11, 2021, p 80.

73 Exhibit 394, McGuire Report, para 58.

74 Ibid, para 59.

concern is the fact that most accountants in British Columbia are not subject to any regulation, despite being able to provide many of the same services as professional accountants. Further, the application of the *PCMLTFA* to accountants is narrow, applying only to CPAs and only for specific activities. It also appears that compliance and understanding among CPAs with the *PCMLTFA* regime is low, and FINTRAC conducts few compliance examinations in this sector.

The foregoing makes it clear that CPABC must play a role in anti-money laundering regulation. In my view, CPABC's mandate is already broad enough to encompass anti-money laundering, and it should begin exercising this part of its mandate promptly. I have outlined in this chapter, and expand in Chapter 33, some ways in which CPABC should exercise this mandate.

## Chapter 33

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# Current Measures and Improvements

In this final chapter on the accounting sector, I discuss the current state of the regulation of accountants for anti-money laundering purposes in British Columbia and improvements that can be made. I begin by considering some further measures to those set out in Chapter 32 that CPABC can take to begin regulating for anti-money laundering purposes. I then consider CPA Canada's anti-money laundering activities and recommend further measures that it can take. Finally, I discuss the desirability of a whistle-blower framework in which accountants and firms could report suspicious activity without breaching their duty of confidentiality.

### **CPABC's Anti-Money Laundering Regulation**

As CPABC has not considered anti-money laundering to fall within its mandate to date, it has taken relatively few steps to address the issue. In what follows, I outline measures that CPABC should take, in addition to the client identification and verification measures I recommend in Chapter 32.

### **Amendments to the CPABC Code and Bylaws**

I reviewed CPABC's Code and Bylaws in detail in Chapter 30. Mr. Tanaka expressed the view that the Code and Bylaws are broad enough to cover anti-money laundering activities.<sup>1</sup> This belief may be correct in some respects; however, in my view, some anti-money laundering issues should be dealt with more explicitly.

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<sup>1</sup> Transcript, January 12, 2021, pp 16–18, 20–21.

CPABC submits that the

harmonization of professional standards nationally is critically important to ensuring the efficient functioning of financial systems that depend on the seamless delivery of services by CPAs across provincial and international boundaries. That efficiency would be hindered by inconsistency in regulatory practices. As such, any significant changes to the CPABC Code require national study and review.<sup>2</sup>

I accept that changes to the CPABC Code could have effects on the codes in other provinces. However, although harmonization is important, it should not trump the necessity of updating the CPABC Code to address money laundering risks in British Columbia. CPABC should therefore implement the following measures promptly. I encourage CPABC to continue working with its counterparts and CPA Canada to seek harmonization of rules and practices across the country, while also recognizing that it has a duty to regulate its members in this province in the public interest and has the ultimate authority to implement changes in this province to effect that purpose.

### ***Use of Trust Accounts***

Accountants in British Columbia are permitted to use trust accounts, although it is unclear how often they do so and for what purpose.

Rule 212 of the CPA Code speaks to handling the property of others. Among other things, the rule states that members who receive, handle, or hold money or property while acting in specified circumstances (e.g., as a trustee, guardian, or liquidator) shall do so in accordance with the terms of the engagement and the applicable law. They must also maintain records to account for the money or property and, unless otherwise provided for in the terms of the trust, hold money in a separate trust account. Members must also “handle with due care any entrusted property.”

CPABC states that, to its knowledge, the use of trust accounts by CPAs in public practice and their firms is infrequent.<sup>3</sup> It accordingly submits that it “does not believe that trust accounts held by CPAs in BC pose a significant risk for money laundering.” CPABC notes it has never received information from law enforcement, another regulatory agency, or a member of the public expressing concerns about how a CPA or a firm handled funds (contrary to examples in the legal profession).<sup>4</sup>

CPABC does not, however, collect information from its members in any systematic or regular way as to whether they use trust accounts and, if they do, why. It appears that CPABC’s first attempt to ascertain this information was through an informal survey

<sup>2</sup> Closing submissions, CPABC, para 31.

<sup>3</sup> Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021) [CPABC McGuire Review], p 16.

<sup>4</sup> Closing submissions, CPABC, para 51.

conducted in December 2020.<sup>5</sup> That survey, however, had important limitations. A key one was that only 450 of the 4,129 licensed public practice members responded, or approximately 10 percent.<sup>6</sup> Further, the survey did not collect any information about the characteristics of the firms of the members who responded,<sup>7</sup> nor did it ask for details about *why* members engaged in certain activities, such as the use of trust accounts or acceptance of cash.

A reporting memo on the results of the survey notes that “[i]t is our understanding that trust accounts are more often used in relation to bankruptcy and insolvency matters as well as professionals who act as trustees in estate matters” and that when practitioners take retainers, “[i]t is believed [they] typically apply the retainers against their client’s account, as opposed to placing the retainer in trust as lawyers may do.”<sup>8</sup> Ms. Liu testified that the belief that practitioners typically apply the retainers against their client’s account rather than putting it in trust was an assumption based on CPABC’s general understanding of how its members practice. The survey did not ask why practitioners used trust accounts.<sup>9</sup>

Apparently based on the results of this informal survey, CPABC noted in its closing submissions that the “few CPABC members who do operate trust accounts”<sup>10</sup> must comply with the “regulatory requirements,” meaning Rule 212. It noted that it is “in the process of seeking additional information from members” with respect to their use of trust accounts.<sup>11</sup>

I accept that the survey was meant to be anonymous and simply an attempt to gain information so that CPABC could determine further outreach measures.<sup>12</sup> While the survey was a good first step, its limitations – particularly the very small sample size and minimal information collected – make it difficult to draw any firm conclusions about members’ practices. Accordingly, I do not accept that the survey establishes that “few” members operate trust accounts, and I cannot conclude that the use of trust accounts among CPAs is infrequent or that the risk associated with them is low.

In my view, CPABC must better understand its members’ use of trust accounts. The risks relating to trust accounts operated by CPAs differ from those relating to lawyers, as there is not the risk of solicitor-client privilege attaching to a CPA’s trust account records. Nonetheless, to minimize the risk of a CPA’s services being misused, it is important to have robust anti-money laundering regulation in place when a CPA

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5 Exhibit 400 is an internal memo discussing the results of the survey.

6 Exhibit 400, CPA Memo from Lisa Eng-Liu, re Possible Opportunities for Education, December 21, 2020 [CPA Education Memo], p 1.

7 Evidence of L. Liu, Transcript, January 12, 2021, p 39.

8 Exhibit 400, CPA Education Memo, pp 1–2.

9 Transcript, January 12, 2021, p 42; Mr. Tanaka agreed that, based on his experience, trust accounts are not generally used: Transcript, January 12, 2021, p 63.

10 Closing submissions, CPABC, para 50.

11 Ibid, para 52.

12 Evidence of L. Liu, Transcript, January 12, 2021, p 39.

handles client funds through a trust account. Further, funds that pass through a CPA's trust account benefit from the perceived legitimacy that the CPA's professional status provides – a perception that underscores the need for robust regulation. I accordingly recommend that CPABC promptly determine how many of its members operate trust accounts, for what purpose, and in what circumstances.

**Recommendation 73:** I recommend that the Chartered Professional Accountants of British Columbia promptly determine how many of its members operate trust accounts, for what purpose, and in what circumstances.

Once CPABC determines which of its members operate trust accounts, it should begin conducting regular trust account audits. It strikes me that it would be relatively straightforward for CPABC to conduct these audits in the course of its practice reviews (which I discuss below). CPABC is well placed to determine how frequently its members' trust accounts should be audited; however, I note that the Law Society of British Columbia has implemented a system whereby every law firm operating a trust account will be audited every six years, with audits occurring more frequently in some situations. Further, the Law Society audits a sample of firms that report not operating a trust account, to ensure that is the case. I discuss the Law Society's audit procedures, which could serve as a useful model for CPABC, in Chapter 28.

**Recommendation 74:** I recommend that the Chartered Professional Accountants of British Columbia implement a trust account auditing regime in which chartered professional accountants and firms that operate a trust account are audited on a regular basis, and that a sample of chartered professional accountants and firms that report not operating a trust account be audited to ensure that is the case.

### **Acceptance of Cash**

CPABC's informal survey asked about members' acceptance of cash. Approximately 40 percent of respondents noted that they accept cash for payments or retainers. The reporting memo notes that “[i]t is likely that such cash is for nominal payments of services such as preparation of simple tax returns.”<sup>13</sup> Ms. Liu testified that that belief is based on answers suggesting the sums were nominal, so they assumed that cash was received for those kinds of services; however, the survey did not ask why or in what amounts members were accepting cash.<sup>14</sup>

Based on the results of this informal survey, CPABC concluded that “a small number of members may receive and handle cash from clients,” likely in small amounts.<sup>15</sup> It

<sup>13</sup> Exhibit 400, CPA Education Memo, p 2.

<sup>14</sup> Transcript, January 12, 2021, p 43.

<sup>15</sup> Closing submissions, CPABC, para 53.

submits that it is “in the process of seeking additional information from members” regarding their handling of cash.<sup>16</sup> Given the limitations of CPABC’s informal survey, I am unable to conclude that a “small number” of members “may” receive and handle small amounts of cash. It is important that CPABC promptly gain an accurate understanding of its members’ use of cash, whether this information is gathered through a self-reporting mechanism or other method.

**Recommendation 75:** I recommend that the Chartered Professional Accountants of British Columbia determine the circumstances in which its members accept cash from clients and in what amounts.

A related question is whether there should be a limit on the amount of cash that accountants can receive, as there is for lawyers (see Chapter 28). There is currently no limit on the amount of cash that accountants can receive.<sup>17</sup> Ms. Wood-Tweel testified that she is not opposed to imposing a limit on the amount of cash that can be accepted. However, she emphasized that the CPA Code already provides protection in this regard:

I look at the issue and I look to my experience in terms of the profession. I think that what we have is ... a code that speaks to the principles that right off the bat, if you are accepting any form of payment – cash, cryptocurrency, ... virtual currency, anything that is anything other than bona fide – you are already having problems with the Code because the Code is saying you shouldn’t be doing it. So the principles of the Code remain true. It’s the foundation of the profession, and we have it.

If we were to look towards something that is more pointed as a rule, that certainly could be introduced. It’s not to say that the principles of the Code are not applying. They are. It’s just that you may choose to move to a pointed rule with respect to cash.<sup>18</sup>

Ms. Wood-Tweel repeated that, in her experience, the majority of the work carried out in public practice does not relate to specific assets or the specific management of assets. In some parts of the profession, such as bankruptcy and insolvency, that work is routine; however, in her view, it “is not something that is ... a core process of ... the profession’s work” in Canada.<sup>19</sup>

CPABC indicates that it is considering imposing a cash transactions rule similar to that in place by the Law Society of British Columbia.<sup>20</sup> In my view, a cash transactions rule is an important anti-money laundering measure that CPABC should adopt. In an

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<sup>16</sup> Ibid, para 54.

<sup>17</sup> Evidence of E. Tanaka, Transcript, January 12, 2021, pp 43–44.

<sup>18</sup> Transcript, January 13, 2021, pp 36–37.

<sup>19</sup> Ibid, p 37.

<sup>20</sup> Exhibit 403, CPABC McGuire Review, p 22.

era when much economic activity takes place electronically, there are inherent risks when a client provides a professional such as an accountant with large sums of cash. I therefore recommend that CPABC implement a cash transactions rule.

**Recommendation 76:** I recommend that the Chartered Professional Accountants of British Columbia implement a cash transactions rule limiting the amount of cash its members can receive in a single client matter.

## Understanding of Members' Activities Relating to the *PCMLTFA*

CPABC and CPA Canada have largely not gathered information about the frequency with which their members engage in triggering activities under the *PCMLTFA*.<sup>21</sup> CPABC's December 2020 informal survey, discussed above, appears to have been its first effort to gather this information. Some 88 percent of respondents said they did not engage in triggering activities.<sup>22</sup> Importantly, however, the survey did not ask how often or for what purpose they engaged in these triggering activities, or the amounts involved.<sup>23</sup>

Again, I accept that the survey was meant to be high level. However, if this is as far as CPABC has gone to determine how many of its members engage in triggering activities and why they do, it is inadequate. In my view, CPABC must ascertain how often its members engage in triggering activities. While I leave the specifics to CPABC, it strikes me that a good option would be to require self-reporting on a member's annual declaration form.

**Recommendation 77:** I recommend that the Chartered Professional Accountants of British Columbia determine how often its members engage in the activities specified in section 47 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

## Practice Reviews

As I discuss in Chapter 30, CPABC conducts practice reviews to ensure that members are complying with accounting standards. The practice review program does not currently address anti-money laundering. Ms. Liu testified that the mandate of the program is to ensure the firm's compliance with professional standards, and the program has focused on engagements to the public.<sup>24</sup> As CPABC explains:

21 Evidence of L. Liu, Transcript, January 12, 2021, p 31; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 36, 68.

22 Exhibit 400, CPA Education Memo, p 2.

23 Evidence of L. Liu, Transcript, January 12, 2021, pp 45–46.

24 Ibid, January 12, 2021, pp 96–98.

The purpose of the practice review program (which includes practice inspection) is to ensure that firms are meeting professional standards; the program does not involve “audits” into any and all potential breaches of law. Practice inspections provide an opportunity for CPABC to engage with and educate its members and firms about enhancing their compliance with professional standards.

If CPABC became aware of any type of unlawful activity (including a concern with money laundering or terrorist financing) during the course of a practice inspection or otherwise, CPABC would take any action considered necessary or appropriate within its regulatory mandate.<sup>25</sup>

In an internal memo dated September 11, 2020, CPABC concluded that it would not be desirable to include *PCMLTFA* compliance within its practice review program because doing so “would be getting into the management and internal practices of a firm, whereas our inspections have always focused on [*CPA Canada Handbook*] standards.” The memo further expressed the view that doing so could overstep CPABC’s authority, given that FINTRAC oversees compliance.<sup>26</sup> Ms. Liu testified that CPABC accordingly decided to focus on education and support instead.<sup>27</sup>

CPABC submits that “its practice review program [should] continue to focus on evolving professional standards, while supporting FINTRAC’s work through increased awareness and education activities for its membership. CPABC sees no need to duplicate FINTRAC’s regulatory compliance program regarding anti-money laundering.”<sup>28</sup> CPABC also suggested that it could review its ability to provide FINTRAC with “regular access to a list of CPABC’s registered firms, to assist FINTRAC to inform its own risk sensitive inquiries.”<sup>29</sup>

Mr. Tanaka testified that an expansion of CPABC’s mandate would likely require additional resources, including human resources with special expertise or knowledge, new technology, more resources, or more money.<sup>30</sup> Ms. Liu added that, as CPABC is self-funded, there could potentially be an impact on membership. She noted that the current practice review team does not have expertise in forensics, which they would need if the practice review program were to extend to anti-money laundering.<sup>31</sup>

As I discuss throughout these chapters on the accounting profession, I do not agree with CPABC that it would duplicate efforts by FINTRAC if it engaged in some form of anti-money laundering regulation. I have concluded that CPABC should conduct anti-money laundering regulation alongside FINTRAC.

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25 Exhibit 403, CPABC McGuire Review, pp 10–11.

26 Exhibit 402, Public Practice Committee Data Sheet, Pre-Reading #6, September 4, 2020, p 2.

27 Transcript, January 12, 2021, p 89.

28 Exhibit 403, CPABC McGuire Review, pp 20–21.

29 Ibid, p 21.

30 Transcript, January 12, 2021, pp 101–3.

31 Transcript, January 12, 2021, pp 103–5.

CPABC’s position that it should not be engaging in money laundering–related, risk-sensitive inspection is notably at odds with the FATF’s guidance. The guidance states that supervisors and self-regulatory bodies (of which CPABC is one) should “draw on a variety of sources to identify and assess [money laundering / terrorist financing] risks,” including national and supranational risk assessments, domestic or international typologies, supervisory expertise, feedback from the financial intelligence unit, information-sharing, and collaboration with other supervisors.<sup>32</sup> The guidance further states that supervisors and self-regulatory bodies

should understand the level of inherent risk including the nature and complexity of services provided by the accountant. Supervisors and [self-regulatory bodies] should also consider the type of services the accountant is providing as well as its size and business model (e.g. whether it is a sole practitioner), corporate governance arrangements, financial and accounting information, delivery channels, client profiles, geographic location and countries of operation. Supervisors and [self-regulatory bodies] should also consider the controls accountants have in place (e.g. the quality of the risk management policy, the functioning of the internal oversight functions and the quality of oversight of any outsourcing and subcontracting arrangements).<sup>33</sup>

The guidance goes on to make a number of points regarding the actions that supervisors and self-regulatory bodies should take, including:

- ensuring that their supervised populations are fully aware of and compliant with measures to identify and verify a client’s identity and the client’s source of wealth and funds, and measures designed to ensure beneficial ownership transparency;
- taking proportionate measures to mitigate and manage money laundering and terrorist financing risks. To that end, they must have a clear understanding of the risks present in a country and associated with the type of accountant, clients, products, and services;
- developing a means of identifying which accountants are at the greatest risk of being used by criminals;
- updating their risk assessment regularly; and
- supervising the implementation of the risk-based approach by members.<sup>34</sup>

It is not necessary for me to repeat the entirety of FATF’s commentary on this matter. The point is that CPABC’s view that it does not have a responsibility to engage in anti–

<sup>32</sup> Exhibit 391: Overview Report on the Accounting Sector in British Columbia, Appendix B, FATF, *Guidance for a Risk-Based Approach: Accounting Profession* (Paris: 2019), para 137.

<sup>33</sup> *Ibid*, para 140.

<sup>34</sup> *Ibid*, paras 141–50.

money laundering regulation is at odds with FATF's view, which discusses the roles that should be played by *both* financial intelligence units such as FINTRAC and self-regulatory bodies such as CPABC.

I acknowledge CPABC witnesses' concerns about extending the ambit of practice reviews, and I have given those concerns due consideration. However, I am of the view that CPABC must take on a role of anti-money laundering supervision. FINTRAC is not the regulator of CPAs. It plays an important, complementary role, but it does not, and it should not, replace the in-depth regulation carried out by provincial CPA regulators.

CPABC is best placed to understand the activities in which its members are engaged. Whereas FINTRAC is tasked with receiving information from a variety of sectors in the economy, CPABC is mandated to focus on CPAs in British Columbia. It has significant powers to compel information, investigate members, and impose appropriate sanctions. It can also view all aspects of its members' practice, including confidential information.

CPABC has taken virtually no steps to monitor its members' compliance with the *PCMLTFA* or to understand how that regime is relevant to its membership. The December 2020 survey is a start but, as noted, its response rate was very low and the questions were posed too broadly to provide any meaningful information.

In my view, practice reviews are a prime opportunity for CPABC to ensure that CPAs are complying with their obligations. I recommend that CPABC expand its practice review program to include regulation focused on anti-money laundering. In particular, CPABC should ensure through its practice reviews that members are complying with the client identification and verification measures that I recommend in Chapter 32. It should also conduct audits of members' trust accounts and audit a sample of chartered professional accountants who report not operating a trust account, as I discuss above. Finally, CPABC should implement measures that are complementary to FINTRAC's role. Although FINTRAC is ultimately responsible for ensuring compliance with the *PCMLTFA*, CPABC is well placed to determine if its members have put in place a compliance program as required by the *PCMLTFA* and to inquire about members' practices and policies relating to record-keeping and transaction reporting required by the *PCMLTFA*.<sup>35</sup>

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35 In this regard, it is useful to consider the complementary roles played by the British Columbia Financial Services Authority (BCFSA) and FINTRAC. In the course of examining provincially regulated financial institutions through operational risk assessments or prudential reviews, BCFSA considers issues including whether the institution has up-to-date anti-money laundering policies, whether there is ongoing anti-money laundering training, whether the institution does self-assessments of its anti-money laundering programs, and whether there is sufficient oversight of the anti-money laundering program. BCFSA also has semi-annual discussions with FINTRAC in which FINTRAC provides information to it on various provincial financial institutions about deficiencies it has identified, and BCFSA in turn includes those deficiencies in its own reviews. BCFSA also shares its concerns surrounding anti-money laundering training or policies with FINTRAC: Evidence of C. Elgar, Transcript, January 15, 2021, pp 23–25, 29–42, 49–54.

**Recommendation 78:** I recommend that the Chartered Professional Accountants of British Columbia (CPABC) expand its practice review program to address anti-money laundering issues including, at a minimum:

- compliance with client identification and verification measures implemented by CPABC;
- audits of trust accounts or confirmation that a member does not operate a trust account; and
- assessment of the adequacy of the anti-money laundering policies and programs in place by the member to ensure compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

## Education

The December 2020 survey indicated that the “complexity of the [PCMLTFA] legislation and regulations appear to be one of the areas of concern for those practitioners who responded to the survey.”<sup>36</sup>

Ms. Liu testified that, since the survey, CPABC has launched a webpage focused on anti-money laundering, on which it intends to add guidance and support for members.<sup>37</sup> Mr. Tanaka added that CPABC offers ethics and other courses that, while not focused on anti-money laundering, nonetheless address it. He added that the 2020 member engagement tour also included a presentation on anti-money laundering.<sup>38</sup> In addition, an advisory services line is available for members to address various matters.<sup>39</sup>

CPABC notes that, between 2017 and 2020, it offered 10 professional development courses and seminars focused on money laundering, with further courses planned.<sup>40</sup> CPABC provided the Commission with a list of courses that it and CPA Canada have offered on anti-money laundering.<sup>41</sup> Such courses are relevant and useful educational resources. I encourage CPABC and CPA Canada to continue anti-money laundering education to their members, ensuring that the courses include a focus on the requirements under the *PCMLTFA*, given the apparently limited understanding of the topic and levels of compliance among CPAs.

CPABC has also published a document called CAS (Canadian Auditing Standard) 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements.”<sup>42</sup>

<sup>36</sup> Exhibit 400, CPA Education Memo, p 2.

<sup>37</sup> Transcript, January 12, 2021, p 48.

<sup>38</sup> Transcript, January 12, 2021, pp 48–50.

<sup>39</sup> Transcript, January 12, 2021, p 50.

<sup>40</sup> Exhibit 403, CPABC McGuire Review, pp 14–15.

<sup>41</sup> Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix F, Anti-Money Laundering CPD Programs, compiled by CPABC and CPA Canada.

<sup>42</sup> *Ibid*, p 95.

This document provides guidance for where an auditor encounters circumstances that suggest money laundering activities and, consequently, an increased risk of misstatement in financial statements and other forms of fraud. Auditors who believe that financial statements are false or misleading should request information. If that information is not forthcoming, they should consider not releasing the financial statements and resigning.<sup>43</sup>

Ms. Wood-Tweel further testified that mandatory continuing professional development requirements do address ethics and that CPABC and CPA Canada are working to incorporate information relating to money laundering within the mandatory ethics courses.<sup>44</sup> When asked whether there would be merit in requiring those who engage in triggering activities to take continuing education on anti-money laundering reporting requirements, she noted that it is left to a CPA's professional judgment to determine which professional development programs are relevant to one's practice. In her view, incorporating information on money laundering into the mandatory ethics education also achieves that goal.<sup>45</sup>

While I appreciate that there will soon be a component of the ethics education that deals with money laundering, it is important to include further information with respect to money laundering. In line with my recommendation to the Law Society that it implement a requirement for education focused on anti-money laundering for members in high-risk areas, I believe the same is desirable for accountants. This mandatory education need not be an annual requirement but should occur at regular intervals.

**Recommendation 79:** I recommend that the Chartered Professional Accountants of British Columbia implement a mandatory continuing professional education requirement focused on anti-money laundering that applies, at a minimum, to chartered professional accountants who engage in the following activities:

- the activities specified in section 47 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*;
- preparing for and providing advice with respect to financial transactions, including real estate transactions;
- preparing for and providing advice with respect to the use of corporations and other legal entities; and
- private-sector bookkeeping.

43 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 96.

44 Transcript, January 13, 2021, pp 88–89.

45 Ibid, pp 89–90.

## Engagement with CIFA-BC

CPABC notes that it has recently joined the Counter Illicit Finance Alliance of British Columbia (CIFA-BC) and “intends to continue to work collaboratively with CIFA-BC’s stakeholders and the RCMP in their joint efforts to prevent and combat money laundering in BC.”<sup>46</sup> This is a promising step and is in line with my view that CPABC has a mandate relating to anti-money laundering regulation. I expect that CPABC will continue its engagement with CIFA-BC and consider how else it may involve itself in money laundering efforts with links to accountants.

## CPA Canada Engagement

CPA Canada has been actively involved in anti-money laundering activities both in Canada and internationally. Below, I review the working groups in which CPA Canada has participated, as well as educational and other materials they have produced.

### CPA Canada’s AML/ATF Committee

CPA Canada’s Anti-Money Laundering and Anti-Terrorist Financing Committee (CPA Canada AML/ATF Committee) was created in 2014–15 as an internal committee devoted to anti-money laundering and counterterrorist financing issues in the accounting profession.<sup>47</sup> Ms. Wood-Tweel testified that, although this was the first committee created following the unification of the professions, others existed before it.<sup>48</sup>

The committee’s objectives were as follows:

- a. Assist CPA Canada in contributing, on behalf of the CPA profession and in the public interest, to the more effective and efficient fight against money laundering and terrorist financing.
- b. Assist CPA Canada in continuing to develop a trusted reputation for the CPA profession in the area of AML/ATF.
- c. Provide CPA Canada with input into the impact on individual CPAs and CPA firms of AML/ATF legislation and related governmental consultations and initiatives.
- d. Support CPA Canada’s efforts in the area of AML/ATF by identifying, prioritizing and analyzing issues that may have an impact on CPAs and CPA firms.
- e. Assist CPA Canada with the development of timely and relevant guidance and resources that will assist CPAs and CPA firms in

<sup>46</sup> Closing submissions, CPABC, para 89.

<sup>47</sup> Exhibit 406, Background Report on CPA Canada’s Anti-Money Laundering Activities (with appendices) [CPA Canada Background Report], para 3.

<sup>48</sup> Transcript, January 13, 2021, pp 40–41.

understanding their obligations under the AML/ATF legislation and improving their level of compliance.<sup>49</sup>

Mr. McGuire testified that part of the committee’s mandate involved considering and commenting on substantial changes to the legislation.<sup>50</sup>

In 2014, the committee prepared a webinar entitled “Compliance with Canada’s Amended AML and ATF Legislation.”<sup>51</sup> This webinar was “designed to help CPAs determine whether and what AML obligations apply to them and their firm, recognize changes to AML obligations and update their compliance programs; and become familiar with CPA Canada’s new guide for AML compliance.”<sup>52</sup> Shortly after the webinar, CPA Canada released its updated *Guide to Comply with Canada’s Anti-Money Laundering (AML) Legislation*.<sup>53</sup> This guide “set out recent changes to Canada’s AML legislation and provided practical guidance for AML compliance to accountants and accounting firms.”<sup>54</sup> I discuss CPA Canada’s webinar and guide in greater detail below.

In May 2014, Mr. McGuire (then chair of the committee) made representations to the federal government’s Standing Senate Committee on Banking, Trade and Commerce and the House of Commons Standing Committee on Finance on proposed amendments to the *PCMLTFA*.<sup>55</sup>

In early 2015, the committee invited FINTRAC to make a presentation on the obligations of CPAs and accounting firms under the *PCMLTFA*. As I note in Chapter 32, FINTRAC’s presentation stated that there were deficiencies in CPAs’ compliance with the *PCMLTFA* and that the level of awareness appeared to be low. Following that presentation, the committee considered ways to raise awareness of anti-money laundering issues among the profession and ultimately decided to issue an alert to the profession in July 2015 (discussed below).

The committee was wound down in 2016 as CPA Canada refocused its anti-money laundering efforts on engagement with the federal government.<sup>56</sup> In particular, it joined the Advisory Committee on Money Laundering and Terrorist Financing (discussed below).

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49 Exhibit 407, Anti-Money Laundering and Anti-Terrorist Financing Committee of the Chartered Professional Accountants of Canada, Terms of Reference (February 2015), p 1.

50 Transcript, January 11, 2021, p 9.

51 Exhibit 406, CPA Canada Background Report, Appendix B.

52 Exhibit 406, CPA Canada Background Report, para 4.

53 Exhibit 393, CPA Canada, *Guide to Comply with Canada’s Anti-Money Laundering (AML) Legislation*, prepared by MNP LLP (2014) [*CPA Compliance Guide*].

54 Exhibit 406, CPA Canada Background Report, para 5.

55 Transcripts to these submissions can be found in Exhibit 406, CPA Canada Background Report, Appendices D and E.

56 Exhibit 406, CPA Canada Background Report, para 9.

## **CPA Canada’s Guide to Comply with Canada’s AML Legislation**

Mr. McGuire testified that CPA Canada increased its focus on education and produced its anti-money laundering guide when it realized that compliance with FINTRAC was exceptionally low.<sup>57</sup> The guide set out recent changes to legislation and provided practical guidance for compliance. It contained questionnaires, checklists, copies of forms from FINTRAC, and practical guidance on how to complete the forms.<sup>58</sup> Mr. McGuire wrote the guide with contributions from CPA Canada’s AML/ATF Committee.<sup>59</sup>

As I discuss in Chapter 32, the guide contains what Mr. McGuire described as a “waterfall diagram” outlining when CPAs and accounting firms are subject to the regime (which, in his view, is complicated to determine, given the various exceptions and limited triggering activities). The guide also refers to FINTRAC’s guidance on indicators of suspicion, noting:

The presence of an indicator is one factor which may lead to the consideration of a suspicious transaction report, but by itself is not definitive. Contextual information about the client, the transaction(s) and historical behaviour will assist in determining whether there are sufficient grounds to suspect the transactions are relevant to a money laundering or terrorist financing offence.<sup>60</sup>

The list of suspicious indicators includes but is not limited to the following:

- Client appears to be living beyond his or her means.
- Client has cheques inconsistent with sales (i.e., unusual payments from unlikely sources).
- Client has a history of changing bookkeepers or accountants yearly.
- Client is uncertain about location of company records.
- Company carries non-existent or satisfied debt that is continually shown as current on financial statements.
- Company has no employees, which is unusual for the type of business.<sup>61</sup>

Ms. Wood-Tweel testified that although these indicators are helpful, CPA Canada trains for a “very high level of professional skepticism” in general.<sup>62</sup>

<sup>57</sup> Transcript, January 11, 2021, pp 9–10.

<sup>58</sup> Exhibit 406, CPA Canada Background Report, para 5.

<sup>59</sup> Transcript, January 11, 2021, pp 13–14.

<sup>60</sup> Exhibit 393, *CPA Compliance Guide*, pp 23–24.

<sup>61</sup> *Ibid*, p 24.

<sup>62</sup> Transcript, January 13, 2021, pp 51–53.

The guide is currently being revised and updated to reflect recent changes to the *PCMLTF Regulations*. CPA Canada indicated that it intended to issue the revised version in the spring of 2021.<sup>63</sup> At the time of writing, it does not appear to have been released yet.

## **2015 Alert to the Profession**

Following FINTRAC’s presentation to the CPA Canada AML/ATF Committee in 2015, CPA Canada issued an alert to the profession in July 2015.<sup>64</sup> The alert was shared by CPA Canada and provincial CPA regulators with their members.<sup>65</sup>

The alert noted that FINTRAC had informed CPA Canada that compliance by CPAs and firms with the *PCMLTFA* required improvement. It reminded CPAs and firms that, as reporting entities, they have obligations when they engage in triggering activities. It also pointed them toward FINTRAC’s guidance and policy interpretations, as well as the CPA Canada guide.<sup>66</sup> The alert notes that the accounting sector “plays a very important role” in anti-money laundering and counterterrorist financing, given the nature of its work. Ms. Wood-Tweel testified that the sector plays two critically important roles:

One is obviously sculpted under the legislation as reporting entities under the legislation. We have responsibilities to comply with the triggering activities, et cetera, so clearly we’re there because we matter. So that’s one of the ways in which we are important to the battle. But the other way is because ... obviously in the public interest [we work] towards the security of the financial system in Canada at large and the capital system. That’s part of our role in the work that we do every day in our craft.<sup>67</sup>

Finally, the alert highlighted the requirements to implement a two-year effectiveness review as well as risk assessment and mitigation plans. As I discuss in Chapter 32, these were areas in which FINTRAC compliance examinations found compliance to be particularly low.

## **Federal Advisory Committee on Money Laundering and Terrorist Financing**

The Federal Advisory Committee on Money Laundering and Terrorist Financing is the successor to the federal government’s former Public-Private Sector

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63 Exhibit 406, CPA Canada Background Report, para 5.

64 Exhibit 397, CPA Canada, Alert: Proceedings of Crime (Money Laundering) and Terrorist Financing – Know Your Obligations (July 2015).

65 Transcript, January 13, 2021, pp 147–48.

66 Exhibit 406, CPA Canada Background Report, para 8; Exhibit 393, *CPA Compliance Guide*.

67 Transcript, January 13, 2021, pp 61–62.

Advisory Committee.<sup>68</sup> It brings together Finance Canada, FINTRAC, and industry representatives.<sup>69</sup> CPA Canada has participated as a member since 2016, represented by Mr. Hernandez.<sup>70</sup> Ms. Wood-Tweel represents CPA Canada on two working groups relating to legislation and policy.<sup>71</sup>

CPA Canada notes that its representatives attend meetings of the committee; take part in discussions; receive information; and provide input and feedback, including with respect to FINTRAC guidance.<sup>72</sup>

## **Input on FINTRAC Guidance and Legislative Reform**

CPA Canada has made numerous submissions to federal government departments, committees, and officials on money laundering issues affecting CPAs. It has made 12 such submissions since 2014 on matters ranging from regulatory amendments to the *PCMLTFA*, the need to improve the availability of beneficial ownership information, and its view that a whistle-blower framework is needed.<sup>73</sup> It also regularly participates in information sessions, consultations, meetings, and discussions with federal government officials and representatives.<sup>74</sup>

A CPA Canada submission from March 13, 2017, is illustrative. It made a series of recommendations regarding three “pillars”: beneficial ownership; enforcement and prosecution; and whistle-blowing. Mr. Hernandez explained that beneficial ownership is important to help clients do their due diligence and avoid becoming inadvertently involved in activities in which they should not engage.<sup>75</sup> As for enforcement and prosecution, he explained that there needs to be “a real deterrence factor”; a need to file a suspicious transaction with “consequences ... a cost of crime.”<sup>76</sup> Finally, whistle-blowing is important to encourage individuals to speak up and then allow law enforcement to bring matters to a close.<sup>77</sup>

CPA Canada has also provided comments to FINTRAC on its Risk-Based Approach Guidance for Accountants.<sup>78</sup>

68 Exhibit 406, CPA Canada Background Report, para 9.

69 Evidence of J. Hernandez, Transcript, January 13, 2021, pp 23–24.

70 Exhibit 406, CPA Canada Background Report, paras 9, 18.

71 Ibid, para 18.

72 Ibid, para 19.

73 Closing submissions, CPA Canada, para 28; these submissions are outlined in detail in Exhibit 406, CPA Canada Background Report, paras 20–53.

74 Exhibit 406, CPA Canada Background Report, para 54.

75 Transcript, January 13, 2021, pp 83–84.

76 Ibid, pp 84–85.

77 Ibid, p 85.

78 Exhibit 406, CPA Canada Background Report, para 20. These comments are included in Exhibit 406, Appendix T.

## Engagement with International Anti–Money Laundering Efforts

CPA Canada is a member of the International Federation of Accountants (IFAC), which has been engaged as an anti-corruption partner in the B20, the official business community engagement forum for the G20.<sup>79</sup>

In December 2020, CPA Canada and the International Ethics Standards Board for Accountants (IESBA) issued an alert to the profession on COVID-19 and evolving risks concerning money laundering, terrorist financing, and cybercrime.<sup>80</sup> CPA Canada also provided comments on IFAC’s Point of View document, *Fighting Corruption and Money Laundering*.<sup>81</sup>

In May 2019, Mr. Hernandez and Ms. Wood-Tweel attended the FATF Private Sector Consultative Forum on behalf of CPA Canada. This forum considered an updated draft of the FATF 2019 guidance on the accounting profession (released in June 2019).<sup>82</sup> CPA Canada representatives also participated in the 2020 FATF Private Sector Consultative Forum on November 24, 2020.<sup>83</sup>

## Presentations

CPA Canada has also organized and given presentations on money laundering–related issues. In February 2019, it hosted a session where members of provincial CPA bodies joined several panellists to discuss the role of CPAs in combatting money laundering.<sup>84</sup> On September 2, 2020, Ms. Wood-Tweel gave a presentation to CPA Saskatchewan. Entitled “Anti–Money Laundering and Terrorist Financing Update,”<sup>85</sup> the presentation explained the *PCMLTFA* regime and provided an overview of beneficial ownership, new amendments to the *PCMLTF Regulations*, and how COVID-19 was creating evolving money laundering risks.<sup>86</sup> Ms. Wood-Tweel testified that she was encouraged by the quality of questions from practitioners and members of industry about how they could assist in the anti–money laundering fight.<sup>87</sup>

CPA Canada advised in its closing submissions that additional presentations have been made for the Nova Scotia and Manitoba CPA associations, and that its webinar is available for a broader audience online.<sup>88</sup>

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79 Ibid, para 55.

80 Ibid, para 56 and Appendix GG.

81 Ibid, para 56.

82 Ibid, para 57.

83 Ibid.

84 Exhibit 406, CPA Canada Background Report, para 12. The panellists were Carol Bellringer (CPA, former BC auditor general and past member of the B20 task force on integrity and compliance); Geneviève Motard (CPA, president and CEO of the Quebec CPA Order, and chair of CPA Canada’s Public Trust Committee); Michele Wood-Tweel; and Russell Guthrie (USCPA, executive director of external affairs, and CFO, International Federation of Accountants).

85 Exhibit 406, CPA Canada Background Report, Appendix L.

86 Ibid, para 13.

87 Transcript, January 13, 2021, p 113.

88 Closing submissions, CPA Canada, para 25 and footnote 40.

## Other Resources

CPA Canada regularly publishes information on anti-money laundering developments and issues on its website, in its magazine for the profession, and through other media channels.<sup>89</sup> It also has a webpage dedicated to anti-money laundering policy developments, including its submissions to government and its work on beneficial ownership.<sup>90</sup>

As well, CPA Canada’s Practitioner’s Toolkit contains a module on regulatory and risk management. However, it does not reference anti-money laundering legislation or standards. Ms. Wood-Tweel testified that including this information is under consideration.<sup>91</sup>

## Follow-up on Compliance with the *PCMLTFA*

Ms. Wood-Tweel testified that CPA Canada has not received further information from FINTRAC about members’ compliance since issuing the 2015 alert.<sup>92</sup> She acknowledged, however, that CPA Canada has not followed up “in a direct way” to assess whether its members have improved their compliance, focusing instead on education and collaborating with federal committees.<sup>93</sup> In her view, it is important to have a “feedback loop” with members to hear about their experiences and questions, but FINTRAC, as the regulator, should be playing an important role, too.<sup>94</sup>

CPA Canada has not conducted surveys or the like to obtain data about members’ compliance, including whether there are a significant number of transactions that ought to be but are not reported; however, it is considering doing so.<sup>95</sup> Ms. Wood-Tweel explained that such data would be relevant for several purposes, including *PCMLTFA* compliance, a better understanding of the nature of members’ work, and determining what continuing professional development to offer.<sup>96</sup>

The above review demonstrates that CPA Canada has generally been active in preparing educational materials and engaging with government initiatives relating to anti-money laundering. However, CPA Canada must do more to ensure that its members understand their obligations under the *PCMLTFA*. Following FINTRAC’s presentation in 2015 and the July 2015 alert, CPA Canada has not followed up directly with FINTRAC to determine if its members’ compliance or understanding has improved. I recommend that CPA Canada acquire and maintain insights into its members’ compliance with the *PCMLTFA*.

<sup>89</sup> A list can be found in Exhibit 406, CPA Canada Background Report, para 14.

<sup>90</sup> Exhibit 406, CPA Canada Background Report, para 15. A copy of the webpage can be found in Exhibit 406, Appendix S.

<sup>91</sup> Exhibit 394, *Report on Accountants, Money Laundering, and Anti-Money Laundering*, prepared by the amISHOP (October 31, 2020, updated December 31, 2020), para 67; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 80.

<sup>92</sup> Transcript, January 13, 2021, pp 65–66.

<sup>93</sup> *Ibid*, pp 63–64.

<sup>94</sup> *Ibid*, p 65.

<sup>95</sup> *Ibid*, p 74.

<sup>96</sup> *Ibid*, pp 102–3.

**Recommendation 80:** I recommend that the Chartered Professional Accountants of Canada follow up with the Financial Transactions and Reports Analysis Centre, on an ongoing basis, to acquire and maintain insights into the level of reporting and compliance of its membership with the requirements of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

## Confidentiality Obligations and a Potential Whistle-blower Regime

As I explain in Chapter 30, the CPA Code contains provisions on confidentiality. CPABC and CPA Canada witnesses expressed concern that their members' duty of confidentiality prevents them from disclosing confidential information, and that even in circumstances where disclosure is permitted, members could still face civil liability for breach of the duty. For this reason, CPA Canada has advocated for a whistle-blower regime that would allow CPAs to report their suspicions while being protected for the breach of confidentiality.

Concerns were also raised before me regarding CPABC's duty to maintain confidentiality under section 69 of the *CPA Act* and whether it is permissible to share information with law enforcement or others.

I address both issues in turn.

### The Duty of Confidentiality Under the CPA Code

Section 208.1 of the CPA Code states that a member "shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer." Ms. Wood-Tweel testified that the rules of confidentiality exist in relation to current and former clients, and current and former employers. They allow for full disclosure from the client, which in turn allows the accountant to do his or her job.<sup>97</sup>

Section 208.1 contains some exceptions. Specifically, a member can disclose confidential information when

- (a) properly acting in the course of carrying out professional duties;
- (b) such information should properly be disclosed for purposes of Rules 101, 211 or 302 or under the [CPA] Act or Bylaws;
- (c) such information is required to be disclosed by order of lawful authority or, in the proper exercise of their duties, by the Board, or a committee, officer or other agent of CPABC;

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<sup>97</sup> Ibid, pp 29-30.

- (d) justified in order to defend the registrant or any associates or employees of the registrant against any lawsuit or other legal proceeding or against alleged professional misconduct or in any legal proceeding for recovery of unpaid professional fees and disbursements, but only to the extent necessary for such purpose; or
- (e) the client, former client, employer or former employer has provided consent to such disclosure.

The duty is also overridden when information is provided to CPABC for the purpose of a practice review or investigation.<sup>98</sup>

CPABC submits that although the duty of confidentiality is different from the legal concept of privilege, it would not consider members to have committed professional misconduct or a breach of the CPA Code if they disclosed confidential information in circumstances that are equivalent to those for which the law recognizes an exception to solicitor-client privilege.<sup>99</sup> These circumstances would include:

- disclosure to appropriate authorities of communications from a client or employer that are themselves criminal or made with a view to obtaining advice to facilitate the commission of a crime;<sup>100</sup> and
- other disclosure that a CPA has reasonable grounds to believe is necessary to prevent a crime involving death or serious bodily harm to any person.<sup>101</sup>

However, CPABC notes that although these circumstances might be exceptions to the duty of confidentiality, “they do not necessarily shield a CPA from civil liability for breach of an express or implied duty of confidence, or other possible legal consequences over which CPABC has no authority.”<sup>102</sup> In this regard, Mr. Hernandez testified that a CPA who breaches confidentiality in a situation where there is no duty to report could be held civilly liable or terminated by their employer.<sup>103</sup>

Without deciding the issue, CPABC’s position on the above exceptions appears logical. It would seem to be an anomalous result if the exceptions to solicitor-client privilege (which, as I discuss in Chapter 27, is a constitutionally protected right with stringent protections and few exceptions) would not exist for the non-

<sup>98</sup> *CPA Act*, ss 51(9), (10).

<sup>99</sup> Closing submissions, CPABC, para 72.

<sup>100</sup> Closing submissions, CPABC, para 72, citing *Solosky v the Queen*, [1980] 1 SCR 821 at 835–36 and *Descôteaux v Mierzwinski*, [1982] 1 SCR 860 at 881. CPABC further notes that, in line with *McDermott v McDermott*, 2013 BCSC 534, it would consider that communications in which a client deliberately uses the CPA to facilitate unlawful conduct does not come within the scope of the duty of confidentiality: Closing submissions, CPABC, footnote 73.

<sup>101</sup> Closing submissions, CPABC, para 72, citing *Smith v Jones*, [1999] 1 SCR 455 at paras 74–86.

<sup>102</sup> Closing submissions, CPABC, para 74.

<sup>103</sup> Transcript, January 13, 2021, p 34; see also Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 135–37, 151–52.

constitutionally protected duty of confidentiality owed by CPAs. Nonetheless, I would encourage CPABC or CPA Canada to seek a legal opinion if they consider it necessary to definitively determine what exceptions to the duty of confidentiality exist. This opinion could be particularly useful with respect to CPABC's suggestion, as I understand it, that CPAs might still be liable for breaching confidentiality, even when an exception applies.

Mr. Hernandez testified that the above issues related to the duty of confidentiality are the reason that CPA Canada has been advocating for a whistle-blower regime since 2017. Such a regime would allow CPAs with suspicions to provide information to law enforcement, prosecutors, or regulators and be protected for the breach of confidentiality.<sup>104</sup> Indeed, several of CPA Canada's submissions to the federal government have dealt with the whistle-blower proposal. Ms. Liu testified that CPABC is also supportive of a whistle-blower regime.<sup>105</sup>

In this regard, the International Ethics Standards Board for Accountants has developed the Non-Compliance with Laws and Regulations (NOCLAR) framework. Ms. Wood-Tweel explained that NOCLAR is a framework by which accountants can determine their steps in response to known or suspected non-compliance with laws or regulations. It was designed with anti-money laundering in mind.<sup>106</sup>

Ms. Wood-Tweel testified that Canada has no single legislative infrastructure for public disclosure and whistle-blowing, a problem that makes it difficult to implement NOCLAR. Whistle-blowing provisions exist in various statutes, including the *PCMLTFA*, environmental legislation, and securities legislation.<sup>107</sup>

CPA Canada accordingly submits, and CPABC agrees, that a national whistle-blowing framework is important so that CPAs need not navigate a complex patchwork system of reporting governed by discrete legislative frameworks."<sup>108</sup> It points to the United Kingdom's *Public Disclosure Act* and the *US Bank Secrecy Act*.<sup>109</sup> CPA Canada submits:

A national whistleblowing framework would be an important mechanism for those professionals who may encounter money laundering activities in circumstances that, for example, do not meet the requirements for a [suspicious transaction report], and where the CPA is not able to resolve the issue within the organization according to professional standards. It is an important consideration for the potential adoption of the NOCLAR international standard in the Canadian CPA profession ... is currently under review.<sup>110</sup>

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104 Transcript, January 13, 2021, p 33.

105 Transcript, January 12, 2021, p 51.

106 Transcript, January 13, 2021, pp 137–38.

107 Ibid, pp 138–39, 120–21.

108 Closing submissions, CPA Canada, para 87.

109 Closing submissions, CPA Canada, paras 88–89; Closing submissions, CPABC, para 76.

110 Closing submissions, CPA Canada, para 90.

I strongly endorse the work being done by CPA Canada toward implementing a national whistle-blower framework for chartered professional accountants. I encourage CPA Canada to continue its work in this regard.

### **CPABC’s Duty of Confidentiality Under the *CPA Act***

Although CPABC supports a whistle-blower framework, it has concerns about any recommendation that would contemplate CPABC disclosing to FINTRAC confidential information about its members’ clients. In CPABC’s view, such disclosure would raise serious concerns about privacy and confidentiality and would also be incompatible with CPABC’s regulatory role:

The disclosure of identifiable client information to FINTRAC could be harmful to CPABC’s ability to carry out its regulatory functions under the *CPA Act*, which depends on registrants providing CPABC with access to client information on a confidential basis when it is relevant in both practice reviews and investigations, on the understanding that CPABC will be required to maintain the confidentiality of that information.<sup>111</sup>

Mr. Tanaka testified that section 69 of the *CPA Act* and the *CPABC Code of Professional Conduct* contain strong protections with respect to confidentiality. Section 69 states in part:

**69(1)** A person acting under this Act must keep confidential all facts, information and records obtained or provided under this Act or under a former enactment, except so far as the person’s public duty requires or this Act or the bylaws permit the person to disclose or to report or take official action on the facts, information and records.

Mr. Tanaka testified that, in part because of section 69, CPABC would “very rarely” refer a matter to law enforcement:

Q: Appreciating that CPABC is not a criminal court and it’s not a prosecuting body, ... what would CPABC do if it uncovered activity that it suspected might be associated with criminality? ... Would CPABC ever refer something to the police?

A: Very rarely. I mean, we’re an independent organization. We’re not an agent of the state. And ... we have strict confidentiality requirements in [the CPA] Act in section 69 and so we have to respect that and in addition there’s privacy legislation as well, so it would be very rare.<sup>112</sup>

Interestingly, however, the Law Society of British Columbia, which has a similar limitation in section 88(3) of the *Legal Profession Act*, has implemented rules permitting the executive director to provide information to law enforcement in certain

<sup>111</sup> Closing submissions, CPABC, para 99.

<sup>112</sup> Transcript, January 12, 2021, pp 55–56.

circumstances upon obtaining consent from the Discipline Committee (see Chapter 28). Section 88(3) reads:

**88(3)** A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person *except for a purpose contemplated by this Act or the rules.* [Emphasis added.]

It strikes me that the italicized portion of section 88(3) is similar to the exception in section 69 of the *CPA Act*; namely, “except so far as the person’s public duty requires or this Act or the bylaws permit.” In the same way that the Law Society has enacted rules allowing for disclosure to law enforcement in certain situations, it appears that CPABC could enact rules or bylaws permitting it to disclose confidential information to law enforcement in certain situations. The reference to a person’s “public duty” is particularly interesting, as this seems to contemplate disclosing information for a public interest purpose.

CPABC, as a regulator, has unique access to everything in a CPA’s file, including confidential information. Further, through practice reviews, it may very well come across situations in which a member was, wittingly or unwittingly, potentially involved in money laundering or other illegal activity. It is important that CPABC be able to share this information with law enforcement in appropriate circumstances. I therefore recommend that CPABC enact bylaws or rules addressing situations in which it can disclose information to law enforcement.

**Recommendation 81:** I recommend that the Chartered Professional Accountants of British Columbia pass bylaws or rules enabling it to share information with law enforcement in appropriate circumstances.

## Conclusion

My discussion of the accounting sector has revealed that much work remains to be done. While there is, unfortunately, a relative shortage of evidence on the precise nature and extent of the involvement of accountants in money laundering in this province, I am satisfied that the nature of their work presents a significant money laundering vulnerability. Anti-money laundering regulation in this sector is crucial and must be strengthened.

As a regulator with a public interest mandate, CPABC has an important role to play in anti-money laundering regulation. This regulation is especially important considering the apparently low compliance rate by CPAs and firms with the *PCMLTFA* and the relatively few compliance examinations carried out by FINTRAC. I trust that

CPABC will consider my recommendations seriously and begin regulating its members for anti-money laundering purposes.

As I discuss further in Chapter 8, I have recommended the creation of an AML Commissioner. The commissioner's role would include a reporting function in which he or she would report to the provincial government on progress being made in various sectors with respect to anti-money laundering regulation. The commissioner will be well placed to monitor CPABC's progress in implementing anti-money laundering measures and report on this progress to the provincial government.

**Part IX**  

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**Other Sectors**

## Chapter 34

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# Luxury Goods

Section 4 of the Commission’s Terms of Reference directs me to make findings and recommendations with respect to the extent, growth, evolution, and methods of money laundering in the luxury goods sector.

This chapter sets out my findings and recommendations with respect to this sector. I begin by discussing the meaning of the phrase “luxury goods” in this context and the process undertaken by the Commission to examine money laundering in this aspect of the province’s economy. As I discuss below, I propose an expansive approach to determining what a luxury good is, based on four features that such goods possess. While the bulk of this chapter is devoted to luxury *goods*, I note at the outset that some *services* also present money laundering risks; I return to this topic later and include services in the recommendations I make at the end of this chapter.

After reviewing the nature of luxury goods, I discuss the risk of money laundering and evidence that money laundering is actually occurring in luxury goods markets, as well as the implications of the manner in which these markets are organized and regulated. I then set out a general model for addressing money laundering risks in luxury goods markets and the role that may be played by a permanent AML Commissioner, the creation of which is recommended in Chapter 8.<sup>1</sup> The flexible model I propose in relation to luxury goods is centred on principles that can be adapted to the nature of different luxury goods markets and the varying risk levels they present. I conclude this chapter by addressing money laundering in the motor vehicle market and by briefly discussing recent steps taken by the Insurance Council of British Columbia to address money laundering in the insurance industry.

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<sup>1</sup> As I explain in Chapter 8, I expect that the AML Commissioner will require a team to assist him or her with the various duties I am proposing. As such, my references to the AML Commissioner should be taken to include the commissioner’s office.

While I am not in a position to identify with precision the extent to which money laundering is occurring in the luxury goods sector, it is evident from the evidence before me that this sector is at a high risk of being exploited for money laundering or spending of criminal proceeds and that, to some degree, this risk has been realized in the form of actual money laundering activity. The risk of money laundering associated with this sector arises, in part, from the inherent features of luxury goods and the markets in which they are traded. In this province, however, it is clear that this risk has been exacerbated by a near-complete absence of visibility into and scrutiny of what is taking place within this sector of the economy. In my view, it is essential that the Province take immediate action to drastically reduce this risk and ensure that the luxury goods sector is not exploited for money laundering moving forward.

## What Are “Luxury Goods”?

My Terms of Reference do not define the phrase “luxury goods,” and the parameters of this sector are more ambiguous than those of some other listed economic sectors, such as real estate or gaming. Given this ambiguity, it is necessary to comment briefly on the meaning of the phrase, how it has been used in previous study and analysis of money laundering in this sector, and how it is used in this Report.

The notion that money laundering may occur through luxury goods markets is not new. To the extent that the luxury goods sector has been a focus of anti-money laundering scholarship and analysis in the past, this work has tended to focus on specific luxury goods markets. As examples, Dr. Peter German was directed to focus on luxury vehicles in his second report,<sup>2</sup> the Financial Action Task Force has released separate reports focused on the markets for gold<sup>3</sup> and diamonds,<sup>4</sup> and several academic publications have examined the risk of money laundering in the fine arts market.<sup>5</sup> A 2017 report prepared by Transparency International addressed the risk of money laundering in several luxury goods markets, including those for fine art, precious stones and jewels, super-yachts, and “personal luxury items” (which encompass accessories, apparel, watches and jewellery, and perfume and cosmetics).<sup>6</sup> While the Transparency International report considers several different luxury

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2 Exhibit 833, Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*], p 167.

3 Exhibit 4, Overview Report: Financial Action Task Force, Appendix WW: FATF, *Money Laundering / Terrorist Financing Risks and Vulnerabilities Associated with Gold* (Paris: FATF, 2015) [*FATF Report: Gold*].

4 Exhibit 4, Overview Report: Financial Action Task Force, Appendix XX, FATF, *Money Laundering / Terrorist Financing Through Trade in Diamonds* (Paris: FATF, 2013) [*FATF Report: Diamonds*].

5 Saskia Hufnagel and Colin King, “Anti-Money Laundering Regulation and the Art Market” (2019) 40(1) *Legal Studies* (Society of Legal Scholars); Hannah Purkey, “The Art of Money Laundering” (2010) 22(1) *Florida International Law Journal*; Katie L. Steiner, “Dealing with Laundering in the Swiss Art Market: New Legislation and its Threats” (2017) 49(1-2) *Case Western Reserve Journal of International Trade Law*; Fausto Martin De Sanctis, *Money Laundering Through Art: A Criminal Justice Perspective* (Cham, Switzerland: Springer, 2013).

6 Exhibit 774, Overview Report: Luxury Goods, Appendix A, Transparency International, *Tainted Treasures: Money Laundering in Luxury Markets 2017* [*TI Tainted Treasures 2017*], pp 34, 49.

goods markets, it largely treats them as separate markets rather than a single economic sector.

These past efforts to examine money laundering in luxury goods markets offer examples of the types of items that may qualify as luxury goods but provide little insight into how this category ought to be defined, or how to determine what is *excluded* from it. While it may not be difficult to identify examples of products that intuitively qualify as luxury goods, in my view, defining “luxury goods” only by way of example is of little value for the purpose of understanding and addressing the risk of money laundering in this sector.

Rather, I believe that, for this purpose, the category of “luxury goods” should be understood to be a broad and open one defined by the nature of the money laundering risk presented by the markets and products in question. As I discuss in more detail below, the money laundering risk posed by luxury goods markets is derived in large part from four features: their high value, their capacity to retain value, their transferability, and their portability.

While the unique features of individual luxury goods markets – such as the traditions of confidentiality and discretion in the fine art world,<sup>7</sup> or the capacity of precious metals and stones to serve as mediums of exchange<sup>8</sup> – may further contribute to the money laundering risk in these markets, any market at risk of money laundering because of the four features I have just identified should be considered a luxury goods market for anti-money laundering purposes. This definition, which should be understood to apply to the use of the phrase “luxury goods” throughout this Report, encompasses conventional luxury goods such as yachts, jewellery, and fine art, but also includes products that may not immediately come to mind as falling within this category, such as electronics, vintage wine, event tickets, or sports and entertainment memorabilia. One might reasonably argue that a more inclusive phrase such as “high-value goods” may more accurately capture this category, but in the interest of consistency with my terms of reference, I will continue to use the phrase “luxury goods” throughout this Report.

In my view, this broad and open definition is preferable to a fixed list of examples of luxury goods for two reasons. First, it recognizes that the products and markets that may fall within this category are numerous and constantly evolving, underscoring the need to continually search for additional markets that bear a similar risk and that should be subjected to anti-money laundering scrutiny. A closed list of existing markets risks creating the incorrect impression that if the money laundering risk associated with the goods sold in those particular markets can be addressed, money laundering through luxury goods would cease to be a cause for concern. In reality, however, even in the

7 Exhibit 774, Overview Report: Luxury Goods, paras 2, 57, 60; Appendix D, Responsible Art Market Initiative, *Guidelines on Combatting Money Laundering and Terrorist Financing* (2017) [*Art Trade Guidelines*], p 103; Appendix F, United States Senate, Permanent Subcommittee on Investigations: Committee on Homeland Security and Governmental Affairs, *The Art Industry and U.S. Policies that Undermine Sanctions* (2020) [*Art Industry and Undermining Sanctions*], p 121.

8 Exhibit 774, Overview Report: Luxury Goods, paras 35–38.

unlikely event that a comprehensive list of such markets could be compiled, this list would quickly become obsolete as markets for new products emerge. I note as examples the growth in consumer electronic goods in recent years, including the introduction of many new products to the marketplace, and the very recent advent of “non-fungible tokens,” which clearly fall into this category but would likely not have been included on a list of luxury goods markets even at the time that this Commission was established in 2019.

The second reason why a broad, open definition is preferable is that it encourages those engaged in the fight against money laundering to think of these diverse markets as a unified economic sector for the purpose of preventing money laundering. Because the money laundering risks associated with these markets are similar, they may be viewed by those intent on laundering the proceeds of crime as largely interchangeable. Accordingly, addressing money laundering in one luxury goods market may be of little use to the province as a whole if the effect is simply to displace this illicit activity to another sector of the province’s economy. This risk of displacement has important implications both for the type of anti-money laundering measures to be implemented and for the sorts of bodies or agencies best able to implement those measures. For example, providing new resources and authorities to regulators responsible for single markets – or even the creation of new regulators – may be a sensible approach if the objective is to eliminate money laundering in the market for a single luxury good, but may be of little utility in addressing money laundering *throughout* this sector. Defining luxury goods as a broad category rather than as a list of individual markets maintains a focus on this economic sector broadly, rather than on the loose collection of individual markets that may be commonly thought to comprise it.

## **The Commission’s Process**

The Commission undertook extensive efforts to examine money laundering in various luxury goods markets in British Columbia. These efforts included consultation with experts in Canada and internationally, review of relevant literature, and obtaining records from and interviewing representatives of trade associations, regulatory bodies, and businesses operating in various luxury goods markets within the province. Through these efforts, the Commission developed an in-depth understanding of the risk of money laundering in this sector and identified indicators of actual money laundering in the markets that it comprises.

Despite these efforts, Commission counsel elected not to devote significant hearing time to the luxury goods sector. This should not be taken as an indication that the Commission assessed the luxury goods sector as an area of low priority or low risk. Rather, the nature of this sector was such that it was not necessary for the Commission to devote as much hearing time as it did to others.

While the information obtained by the Commission is sufficient to allow me to draw conclusions regarding the risk of money laundering in luxury goods markets in this

province and identify indicators that this activity is actually occurring, it is necessary to acknowledge two factors that limited the Commission's efforts in this sector.

The first of these factors is the COVID-19 pandemic. While the pandemic had an impact on all aspects of the Commission's work, few areas were as significantly affected as its inquiries into the luxury goods sector. The Commission's intended approach to this sector included the engagement of private investigators to seek out information by attending luxury goods retailers, identifying and cultivating sources of information about these businesses and industries, and gaining insight into whether and where activity that may be associated with money laundering is taking place in these industries. These investigative efforts commenced in early 2020 but came to a halt almost immediately following the onset of the COVID-19 pandemic. Due to the initial closure of many retailers, changes in their operations, and concern for the safety of Commission and retailer staff and the broader public, it was not possible to pursue these investigations as initially planned. The Commission quickly adjusted its approach and made contact with a number of luxury goods retailers, obtaining relevant documents and conducting remote interviews. While this process yielded valuable information, it is impossible to say how it compares to what the Commission would have learned had it been able to execute its original plan.

The second limitation faced by the Commission in its investigations into money laundering in the luxury goods sector was legal restrictions on the extent to which the Commission was able to collect information. In particular, despite the summons power set out in the *Public Inquiry Act*, SBC 2007, c 9, the Commission faced limits in its ability to obtain information related to provincial sales tax rebates for vehicles exported from the province and to records held by the Vehicle Sales Authority, which regulates motor vehicle dealers and salespeople. These comments are in no way meant to suggest that these records and information were improperly withheld from the Commission. To the contrary, I am satisfied that those in possession of those records were properly complying with the governing legislation. However, the reality is that the Commission's ability to inquire into money laundering in the luxury goods sector was, to some degree, hampered by these limitations.

I do not believe that these limitations significantly affected the Commission's ability to fulfill its mandate with respect to this sector. Rather, I consider it necessary to identify them for two reasons. First, as this is a public inquiry, I believe that, to the extent possible, it is important that I explain to the public the steps the Commission did and did not take and, where the Commission did not take what may seem to be logical steps, the reason why those steps were not taken. Second, the above-noted limits on the Commission's ability to obtain information are likely to inhibit future efforts to obtain the same information by others concerned with combatting money laundering in the province, including the AML Commissioner. By identifying these limits here, my hope is that steps can be taken to ensure that these barriers do not restrict future efforts to address money laundering in British Columbia.

## Money Laundering Risk in Luxury Goods Markets

While the luxury goods sector is comprised of a diverse set of markets for a broad range of products, these markets are unified by the money laundering risk that they face. Broadly speaking, the luxury goods sector is at risk of money laundering in three forms:

1. **Luxury goods as a means of laundering money:** The first form of money laundering through luxury goods – a more traditional one – involves using luxury goods as a means of storing the value of the proceeds of crime so that they can be dealt with in a manner that would be difficult or impossible if the illicit funds remained in the form in which they were originally obtained and give the funds a façade of legitimacy when the goods are sold. In this form, luxury goods are a means to an end, acquired *for the purpose of* laundering money.
2. **Use of proceeds of crime to purchase luxury goods for use and enjoyment:** The second form of money laundering risk facing the luxury goods sector involves the use of proceeds of crime to acquire luxury goods, such as luxury automobiles or yachts, for the purpose of using and enjoying those goods. In this form, the acquisition of luxury goods is an end in itself. The goods are not acquired solely for the purpose of laundering money; however, they ultimately serve the purpose of storing value and giving the proceeds a façade of legitimacy when sold.
3. **Use of luxury goods in the “Vancouver model”:** As I expand below and in Chapter 2, the “Vancouver model” involves lending proceeds of crime to individuals who were not directly involved in the criminal activity that generated those proceeds (and who may not be aware of their illicit origins), with the expectation that the loan will be repaid in another form and/or location. It seems highly likely that money laundering has occurred through the Vancouver model in the luxury goods sector, with those receiving the illicit funds using them to purchase luxury goods.

In what follows, I review these three forms of money laundering in more detail.

My focus in this chapter is primarily on luxury *goods*, as stipulated in my Terms of Reference. However, I note that there are at least two ways that *services* can be used to launder money. First, an individual may ostensibly pay for services, but those services are not in fact performed. This allows for the movement of illicit funds and an appearance of legitimacy of the funds in the hands of the purported service provider. Second, individuals who receive illicit funds as part of the Vancouver model can spend those funds on services. As the model ultimately requires repayment from the individual who was loaned the funds, the use to which those funds are put by the borrower is immaterial to the successful laundering of the illicit funds. As such, their use to purchase services furthers the aims of the money laundering scheme as effectively as their use to gamble, purchase luxury goods, or for any other purpose. The two methods of money laundering through services raise significant risks and concerns; I have therefore included services in the recommendations I make at the end of this chapter.

## Luxury Goods as a Means of Laundering Money

The first money laundering risk arises from the possibility that proceeds of crime can be used to acquire goods, which can then be held, transferred, sold, and/or transported. This is done in order to store value, convert value, or transfer it to another location, jurisdiction, or person. This in turn obscures the source of funds initially used to acquire the luxury good and/or the movement of the value stored in that good.

The nature of this risk was captured in a 2015 report prepared by the Europol Financial Intelligence Group titled *Why Is Cash Still King?* (which uses the phrase “high value goods” in place of “luxury goods”):

Typically, the reason for using high value goods (such as watches, art works, luxury vehicles, precious metals and jewels) or real estate is that they offer criminals an easy way to integrate funds into the legal economy, converting criminal cash into another class of asset which retains its value and may even hold opportunities for capital growth.

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Another reason that attracts criminals to the purchase of high value goods is that certain items, such as gold or precious stones, are readily liquid and moveable asset classes which can be traded globally. As these items have a very high value, just like high denomination notes, they offer criminals the opportunity to shrink bulky cash holdings into discrete and portable holdings of gold or diamonds, for example. These items can be smuggled across borders and thereafter sold ... [T]hese items are not captured under European cash control regulations and as such have an added advantage in that they need not be declared.<sup>9</sup>

The risk that luxury goods may be used to launder money in this way arises primarily from the four features common to luxury goods that I identified above: their high value, capacity to hold value, transferability, and portability. There are, of course, additional features of specific luxury goods markets that may exacerbate or attenuate these risks for specific markets. In my view, however, these four features are the primary sources of the risk of this form of money laundering that afflicts the sector as a whole, and they are useful in defining what should qualify as a luxury good for the purpose of combatting money laundering in British Columbia.

### High Value

The first, and most obvious, feature of luxury goods that contributes to the risk of money laundering is their high value. The value of luxury goods is relevant to money laundering risk because the more expensive a good, the greater the volume

<sup>9</sup> Exhibit 64, Europol Financial Intelligence Group, *Why Is Cash Still King? A Strategic Report on the Use of Cash by Criminal Groups as a Facilitator for Money Laundering* (2015) [Europol Cash Report], p 36.

of illicit funds that can be converted into that good. This enables the laundering of proceeds of crime because it permits the more efficient conversion, transfer, or transportation of illicit funds. Where, for example, a substantial volume of illicit cash is used to purchase a single piece of jewellery or work of art, the cash is converted into a different form in a single transaction, and the value of that cash can be much more easily stored or transported than could the cash itself or a larger volume of less expensive goods. Moreover, the luxury good can be converted back into cash or another monetary instrument in a single transaction, rather than a series of transactions, which would be required to convert a large quantity of less expensive goods. This should not be taken to suggest that money laundering cannot be accomplished through the purchase of lower-value goods – particularly if purchased in high volumes – or that lower-value goods should not be the subject of anti-money laundering scrutiny; rather, in my view, the risk associated with particular markets will typically increase with the value of the goods sold in that market.

### ***Capacity to Retain Value***

A second feature of luxury goods that gives rise to an elevated risk of money laundering is their capacity to retain value. Goods like vehicles, yachts, jewellery, and fine art are not perishable and do not typically become valueless following purchase, as evidenced by the robust markets for used or pre-owned goods in each of these categories. While some of these items may decline in value, if purchased with the proceeds of crime, these items can be relied on to retain at least a portion of the value of those illicit funds while offering relief from the burden and inconvenience of storing and concealing large quantities of cash – as well as the suspicion that large amounts of cash may attract.

### ***Transferability***

The utility of luxury goods in efforts to launder money is further enhanced by the relative ease with which these goods can be transferred to others.<sup>10</sup> As noted above, because luxury goods tend to retain their value following purchase, there are relatively robust markets for used or pre-owned goods in many of these categories. This facilitates money laundering by ensuring that a bad actor can reasonably expect to be able to transfer the good to another person and, in doing so, extract the value retained by the good after it was acquired with the proceeds of crime. This feature of these goods may also facilitate the transfer of value for criminal purposes other than through the exchange of cash by permitting that value to be transferred through the delivery of a good, rather than cash itself.

The transferability of these goods is also useful to those intent on laundering money, as it enables the creation of a legitimate explanation for criminally derived property. Where a luxury good acquired with the proceeds of crime is resold, the funds obtained through the resale can be explained as the proceeds of the sale of the luxury good, obscuring the criminal origins of the funds initially used to acquire the item.

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<sup>10</sup> Exhibit 774, Overview Report: Luxury Goods, paras 37–38.

## **Portability**

A further common feature of luxury goods that contributes to the risk of money laundering posed by this sector is the portability of these goods.<sup>11</sup> Goods like jewellery, electronics, and works of fine art are often relatively compact and easily transported. Some items within this category, such as vehicles and yachts, are themselves modes of transportation. The portability of these goods allows the value of the proceeds of crime stored in these items to be moved between locations – and potentially jurisdictions – easily and without attracting the scrutiny often directed at large volumes of cash.

## **Additional Features of Specific Luxury Goods**

There are, of course, other features of certain luxury goods markets that may further contribute to a risk of money laundering. The risk of money laundering through fine art, for example, is elevated by the industry's traditions of confidentiality and discretion,<sup>12</sup> while the risk of money laundering through jewellery and precious metals and stones is exacerbated by their capacity for use as a medium of exchange, obviating the need to convert them to currency before they can be spent.<sup>13</sup> These additional features do not apply to all luxury goods, but illustrate how the features listed above, which are of more general application and unify the luxury goods sector, may be exacerbated by other characteristics.

## **Using Risk to Define the Sector**

In my view, and for the reasons outlined in detail above, the foregoing four characteristics are a useful means of defining this otherwise amorphous sector of the economy. Efforts to combat money laundering through luxury goods should be focused on any market that satisfies this description – including those that arise following the conclusion of the Commission's work – regardless of whether those markets sell goods that would typically be considered “luxuries.” The proposed regulatory model for combatting money laundering in this sector, set out later in this chapter, is intended to apply to all such markets and, in my view, will be most effective if implemented in a way that permits it to do so.

## **Using Proceeds of Crime to Purchase Luxury Goods for Use and Enjoyment**

The second, broader form of money laundering connected to the luxury goods sector involves the use of proceeds of crime to purchase luxury goods with the intention of using or enjoying those goods.

<sup>11</sup> Ibid, paras 2, 35, 57, 60.

<sup>12</sup> Ibid, paras 2, 57, 60; Appendix D, *Art Trade Guidelines*, p 103; Appendix F, *Art Industry and Undermining Sanctions*, p 121.

<sup>13</sup> Ibid, paras 35, 37–38, 49.

Witnesses during the Commission’s hearings referred to the affinity of criminals for high-value, luxury goods.<sup>14</sup> Simon Lord, one of the world’s leading experts on money laundering, described how the purchase of luxury goods by those who commit crimes may not be attempts to launder money, but rather the ultimate purpose motivating their criminal endeavours:

People like to buy luxury goods, and one of the things that you tend to find with criminals is that they go for things like expensive cars. They go for ... expensive watches and things like that. And there’s always an argument as to the extent to which the purchase of an expensive item is a method of laundering funds or whether it’s just a way of realizing your ill-gotten gains ... [T]he whole purpose of committing most types of crime is the acquisition of a large amount of money ... [W]hen I talk about money laundering, I say that actually all crimes, a million crimes, are actually money laundering, but just with a predicate offence bolted on that generates the money that you’re going to launder. And so ... in a lot of cases, if you want to buy a flash car or you want to buy a decent watch, it is simply the way you enjoy your ill-gotten gains. But the other side of that is ... that you’re essentially getting into a type or form of trade-based money laundering.<sup>15</sup>

Similar observations were made by Dr. German in the “luxury vehicles” section of *Dirty Money 2*, where he suggested that criminality motivated by a desire to live a luxurious lifestyle may be particularly prevalent in this province:

Gangsters in B.C. have often been associated, for good reason, with living a fast life of upscale restaurants, designer clothes, expensive jewellery, and luxury cars, funded and fuelled by drug trafficking and other crimes. Through their ostentatious lifestyle, they seek to portray power and wealth. One expert on gangs internationally wrote, “In none of the places that I visited did I see the same level of wealth on display by gang members that I have observed in B.C.”

British Columbia gangs are unlike territorial street gangs in other cities in the world that are a product of economic necessity or oppression; rather, they are motivated by the “ability to make quick money and enjoy a lifestyle of hedonism and decadence,” and their girlfriends have “a desire to live in the upper echelon of society – fast cars, fast drugs and fast parties.”<sup>16</sup>

I am not in a position to assess whether those engaged in a life of crime do indeed have a greater fondness for luxury goods than law-abiding people, or whether crime in British Columbia is disproportionately motivated by a desire for conspicuous consumption. I do accept, however, that the purchase of luxury goods with the proceeds

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14 Evidence of S. Lord, Transcript, May 29, 2020, p 21; Evidence of S. Schneider, Transcript, May 26, 2020, pp 10-11.

15 Transcript, May 29, 2020, p 21.

16 Exhibit 833, *Dirty Money 2*, p 181.

of crime is likely often motivated simply by a desire to own and use those goods and not always part of a premeditated money laundering scheme.

The likelihood that criminals may use the proceeds of crime to purchase luxury goods for the same reason that anyone else might purchase an expensive car, piece of jewellery, or painting does not, in my view, exclude these purchases from being categorized as money laundering – nor does it in any way diminish the need to eliminate this kind of activity. The ultimate goal of money laundering is to convert the proceeds of crime into a form that can be used in the legitimate economy. If illicit funds can be used to purchase luxury goods directly – without distinct, intervening steps to make the funds appear legitimate – the goal of laundering has been accomplished, just as it would if those funds had been routed through a series of offshore bank accounts and numbered companies in secrecy jurisdictions. That this type of complex laundering process was not required before the funds could be spent only simplifies the criminal operation and lowers its costs of business. Further, that a luxury good was not acquired for the *purpose* of laundering money does not mean that it will not ultimately be used to launder money. A vehicle purchased for personal use with the proceeds of crime will, in most instances, eventually be sold. When it is, the value derived from the sale will appear legitimate in the same way that it would if the vehicle was purchased with the intent of laundering the illicit funds originally used to purchase it. In my view, as there is ultimately no difference in outcome, the purchase of luxury goods for personal use with illicit funds should be viewed as no less concerning than their purchase for the purpose of laundering.

## **Vancouver Model**

The third way in which luxury goods can be used to launder money is through the “Vancouver model.” This model, discussed in more detail in Chapter 2, involves the lending of cash or other instruments of illicit origin to individuals not directly involved in the criminal activity that generated those proceeds, with the expectation that the loan will be repaid in another form and/or location. The borrower may or may not have knowledge of the illicit source of the funds.

The evidence before me does not definitively prove that there is widespread systematic use of the Vancouver model of money laundering through luxury goods in the same way as in casinos. However, there is a sufficient basis to be concerned about criminal proceeds being loaned to fund the purchase of luxury goods in this province. As I discuss in Chapter 13, it is clear that, due in part to barriers to the removal of money from China, patrons of BC casinos gambled substantial amounts of illicit funds acquired as part of the Vancouver model. It seems obvious that the barriers these individuals faced in obtaining legitimate funds with which to gamble would have also impacted their ability to obtain legitimate funds to finance other aspects of their lives. In this context, it seems highly likely that some of these patrons – if in need of funds with which to purchase a vehicle, jewellery, artwork, electronics, or any number of

other luxury goods – would have resorted to the same source of illicit cash that they used to gamble.

As such, it is clear, in my view, that the risks of money laundering in the luxury goods sector include a high risk of money laundering through the Vancouver model. In my view, using proceeds of crime in this way can certainly be considered money laundering and should be cause for concern – just as it is cause for concern when those who engage in illicit activity themselves purchase goods with illicit funds (as discussed above).

### ***Use of Proceeds of Crime by Criminals and the Vancouver Model Beyond Luxury Goods Markets***

I pause here to note that there is no credible basis to believe that the use of proceeds of crime by criminals themselves or by third parties is limited to luxury goods markets or, in the case of the Vancouver model, the gaming sector. On the contrary, it would seem that these typologies can appear in virtually any aspect of the economy, including (as noted above) payment for services. Absent measures that would prevent the use of proceeds of crime in certain sectors, it seems entirely likely that an individual with access to criminal proceeds – whether through the Vancouver model or their own criminal activity – would use those proceeds to fund any and all aspects of their lives. While the use of illicit funds to gamble or purchase luxury vehicles may lead to more compelling headlines, it is just as likely that these funds are also used for more mundane purposes, such as groceries, entertainment, and payment for services. However, despite the capacity of criminal proceeds to be spent on virtually anything, I remain of the view that there is good reason to focus efforts to detect and combat money laundering in the “luxury goods” sector, with reference to the four characteristics I have identified above – high value, capacity to retain value, transferability, and portability.

While the risk of money laundering through the Vancouver model and the direct use of proceeds of crime by criminals are not restricted to the luxury goods (or gaming) sectors, I believe that their use in the luxury goods sector is worthy of particular attention for two reasons. First, these typologies are likely to be much more detectable in this sector than in other parts of the economy. Second, the use of proceeds of crime to purchase luxury goods is more likely to have a greater impact on society than is their use in other types of transactions.

The use of proceeds of crime in the form of cash to purchase luxury goods is likely to be more detectable than in other transactions because of the high value of luxury goods. The use of illicit cash to make small purchases such as groceries, restaurant meals, or movie tickets is unlikely to stand out from similar transactions made using legitimate funds because the value of those purchases is such that it would not be at all unusual for any member of the public to use cash. This is not the case where the item purchased is a luxury car, yacht, work of fine art, or piece of jewellery costing tens or even hundreds of thousands of dollars. As such, the relevance of these

typologies to the luxury goods sector – and the reason, in part, for their inclusion in this chapter – is not the exclusivity of their use in this sector, but rather the opportunity for detection. Accordingly, the model for addressing money laundering in this sector that is developed later in this chapter is designed to address all three forms of money laundering outlined above – the purchase of luxury goods with the intention of laundering money, by criminals themselves to purchase items they desire, or by others through the Vancouver model.

The second reason why the use of proceeds of crime to purchase luxury goods is deserving of particular attention is the elevated impact this activity may have on society because of its potential to motivate criminal activity and to distort local economies. The profit motivation that drives revenue-generating criminal activity is dependent on the ability of those engaged in those crimes to spend their ill-gotten gains. As discussed previously in this Report, the purpose of any money laundering endeavour is to ensure that the proceeds of crime can be spent. While in an ideal world it would not be possible to spend illicit funds at all, it seems obvious that some types of spending will provide a stronger incentive for criminal activity than others and that profit-driven crime would be much less attractive in this province if those who make money through crime were limited to using that money to purchase the necessities of life rather than the luxury vehicles, expensive jewellery, and super-yachts often associated with a stereotypical criminal lifestyle.

In addition, limiting the spending of illicit funds to the purchase of the same kind of day-to-day necessities that all law-abiding British Columbians purchase – if this were possible – would be less likely to distort local economies. In his evidence, journalist Oliver Bullough described how the unfettered use of the proceeds of crime and corruption to purchase luxury goods can distort the mix of businesses and “hollow out” a local economy:

[I]t inflates asset prices enormously – I mean house prices enormously – and it skews the economy towards particular sectors ... the luxury watch sector, the sports car sector ... the high-end boutique sector ... the kind of things that are purchased by oligarchs and the relatives of oligarchs, but not by the rest of us ... [I]t skews the economy towards what Ajay Kapur called plutonomy rather than the kind of things that the rest of us buy.<sup>17</sup>

In my view, because of the greater likelihood that proceeds of crime in the form of cash will stand out when used to purchase luxury goods and the potential that these transactions hold to motivate criminal activity and impact local economies, it is important that efforts to combat money laundering in luxury goods markets include a focus on preventing the use of illicit funds to purchase luxury goods, even where those purchases are for the purpose of consumption and not part of a deliberate money laundering scheme.

<sup>17</sup> Evidence of O. Bullough, Transcript, June 2, 2020, p 57.

## Money Laundering Risk in Luxury Goods Markets Realized

The evidence before me establishes that the risk of money laundering in luxury goods markets described above is not merely a hypothetical concern. To the contrary, the evidence indicates that this risk has been realized and that substantial amounts of proceeds of crime and corruption have been laundered through luxury goods markets in jurisdictions around the world, including in Canada. While I am unable to determine precisely how much money is being laundered through luxury goods markets in British Columbia specifically, the record before me offers strong indications that this form of money laundering is present in this province.

## Money Laundering Through Luxury Goods Globally

Money laundering through luxury goods markets is clearly a source of concern to those working to combat money laundering internationally. This issue has been addressed in reports prepared by organizations including Transparency International,<sup>18</sup> the Financial Action Task Force,<sup>19</sup> Europol,<sup>20</sup> the Basel Institute on Governance,<sup>21</sup> the United Kingdom's National Crime Agency,<sup>22</sup> and the United States Senate Permanent Subcommittee on Investigations.<sup>23</sup> Money laundering in this sector globally has also been addressed in academic commentary<sup>24</sup> and was referred to by a number of international experts who gave evidence during the Commission's hearings.<sup>25</sup>

Much of this evidence included references to concrete examples of money laundering through luxury goods markets. These examples offer valuable insight into how money laundering through luxury goods markets actually occurs and demonstrate that it is much more than a theoretical risk. A sampling of these examples from various sources is set out below.

Europol's 2015 report *Why Is Cash Still King?* offered the following example of a money laundering scheme uncovered in France involving the purchase, transportation, and sale of gold:

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18 Exhibit 774, Appendix A, TI *Tainted Treasures 2017*, online: [https://images.transparencycdn.org/images/2014\\_PolicyBrief4\\_RegulatingLuxuryInvestments\\_EN.pdf](https://images.transparencycdn.org/images/2014_PolicyBrief4_RegulatingLuxuryInvestments_EN.pdf).

19 Exhibit 4, Appendix WW, *FATF Report: Gold*, and Appendix XX, *FATF Report: Diamonds*.

20 Exhibit 64, *Europol Cash Report*, p 13.

21 Exhibit 774, Appendix D, *Art Trade Guidelines*.

22 Exhibit 13, National Crime Agency, *Chinese Underground Banking and "Daigou"* (NAC/NECC v.1.0) (2019).

23 Exhibit 774, Appendix F, *Art Industry and Undermining Sanctions*.

24 F.M. De Sanctis, *Money Laundering Through Art: A Criminal Justice Perspective*, p 56; S. Hufnagel and C. King, "Anti-Money Laundering Regulation and the Art Market," p 4; H. Purkey, "The Art of Money Laundering," p 112.

25 Evidence of R. Wainwright, Transcript, June 15, 2020, pp 24–25; Evidence of O. Bullough, Transcript, June 2, 2020, pp 2–3; Evidence of S. Lord, Transcript, May 29, 2020, pp 20–22; Evidence of G. Hughes, Transcript, May 3, 2021, pp 30, 79; Evidence of S. Cassella, Transcript, May 10, 2021, p 15.

A recent investigation by French authorities into a drug trafficking network led to several arrests relating to the laundering of the group's profits. Money from the sale of cannabis was collected in France and its laundering was orchestrated through the movement of cash from Paris to Belgium, where it was used to buy gold. Thereafter, couriers (often Belgian students) acted as mules, transporting the gold to Dubai. In Dubai the gold was then made into jewellery and sent to India to be sold on the gold market. The profits were finally shared between the [organized crime groups] and money launderers with the assistance of bankers with access to the financial system. A key organiser admitted laundering EUR 36 million since 2010 and sending 200 kg of gold from Belgium to India. The network collected about EUR 170 million per year.<sup>26</sup>

Simon Lord spoke of money laundering schemes involving gold observed in the United Kingdom in strikingly similar terms:

[O]ne of the things that we have seen is people using ... bullion dealers, paying cash into the accounts of a bullion dealer, the bullion dealer supplying them with fine gold bars, and then people ... moving the gold bars across an international boundary instead of moving cash. Now, the advantage that they had of doing that in the UK up until relatively recently was that gold and precious metals, stones, and things like that didn't count as cash, and so you couldn't seize it in the same way that you could cash. That has actually changed recently. There has been something ... called the "listed asset" provisions which have been introduced into our primary money laundering legislation ... [They] effectively enabl[e] us to seize ... gold, precious metals, items like that, in the same way that we would do in cash. But ... it is something we've seen, and it's a useful method of money laundering, when you're moving gold to ... a gold processing centre or [somewhere], the demand is very high. So, in places like India, for example, and in places like the [United Arab Emirates] ... which processes a lot of gold [and] turns it into jewellery. And India, the price of gold actually tends to go above the gold fix a lot of the time because the demand is so great, they can't get enough gold to meet the demand. So if you're going to move money and you're going to move it to somewhere like India, then doing it through gold is quite an effective way of dealing with it.<sup>27</sup>

A 2013 Financial Action Task Force report identified a money laundering scheme involving the purchase of vehicles in the United States with funds originating in Lebanon, and the export of those vehicles to West Africa:

An investigation by the Drug Enforcement Administration (DEA) and other federal law enforcement agencies discovered a scheme to launder money

<sup>26</sup> Exhibit 64, *Europol Cash Report*, p 37.

<sup>27</sup> Transcript, May 29, 2020, p 22.

through the United States financial system and the United States used car market. As part of the scheme, funds are transferred from Lebanon to the United States in order to purchase used cars, which were are [sic] shipped to West Africa and sold for cash. Cash proceeds of these car sales are then transferred, along with the proceeds of narcotics trafficking and other crimes, to Lebanon. The cash is often moved through bulk cash smuggling. In 2012, the US District Court–Southern District of New York (SDNY) issued a civil ML complaint and “in rem” forfeiture action involving a number of Lebanese financial institutions and exchange houses.<sup>28</sup>

Other examples found in these sources describe the identification of luxury goods including luxury cars, fine art, yachts, and jewellery purchased with the proceeds of crime or corruption; the use of various luxury goods to convert, store, transport, and/or transfer value acquired through illicit activity; and efforts to launder luxury goods that are themselves the proceeds of crimes such as theft or smuggling.<sup>29</sup> In my view, this evidence clearly establishes not only that it is possible to launder money through luxury goods markets, but that this type of activity is a reality in jurisdictions across the globe.

## Money Laundering Through Luxury Goods in Canada

The evidence before me also establishes that Canada’s luxury goods markets are not immune to this form of money laundering.<sup>30</sup> Of the 38 case examples set out in the Financial Action Task Force report referred to above, six were drawn from Canada.<sup>31</sup> The methodology used in compiling the Financial Action Task Force report<sup>32</sup> was clearly not intended to produce a representative sample, and no conclusions should be drawn as to the prevalence of this typology from the apparent disproportionate number of cases in this report emanating from Canada. However, these examples, set out below, clearly demonstrate that luxury goods markets are being used to launder money in Canada:

- a. **Case Study #1:** This case involved an organised criminal group that distributed drugs and controlled several low-level (street-level) drug dealers. The higher-placed distributor would distribute drugs to the street-level dealer and receive diamonds, gemstones, and jewellery as payment, as well as cash. Likewise, the street-level drug dealer traded drugs for diamond jewellery and then traded up to the higher placed drug dealer for more drugs and debt payments. The higher placed drug distributor would then sell the diamonds and jewellery at small

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28 Exhibit 4, Appendix XX, *FATF Report: Diamonds*, p 125.

29 Exhibit 774, Overview Report: Luxury Goods, p 42; Exhibit 4, Appendix XX, *FATF Report: Diamonds*, pp 86-127; Evidence of S. Lord, Transcript, May 29, 2020, pp 20-22.

30 Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 59-61; Evidence of C. Leuprecht, G. Clement, A. Cockfield, J. Simser, Transcript, April 9, 2021, pp 38-39; Evidence of M. Paddon, Transcript, April 14, 2021 pp 90-95; Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 59-60; Transcript, May 26, 2020, p 17.

31 Exhibit 4, Appendix XX, *FATF Report: Diamonds*, pp 87, 90, 92-93, 99, 123.

32 Exhibit 4, Appendix XX, *FATF Report: Diamonds*, p 84.

incremental amounts (CAD \$3,000–\$8,000) to the jewellery market (jewellers) and in return would receive payment by way of cheque. The drug distributor also received high-end jewellery (watches) instead of payment for the illicit jewellery.<sup>33</sup>

- b. **Case Study #4:** This case involved a drug dealer/producer who sold drugs and traded drugs for collectively over US \$1 million in stolen and purchased jewellery. The drug dealer – who had strong industry, commodity, and market knowledge – sold the least valuable (scrap) jewellery as scrap to jewellery stores and bullion dealers. Jewellery that had some aesthetic or residual market value above the component parts was sold as estate jewellery to jewellers. In return, the drug dealer received cash, gold and silver bars, and coins and diamond jewellery. The drug dealer used some of the proceeds of crime from the sale of drugs and sale of jewellery obtained through trade for drugs to purchase specific diamond jewellery and gemstones items (jade) as a mean[s] to store wealth. The drug dealer used appraisals to define the value of jewellery that was stored as wealth and to help negotiate fair prices for the resale of the jewellery to the market.<sup>34</sup>
- c. **Case Study #13:** This is a case where fraud was the predicate offence. The criminals had jewellery industry contacts at the wholesale level. To launder the proceeds of crime, they purchased over CAD \$1 million worth of diamonds that were then re-sold back to the jewellery market and also to the general public through the Internet. They did not mark up the value of the diamonds for retail purposes; instead, they sold them to retail customers at wholesale prices and therefore moved them quickly. The diamonds were all in a size and quality class that are the most desirable and resulted a quick turnover of the diamonds. The money received from the sale of the diamonds was wired direct to their bank from the various sales locations.<sup>35</sup>

In addition to these examples, evidence from witnesses who testified before me also supports the conclusions that proceeds of crime are being used to purchase luxury goods in Canada and that the markets for these goods are being used to launder money in this country. Garry Clement, an anti-money laundering expert and former RCMP member who was heavily involved in the early days of the RCMP's proceeds of crime section, described the frequency with which proceeds-of-crime investigations undertaken by the units he led involved luxury goods:

I can tell you in just about every investigation that I was involved in or had my units investigate, we came across all kinds of safety deposit boxes full

33 Exhibit 774, Overview Report: Luxury Goods, para 44.

34 Ibid.

35 Ibid.

of high-value jewellery, Rolex watches, not so much of interest today, but they were quite popular in the '80s and '90s. We all know that paintings from renowned artists are worth [a] tremendous amount of money, but ... high-valued goods [haven't] been something that Canada in the past has looked at, and yet it's a great investment because we've gone into lots of fairly sophisticated criminals and found their house[s] full of art. So it was a great way to launder money and at that time, and still for the most part, a lot of these high-end jewellers have not had to report. So it's ... a vehicle for money laundering very much like the high-end car industry was. And so what we had to look at and we've looked at for years is that ... anything that can ... hide your cash, a vehicle to hide your cash, definitely is used by sophisticated criminals, and I think it's an area that we are tightening up in some areas in Canada, but it's an area that we really need to take a serious look at, whether it's done provincially or otherwise ... I started a program in the '90s out of Ottawa called Merchants Against Money Laundering, and I really believe that all merchants need to get on side here. It's both a moral and ethical responsibility because we are sadly losing the fight in this arena.<sup>36</sup>

Similarly, Chief Superintendent Robert Gilchrist, director general of Criminal Intelligence Service Canada, gave evidence of an investigation into a casino-focused money laundering scheme resulting in the seizure of property including luxury vehicles presumably believed to have been purchased with the proceeds of crime:

A recent example of the use of casinos by organized crime is actually an example out of the Province of Ontario. It's a York Regional Police investigation that has been publicly reported on and therefore I can comment. It's an investigation into an organized crime group based in Ontario. During that investigation, group members collectively gambled in Ontario casinos and are believed to have laundered over \$70 million Canadian inside legal casinos. It's reported members of their group went to casinos nightly with \$30 to 50,000 Canadian funds, lost a fraction of their cash, and allegedly pocketed the rest as legitimate wins. In July of 2018, this investigation resulted in numerous arrests in Canada and Italy, and approximately \$35 million in seizures, including homes and luxury vehicles.<sup>37</sup>

While it is not possible based on this evidence to gain a sense of the prevalence of this method of money laundering in Canada generally, it makes clear that the risk of money laundering through luxury goods markets in this country is not simply theoretical. It also demonstrates that, as is the case elsewhere in the world, proceeds of crime are actually being used to purchase luxury goods, including as part of deliberate efforts to launder those illicit funds.

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36 Evidence of G. Clement, Transcript, April 9, 2021, pp 38–40.

37 Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 59–60.

## Money Laundering Through Luxury Goods in British Columbia

The foregoing examples of money laundering through luxury goods markets in Canada are not identified as occurring within British Columbia specifically. The example drawn from Mr. Gilchrist’s evidence occurred in Ontario, while the remainder do not specify the province in which they occurred. While I am unable to determine whether any of these specific incidents occurred in British Columbia, it would be naïve, in my view, to believe that the proceeds of crime were being laundered through luxury goods markets globally and elsewhere in Canada, but not in this province. This is particularly so in light of the near-complete absence of regulatory efforts to deter or prevent this form of money laundering in this province, as I discuss later in this chapter.

While the evidence described above offers, in itself, ample basis to infer that this method of money laundering must also be in practice in this province, evidence before the Commission – including testimony of criminologist Stephen Schneider, Dr. German’s second report (*Dirty Money 2*), and evidence of efforts relating to luxury vehicles undertaken as part of Project Athena – provides additional support for this inference.

Dr. Schneider gave evidence before the Commission for three days and produced a report titled *Money Laundering in British Columbia: A Review of the Literature*.<sup>38</sup> As part of this literature review, Dr. Schneider identified both “Motor Vehicles” and “Precious Metals and Gems” as methods of money laundering in the province, offering examples of the use of proceeds of crime to purchase jewellery and motor vehicles, including the following two case studies:

**Case Study #1:** In August 2018, a multi-agency police task force investigation into gang activity in Greater Vancouver arrested members of the “Kang/Latimer Group,” charging 14 people with 92 criminal offences. As part of the bust, police seized 93 firearms, an improvised explosive device, 59 prohibited devices, 9.5 kilograms of fentanyl, almost 40 kilograms of other illicit drugs, \$833,000 in cash, \$800,000 in jewellery, and \$350,000 in collector cars, all of which became the subject of civil forfeiture proceedings. The next week, the Delta Police Department announced additional drug trafficking and weapons charges against seven men linked to the Red Scorpion gang. Among the assets seized as proceeds of crime from Latimer were \$82,000 in cash and four luxury vehicles.<sup>39</sup>

**Case Study #2:** In November 2014, the B.C. Civil Forfeiture Office successfully pursued a civil claim to force the forfeiture of more than CAD \$200,000 worth of jewellery from an individual who was, at the time, a member of the Renegades MC, a Hell’s Angels affiliate in Prince George. The individual was found guilty in May 2014 of weapons offences, although the Civil Forfeiture Office alleged that he and his girlfriend derived

<sup>38</sup> Exhibit 6, Stephen Schneider, *Money Laundering in British Columbia: A Review of the Literature* (May 11, 2020).

<sup>39</sup> *Ibid*, p 76.

their income from drug trafficking. Among the items (and their worth) ordered to be forfeited by the courts were a man's yellow 10-karat gold diamond pendant (CAD \$42,610.40), a man's Breitling watch (\$37,916.00), a man's 12-karat yellow gold chain (\$30,284.80), a man's 14-karat white gold diamond ring (\$26,073.60), a man's 18-karat white gold diamond ring (\$22,797.60), a yellow and white gold diamond cross pendant (\$15,444.80), a man's 12-karat yellow gold diamond ring (\$12,331.20), a man's yellow gold demon garnet ring (\$3,472.00), and a yellow gold chain (\$3,225.60). The girlfriend allegedly stored some of the jewelry in a safety deposit box to prevent its seizure by the RCMP.<sup>40</sup>

*Dirty Money 2* provides further support for the contention that money laundering through the luxury goods market is actually occurring in British Columbia. Focusing specifically on luxury vehicles, Dr. German identified significant cause for concern regarding possible money laundering in the motor vehicle market, setting out information obtained from motor vehicle dealers about suspicious transactions and activity suggestive of money laundering.<sup>41</sup> Dr. German<sup>42</sup> and Doug LePard, who worked with Dr. German on his second report, gave evidence as to the efforts undertaken with respect to the motor vehicle industry in preparation of the report. Mr. LePard, a policing and criminal justice consultant and former deputy chief with the Vancouver Police Department, explained the process by which they examined this industry and the ease with which he was able to identify activity he believed to be connected to money laundering:

I did a lot of reading to orient myself to what the situation was and looked at investigations into money laundering in other jurisdictions that had been occurring through vehicles. There was really a wealth of information about that. I applied my police experience too in terms of, well, how does a criminal with no legal source of income buy an expensive car? Well, they are going to need to buy it with cash because they're not going to be getting bank loans and that sort of thing.

So again, to put it in a nutshell, I approached it from a number of different angles. And one of those was to cold call dealerships – sometimes with information that I had received confidentially, either through tips that we received when we were working on the project or through police officers who were expert at these kinds of investigations – about where I might want to look and found it wasn't hard at all to find that there was money laundering going on through luxury cars in a number of different ways, either directly purchasing very expensive cars with the proceeds of crime to engaging in various scams to legitimize proceeds of crime.<sup>43</sup>

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40 Ibid, pp 99–100.

41 Exhibit 833, *Dirty Money 2*, pp 184–89.

42 Evidence of P. German, Transcript, April 12, 2021, pp 67–70.

43 Transcript, April 7, 2021 (Session 1), pp 60–61.

Similarly, Melanie Paddon, a retired RCMP sergeant with 27 years of experience investigating the proceeds of crime, gave evidence regarding the efforts undertaken with respect to luxury vehicles, undertaken as part of Project Athena (described in detail in Chapter 39).<sup>44</sup> Sergeant Paddon described her own efforts to examine the practices of motor vehicle dealers in British Columbia, identifying a number of indicators of possible money laundering activity observed at motor vehicle dealerships in this province.<sup>45</sup> Given her experience and qualifications, Sergeant Paddon's evidence offers some further support for the conclusion that money laundering through luxury goods markets is a reality in British Columbia.

It is therefore clear, in my view, that money laundering is occurring in British Columbia's luxury goods markets. There is no credible basis to believe that this province would be immune to this phenomenon, observed in multiple international jurisdictions and in Canada generally. The work of Dr. German and Dr. Schneider, as well as the efforts of Sergeant Paddon as part of Project Athena, are sufficient to put to rest any lingering doubts that British Columbia may be an outlier in this regard and satisfies me not only that the province faces a significant risk of money laundering through luxury goods markets, but that activity of this sort is actually occurring.

## **Organization and Regulation of Luxury Goods Markets**

The significant risk of money laundering in the luxury goods sector – and the inescapable conclusion that this risk has been realized – call for a forceful regulatory response to mitigate risk and eliminate this activity through the prevention and detection of money laundering in this sector. Unfortunately, no such response has materialized to date, and to whatever extent the proceeds of crime are being laundered in luxury goods markets in British Columbia, they are being laundered largely without interference. In fact, efforts to combat money laundering in the luxury goods sector in this province are so anemic that they inhibited the Commission's efforts to examine money laundering in the sector simply because, in many markets, there are no records, no information about suspicious activity is gathered, and there is no one with relevant responsibilities to speak to.

This absence of anti-money laundering regulation is one of three features of the luxury goods sector that exacerbate the inherent money laundering risk associated with these types of goods, discussed above. The other two features – the diversity of the sector and diffusion of the markets that comprise the sector – are contextual features that add to the money laundering risk in luxury goods markets. In what follows, I discuss these two features and their impact on the risk associated with the sector, before addressing the absence of regulation in greater depth.

<sup>44</sup> Transcript, April 14, 2021, pp 90–95; Exhibit 842, Luxury Vehicle Sub Group (undated).

<sup>45</sup> Transcript, April 14, 2021, pp 91–95; Exhibit 842, Luxury Vehicle Sub Group (undated).

## The Nature of British Columbia’s Luxury Goods Sector: Diversity and Diffusion

In order to understand the money laundering challenge facing British Columbia’s luxury goods sector, it is necessary to appreciate the significance of the two features of the sector identified above: diversity and diffusion. These features add to the risk of money laundering in the sector, while also complicating efforts to regulate it.

The sector is **diverse** in the sense that it is comprised of a broad range of different markets, selling products ranging from motor vehicles to jewellery to electronics. Even as the risk of money laundering faced by these markets is shared, they are, in other ways, distinct, each with their own unique cultures, traditions, and practices. While, in my view, it is useful to view these markets as one sector for anti-money laundering purposes, this does not change the fact that it is a sector comprised of a loose collection of very different markets that may have little in common beyond the elevated value of the goods that they sell and the nature of the money laundering risk that they face.

The diversity of the sector exacerbates money laundering risk and complicates anti-money laundering efforts. In particular, it creates a complex tapestry of distinct markets, the idiosyncrasies of which can be exploited by those intent on laundering money. Meanwhile, efforts to regulate these markets in a coordinated way are forced to grapple with how each operates and consider how to distinguish the normal functioning of unique markets from genuinely suspicious activity. For example, the tradition of confidentiality and discretion in the market for fine art<sup>46</sup> creates money laundering risk, but also a possible legitimate explanation for an interest in maintaining a level of secrecy over transactions that would be difficult to justify in other markets. Effective anti-money laundering regulation of this sector in a unified way requires an in-depth knowledge of how each of these markets functions sufficient to distinguish normal behaviour consistent with the cultures and traditions of each from genuinely suspicious activity.

Money laundering risk and the complexity of regulation is also elevated by the **diffusion** of the luxury goods sector. The sector is diffuse in the sense that the markets that comprise the sector typically consist of a large number of separate, often small, retailers. For example, by the end of 2021, there were 1,535 separate licensed motor vehicle dealers in British Columbia,<sup>47</sup> while in 2018 a representative of the Canadian Jewellers Association estimated in testimony before the House of Commons Standing Committee on Finance that there were approximately 5,000 jewellers in Canada.<sup>48</sup> Add to these all of the art dealers and galleries, yacht brokers, electronics retailers, and other businesses dealing in luxury goods in British Columbia and it is clear that the number of

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46 Exhibit 774, Overview Report: Luxury Goods, paras 2, 57, 60; Appendix D, *Art Trade Guidelines*, pp 103, 121.

47 Vehicle Sales Authority of British Columbia, *Annual Report 2020/2021*, p 7, online: <https://www.mvsabc.com/about-the-vsa/corporate-documents/annual-report-2020-2021.pdf>.

48 Exhibit 776, Affidavit No. 1 of Beatrice Sturtevant, March 22, 2021 [Sturtevant #1], p 23.

distinct businesses operating in this sector creates an industry very different in character from, for example, the gaming industry, which is overseen by a single Crown corporation.

The diffusion of the sector presents a money laundering challenge and complicates regulation by creating a vast number of distinct locations at which money laundering could occur. Whereas the gaming industry offers a limited number of casinos – all under the control of single Crown corporation – that can be targeted for money laundering, the luxury goods sector presents a virtually limitless number of distinct businesses, any one of which could be used to launder money. The challenge this presents for regulation is obvious. Given the realities of finite time and resources, the task of maintaining effective oversight over activities within one such market is daunting. When multiplied by the number of distinct markets that comprise the sector, the challenge only grows.

## **The Absence of Anti–Money Laundering Regulation in the Luxury Goods Sector**

While the foregoing features of the luxury goods sector offer insight into why it may be difficult to address the risk of money laundering in this sector in British Columbia, they offer no excuse for the near-complete absence of any efforts to combat or even detect the use of illicit funds in this area of the province’s economy. In most instances, the absence of anti–money laundering regulation is likely a function of the absence of any kind of significant regulatory regime. Most luxury goods markets – for example, art dealers and galleries, jewellers, yacht brokers, and luxury clothing and apparel retailers – are largely unregulated industries, save for the reporting and other obligations of jewellers under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) and routine obligations for requirements such as business licenses.<sup>49</sup>

However, even heavily regulated markets in this sector – particularly the motor vehicle industry – suffer from a dearth of anti–money laundering regulation. The sale of motor vehicles in British Columbia is governed by the *Motor Dealer Act*, RSBC 1996, c 316, and the regulations to that Act.<sup>50</sup> The Act and regulations set out a comprehensive scheme for regulating motor vehicle dealerships and salespeople, which is administered in part by the Vehicle Sales Authority of British Columbia.<sup>51</sup> Among the regulatory requirements set out in the Act are requirements that motor vehicle dealers be registered with the authority<sup>52</sup> and that motor vehicle salespersons be licensed by it.<sup>53</sup> The Act provides for a complaints process<sup>54</sup> and authorizes the

<sup>49</sup> Exhibit 774, Overview Report: Luxury Goods.

<sup>50</sup> *Ibid*, para 7.

<sup>51</sup> *Ibid*, para 7.

<sup>52</sup> *Ibid*, para 10.

<sup>53</sup> *Ibid*, paras 12–14.

<sup>54</sup> *Ibid*, paras 18–26.

authority to take various investigative steps and impose disciplinary measures in response to complaints.<sup>55</sup> The authority also has the power to refuse, cancel, or suspend a registration and to refuse, revoke, or suspend a license if the registration or license is not in the public interest.<sup>56</sup>

Despite these stringent regulatory requirements, motor vehicle dealers are not subject to any anti-money laundering requirements: neither the Act nor the mandate of the Vehicle Sales Authority extends to money laundering, and motor vehicle dealers are not subject to the *PCMLTFA*.<sup>57</sup> The primary function of the Vehicle Sales Authority is consumer protection.<sup>58</sup> Accordingly, while it has the power to conduct inspections and compel dealers to produce information, it cannot do so for the purpose of identifying indicators of money laundering.<sup>59</sup> Further, although the authority can produce rules and regulations binding motor vehicle dealers and salespeople, it has no such rules or regulations requiring basic anti-money laundering practices such as customer due diligence requirements or regulations governing cash payments.<sup>60</sup>

### **Impact of Diversity, Diffusion, and Absence of Regulation on Perceptions of Money Laundering in the Luxury Goods Sector**

In addition to the above challenges, the absence of centralization and regulation in luxury goods industries may contribute to an underestimation of the severity of money laundering activity in this sector. Because no one is responsible for monitoring possible money laundering activity in these markets, and because no one is collecting the information necessary to do so, it may appear as though there is no money laundering concern in these markets simply because signs of such activity go unnoticed. As such, it may be that the greater public concern about money laundering in the gaming industry (a centralized, regulated sector), compared to the luxury goods sector, is *not* a reflection of limited money laundering activity in luxury goods markets, but rather the result of greater scrutiny of the gaming industry, which brings those issues that do exist to light. In other words, it may be that the reason the public has not been alarmed by surveillance footage of bags of cash accepted at car dealerships, jewellers, art dealers, and yacht brokerages is not because there are no bags of cash, but because there is no surveillance footage. This possibility underscores the need for further efforts to examine money laundering in this sector as well as the need to structure the sector to ensure that effective anti-money laundering scrutiny is possible.

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55 Ibid, paras 18–26.

56 Ibid, paras 11–16.

57 Exhibit 775, Overview Report: Motor Vehicle Sales Authority of British Columbia, para 6.

58 Exhibit 774, Overview Report: Luxury Goods, para 31.

59 Exhibit 775, Overview Report: Motor Vehicle Sales Authority of British Columbia, para 7.

60 Ibid, para 10.

## Industry-Driven Anti-Money Laundering Efforts

The near-complete absence of any kind of meaningful anti-money laundering regulation in British Columbia's luxury goods sector does not mean that there is no cause for optimism that steps are being taken to address the elevated risk faced by this sector. While regulators and other public authorities are, for the most part, not taking meaningful action, there are examples of industry itself working to mitigate the risks of money laundering in luxury goods markets. In particular, the jewellery and precious metals and stones industry, as well as the yacht brokerage industry, have taken action to prevent money laundering within their markets. As I discuss below, however, there are inherent limitations on the impact of this kind of voluntary, industry-led action, and it cannot be relied upon as a complete solution to this problem.

### *Jewellery and Precious Metals and Stones*

In contrast to the motor vehicle sales industry, where heavy regulation has not resulted in meaningful anti-money laundering action, the market for jewellery and precious metals and stones offers an example of how limited regulation can spur an industry to take additional action on its own initiative where that industry is well-organized and where that regulation is focused on the risk of money laundering.

The jewellery and precious metals and stones industry is largely unregulated. While the industry is the subject of some federal legislation such as the *Export and Import of Rough Diamonds Act*, SC 2002, c 25, and the *Precious Metals Marking Act*, RSC 1985, c P-19, there is no legislation at the federal or provincial level establishing a comprehensive regulatory regime for the industry. Accordingly, in contrast to the motor vehicle sales industry, there is no requirement that jewellery and precious metals and stones retailers register with a regulator, or that salespeople working in the industry be licensed. Nor is there a regulator equivalent to the Vehicle Sales Authority, which is empowered to receive complaints, conduct inspections, impose discipline, or exclude bad actors from the industry.<sup>61</sup>

Where the regulation of this industry exceeds that of the motor vehicle sales industry, however, is with respect to regulations specifically targeted at money laundering. Unlike motor vehicle dealers (and most luxury goods retailers), dealers in precious metals and stones are subject to the *PCMLTFA* and have been since 2008.<sup>62</sup> Accordingly, dealers in precious metals and stones are required to comply with the obligations of that regime, including reporting suspicious and other transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and implementing a compliance program.<sup>63</sup>

While the requirements of the *PCMLTFA* may well assist in the identification and prevention of money laundering in the industry, perhaps of greater interest in understanding the impact of regulation is the response of the industry itself to this regulation, organized by the Canadian Jewellers Association.

61 Exhibit 774, Overview Report: Luxury Goods, paras 39–40.

62 Ibid, para 39; Exhibit 776, Sturtevant #1, pp 32, 67.

63 Exhibit 776, Sturtevant #1, para 25. See Chapter 7 for a more detailed explanation of the *PCMLTFA* regime.

The Canadian Jewellers Association is a national trade association for the Canadian jewellery industry,<sup>64</sup> founded in 1918<sup>65</sup> and comprises retailers, suppliers, appraisers, designers, and providers of goods and services.<sup>66</sup> Membership in the Canadian Jewellers Association is voluntary.<sup>67</sup> In 2020, the association had 444 members across Canada, including 57 in British Columbia.<sup>68</sup> I note that this membership seems to be a small proportion of the total number of jewellers operating in Canada, given the association's 2018 estimate that there were 5,000 jewellers operating in Canada.<sup>69</sup>

Since the incorporation of dealers in precious metals and stones into the *PCMLTFA*, the Canadian Jewellers Association has taken a number of actions to assist its members and the industry more broadly to comply with their obligations under the regime and to reduce the risk of money laundering in the market for jewellery, precious metals and stones. These actions include:

- producing training and professional development materials for the association's members, available in person and online;<sup>70</sup>
- publishing anti-money laundering articles and resources, including in the association's monthly newsletter and in trade publications;<sup>71</sup> and
- developing resources in conjunction with a consulting firm to assist in implementation of compliance programs, including the creation of an online tool to assist in risk assessment and identification of necessary components of a compliance program.<sup>72</sup>

It does not appear that any data have been collected that would allow the Commission to draw any conclusions as to the impact these measures have had on the prevalence of money laundering in the jewellery and precious metals and stones industry. However, experience in other sectors has taught us that anti-money laundering education and resources can go some way toward addressing risk. These efforts on the part of the industry were clearly prompted by the increased regulation introduced when the *PCMLTFA* was extended to dealers in precious metals and stones. Yet, there was no obligation for the Canadian Jewellers Association to take the action that it took, and I applaud the association and, by extension, the industry, for the steps it has taken.

The activity by the Canadian Jewellers Association demonstrates not only that enhanced regulation can have positive ancillary effects that go beyond basic legal

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64 Exhibit 774, Overview Report: Luxury Goods, para 51.

65 Exhibit 776, Sturtevant #1, para 6.

66 Ibid, para 2, 5.

67 Exhibit 774, Overview Report: Luxury Goods, para 51.

68 Exhibit 776, Sturtevant #1, para 8.

69 Ibid, exhibit A, p 23.

70 Ibid, paras 17–21 and exhibit C.

71 Ibid, paras 21–24 and exhibits D, E, F.

72 Ibid, paras 25–29 and exhibits G, H.

requirements, but also that voluntary industry action may be a viable means of enhancing the province's response to money laundering. It also shows that there may be value in government working with industry groups such as the Canadian Jewellers Association in the hope of inspiring such action.

### **Yacht Brokerages**

The example of the yacht brokerage industry in British Columbia suggests that it may be possible to prompt this kind of voluntary action by industry even in the absence of binding regulations. Like many luxury goods retailers, yacht brokers are not subject to the *PCMLTFA*.<sup>73</sup> The industry is also largely unregulated, with no licensing or registration requirements in the same way as the motor vehicle sales industry.

While largely unregulated, the industry in this province is organized through the British Columbia Yacht Brokers Association. The association is a society incorporated under the *Societies Act*, SBC 2015, c 18,<sup>74</sup> and has the following purposes:

- a. To unite those engaged in the yacht brokerage business for the purpose of promoting cooperation and professionalism through its members.
- b. To promote and maintain a high standard of conduct in the transacting of the yacht brokerage business.
- c. To instill in the boating public a greater confidence in yacht brokers.
- d. To encourage a greater interest in the welfare and safety of the boating public.<sup>75</sup>

In June 2020, the BC Yacht Brokers Association introduced its “Anti-Money Laundering Practice Policy”<sup>76</sup> and amended its Code of Ethics to require compliance with the policy.<sup>77</sup> The policy requires members to implement certain anti-money laundering practices, including those related to client identification, ascertaining beneficial ownership, and handling cash transactions.<sup>78</sup> It also assigns brokers responsibility for establishing a “comprehensive and effective program” for complying with the policy and provides tips for identifying possible money laundering activity.<sup>79</sup>

As with the actions taken by the Canadian Jewellers Association, I am unable to evaluate the precise impact the actions taken by the BC Yacht Brokers Association have had on money laundering in the industry. However, this is clearly a positive development from

73 Exhibit 774, Overview Report: Luxury Goods, para 72(i).

74 Exhibit 774, Overview Report: Luxury Goods, para 73.

75 Exhibit 774, Overview Report: Luxury Goods, para 73.

76 Exhibit 774, Overview Report: Luxury Goods, para 74, Appendix I, British Columbia Yacht Brokers Association, “Anti-Money Laundering Practice Policy” [Yacht Brokers AML Policies].

77 Exhibit 774, Overview Report: Luxury Goods, para 74; see also Appendix J, British Columbia Yacht Brokers Association, Code of Ethics, para 14.

78 Exhibit 774, Appendix I, Yacht Brokers AML Policies.

79 Ibid.

an anti-money laundering perspective and further demonstrates that voluntary action on the part of industry may realistically contribute to the province's anti-money laundering efforts. Moreover, the actions of the BC Yacht Brokers Association indicate that this kind of industry-led action may be possible even without binding regulation like that applicable to dealers of precious metals and stones. Based on documents produced by the BC Yacht Brokers Association, I understand that it was contact from the Commission itself that may have spurred the development of this practice policy. This suggests that it may be possible for authorities to inspire meaningful action to address money laundering in luxury goods markets simply by reaching out to industry and raising awareness of the risk of illicit activity.

### ***The Limits of Industry-Driven Action***

The examples of voluntary industry action noted above are encouraging. I commend the Canadian Jewellers Association and the BC Yacht Brokers Association for their efforts to protect their own industries from criminal activity, and I encourage other industries to take similar action. In my view, however, while industry-led action may be part of the solution to the elevated money laundering risk faced by the luxury goods sector, it cannot be relied upon to resolve the problem in the absence of meaningful action from government.

This is so in part because both of these examples involve voluntary industry action *prompted by action on the part of government or public authorities*. The efforts of the Canadian Jewellers Association are clearly a response to the inclusion of dealers in precious metals and stones in the *PCMLTFA*, while I understand the actions of the BC Yacht Brokers Association to have been a response to contact by the Commission. It is possible that these industries may have eventually taken action on their own initiative, but it seems likely that in both cases the “nudge” provided by a public authority was a necessary precondition to the voluntary action. This illustrates the importance of government engaging at least to the point of encouraging voluntary action by industry. Further, as I noted above, the Canadian Jewellers Association represents approximately 10 percent of the total number of jewellers in Canada; while I understand that their anti-money laundering activities are not strictly limited to their own membership, they likely leave unaddressed a large proportion of the industry.

More fundamentally, voluntary industry action cannot be relied on as a complete solution to the risk of money laundering precisely *because* it is voluntary. There will inevitably be businesses within luxury goods markets that choose not to adopt these voluntary measures, and even entire industries that will decline to do so. As an example, the Commission engaged with the Art Dealers Association of Canada in a manner similar to its communications with the BC Yacht Brokers Association. Whereas the BC Yacht Brokers Association responded by taking meaningful action to reduce the risk of money laundering in their industry, the Art Dealers Association of Canada responded with skepticism that their industry could be affected by money

laundering and by cautioning that “over-legislation” could harm the industry.<sup>80</sup> To be clear, the Commission did not ask the Art Dealers Association of Canada to take action to respond to the risk of money laundering in its industry, and I have no evidence supporting a conclusion that its members are anything but ethical, law-abiding business owners. That said, this response does underscore the limits of voluntary action and the need for active engagement by government to effectively address money laundering in the luxury goods sector.

## **Lessons from the Organization and Regulation of Luxury Goods Markets**

The following section sets out a model for addressing money laundering in the luxury goods sector in British Columbia and describes the role that could be played within that model by a permanent AML Commissioner. Before discussing this model, however, I believe that it is useful to pause and identify three key lessons that can be learned from the discussion above regarding the regulation and organization of luxury goods markets and their implications for the risk and response to money laundering in this sector.

### ***Access to Information***

The Commission’s own experience illustrates that the first step in addressing the risk of money laundering in this sector of the economy is to make it *possible* to understand what is happening in the markets that comprise the sector. The diffusion of the sector makes the task of collecting information onerous; the absence of regulation means that no one is tasked with attempting to do so (with the exception of FINTRAC in the case of jewellers); and the absence of any record-keeping or reporting requirements in most of the sector mean that useful information may not exist even if it was possible to collect and someone had the mandate to do so. I would add that even though many people have a superficial sense of money laundering, the stereotypical or simplistic view belies the complexity and the reality of money laundering. This is a topic area that is not intuitive, and if anything is often misunderstood or oversimplified. Any effort to combat money laundering in this sector must begin by solving this informational challenge, including statutory barriers that may exist.

### ***The Importance of Focused Regulation***

The example of the Vehicle Sales Authority demonstrates that, even where a robust regulatory regime exists within a luxury goods market, regulation must be targeted at preventing money laundering if it is likely to have a meaningful impact. The vehicle sales industry is heavily regulated – including registration and licensing requirements for dealerships and salespeople – yet there is no meaningful, industry-wide effort to prevent money laundering in the industry. If we are to expect a regulator like the

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<sup>80</sup> Exhibit 774, Overview Report: Luxury Goods, Appendix G, Letter of January 21, 2020, from Hillary E. Robinson, Executive Director, Art Dealers Association of Canada.

Vehicle Sales Authority to take effective action to prevent money laundering in the industry it regulates, it must be given a mandate – as well as the necessary authority and resources – to do so.

### ***The Role of Voluntary Action***

The experiences of the Canadian Jewellers Association and the BC Yacht Brokers Association demonstrate that voluntary action by industry is a viable, if limited, means of addressing risk in this sector. With the support and encouragement of government, industry may take on the task of combatting money laundering itself by setting voluntary standards and providing resources to individual retailers that may not have the knowledge or resources to limit their money laundering risk themselves. Voluntary action of this sort has the advantages of being extremely low cost for government and allowing an industry to develop a bespoke approach to combatting money laundering – one tailored to the culture, traditions, and practices of the industry. While the presence and potential of voluntary industry measures does not obviate the need for more direct and coercive action by government, encouragement and support of voluntary action is deserving of investment.

## **A Model for Addressing Money Laundering in the Luxury Goods Sector**

The preceding discussions of the risk of money laundering facing the luxury goods sector and the regulation and organization of luxury goods markets offer valuable insight into the nature of the risk facing this sector of the economy and the very limited measures in place to address it. In what follows, I draw on these insights to develop a model for addressing the risk of money laundering in this sector by identifying six components essential to an effective money laundering response in the luxury goods sector.

The model here is not intended to be a prescriptive one. While it is not devoid of specific recommendations, it does not identify a comprehensive set of specific measures that must be implemented in all luxury goods markets. As discussed above, the luxury goods sector consists of a collection of distinct markets, each with its own unique cultures, practices, and risk factors. Due to the nature of the sector, it is my view that the response to the risk of money laundering in this sector must be flexible and adaptive to ensure that the response can be tailored to the unique circumstances and risk factors of individual markets and evolving activity within those markets. The model proposed below is intended to facilitate this flexible and adaptive response.

As I expand below, the model I am proposing will involve a central authority receiving reports on transactions involving \$10,000 or more in cash. The Province is best placed to determine which entity should receive and store these reports (for the

purposes of this discussion, I will refer to this entity as the “central authority”). Indeed, the Province may consider that having the reports go directly to the AML Commissioner is desirable. In any event, it is essential that the AML Commissioner have access to these reports and the ability to communicate with the central authority about the usefulness of such reports and possible changes to the regime.

I add that the reports should ideally go to one central authority, rather than, for example, having reports about vehicles going to the Vehicle Sales Authority and those for other luxury goods elsewhere. The primary reason for this reporting regime is to permit the central authority and the AML Commissioner (who, again, must have access to the reports) to understand activity in the luxury goods sector, which is, at present, something of a black box due to the difficulties I have outlined above. Having the reports go to different entities would make it more difficult for the central authority and the AML Commissioner to assess the luxury goods sector as a whole.

## **Visibility into Activity Within Luxury Goods Markets**

In order to effectively combat money laundering in the luxury goods sector, it is necessary to first understand the nature of the activity occurring within the markets that comprise the sector. As discussed above, among the challenges associated with combatting money laundering in the luxury goods sector are diversity, diffusion, and lack of regulation in the sector. Because of these features, as things presently stand, it is very difficult to gain an understanding of the extent to which money laundering is occurring within the sector and, if it is occurring, how it is being accomplished.

If there is any hope of ensuring that the luxury goods sector in British Columbia is not used to launder illicit funds, this challenge must be overcome by creating visibility into activity occurring within the markets that make up this sector. There are a range of possible measures that may assist in creating this visibility. These include reporting requirements like those applicable to reporting entities under the *PCMLTFA*, or the granting of audit and inspection powers to regulatory or other public authorities. The most appropriate measures will likely vary by market, and it will be necessary to work and consult with industry to identify the most appropriate approach for each market.

As I have discussed, one of the ways criminals launder proceeds through luxury goods is to use illicit cash to purchase the luxury goods, thereby transforming the cash into a less suspicious form that can be transferred or sold to provide a façade of legitimacy. Given the elevated risk associated with certain types of transactions, it is necessary, in my view, to establish a common basic reporting requirement that will ensure a minimum level of visibility into suspicious activity – not only in the luxury goods sector, but across the province’s economy.

To this end, I recommend that the Province implement a universal record-keeping and reporting requirement for cash transactions of \$10,000 or more for all businesses,

with limited, enumerated exceptions. This recommendation is not intended as a complete solution to the challenge of creating visibility into these markets, but rather as a minimum necessary starting point, onto which further measures will inevitably be added. This recommendation is discussed in detail below, followed by a discussion of the role that could be played by the AML Commissioner in evaluating the need for additional measures.

**Recommendation 82:** I recommend that the Province implement a universal record-keeping and reporting requirement for cash transactions of \$10,000 or more. Every business that accepts \$10,000 or more in cash in a single transaction or a series of related transactions should be required to:

- verify a customer’s identification and record their name, address, and date of birth;
- inquire into and record the source of funds used to make the purchase;
- determine whether the purchase is being made on behalf of a third party and, if so, inquire into and record the identity of that third party; and
- report the transaction – including the total amount of cash accepted; the item or service purchased; the source of funds reported by the customer; whether the purchase was made on behalf of a third party and, if so, the identity of that third party; and the name, address, and date of birth of the customer – to the Province.

The Province should ensure that the AML Commissioner has access to these reports.

The universal record-keeping and reporting requirement should apply in all circumstances, with some narrow exceptions:

- one-time transactions between private individuals;
- financial institutions and financial services businesses;
- lawyers; and
- other situations where it is determined that the requirement would be unduly onerous, generate reports of little value, or is otherwise inappropriate.

I note that this recommendation is broad enough to encompass cash transactions involving both goods and services, in line with my discussion earlier in this chapter about the money laundering risks associated with services. It is also broad enough to encompass the receipt of cash by builders and building supply companies. As I elaborate in Chapter 17, the Commission conducted a small study into the acceptance

of cash by builders and building supply companies, which showed that five building suppliers took in over a million dollars in large cash transactions (\$10,000 or more) between 2015 and 2020.

### ***A Universal \$10,000 Cash Record-Keeping and Reporting Requirement***

As a general principle, I believe that anti-money laundering measures, including information-gathering mechanisms, should be tailored to the unique circumstances of individual luxury goods markets. There are some types of activity, however, that give rise to sufficient suspicion that they must be subjected to scrutiny regardless of the market in which they occur. The use of very large volumes of cash is one such type of activity.

Given the extent to which Canadian society has moved away from cash in favour of other payment methods, in most circumstances it is difficult to conceive of why a purchaser spending legitimate funds would choose to pay for any high-value good or service using cash. While I do not propose, at this stage, that the Province ban such transactions, I do believe that very large cash transactions pose a significant risk of money laundering and that this risk justifies requiring that additional information be gathered and reported to appropriate authorities. For this reason, I am recommending that any business that accepts \$10,000 or more in cash as payment for a good or service in a single transaction or series of related transactions, with identified exceptions, be required to:

- verify and record the identity of the customer making the payment by viewing a piece of government-issued photo identification and recording the customer's name, address, and date of birth;
- inquire into and record the source of the funds used to make the purchase;
- determine whether the purchase is being made on behalf of a third-party, and if so, inquire into and record the identity of that third party; and
- report the transaction – including the total amount of cash accepted; the item or service purchased; the source of funds reported by the customer; whether the purchase was made on behalf of a third party and, if so, the identity of that third party; and the name, address, and date of birth of the customer – to the Province.

One-time transactions between private individuals, such as the private sale of a vehicle by a person not habitually in the business of selling vehicles, should not be captured by this requirement.

While this requirement should be applied to all businesses offering goods or services, I anticipate that there may be certain markets where this requirement is particularly onerous, where the reports generated are of little value, or where there are other reasons why it may be sensible to exempt some types of businesses or sectors of

the economy from this requirement. I am therefore recommending that exemptions be made where appropriate, including, from the outset, the following two exemptions:

1. **Financial institutions and financial services businesses, including credit unions and money services businesses:** By their nature, these businesses routinely handle cash in large volumes and, as such, are likely to generate a very large volume of reports that will be of little value in detecting genuinely suspicious activity.
2. **Lawyers:** As I explain in Chapter 27, I have concluded that the Province should not implement a reporting requirement for lawyers due to the significant constitutional difficulties that would arise in doing so, as well as in recognition of the strong anti-money laundering regulation already undertaken by the Law Society of British Columbia.

I expect that additional exemptions may well be added to this list prior to and following the implementation of this recommendation. The Province may wish to consider, for example, whether requirements to provide proof of the source of cash used in transactions of \$10,000 or more are sufficient, such that, if they are continued, further reporting under this regime is unnecessary.

Unlike reporting to FINTRAC, I anticipate that the primary function of the information collected through this requirement will be to guide anti-money laundering policy development. By providing insight into the types of businesses and locations where suspicious transactions are occurring (and likewise where such transactions are *not* occurring), the information will assist the AML Commissioner to identify where suspicious activity is occurring. It will provide valuable insight into the markets and geographic locations that should be targeted with enhanced anti-money laundering measures. For example, if these records indicate a sudden increase in large cash purchases of luxury vehicles in one region of British Columbia, this may indicate the need to gather further information as to the cause of that increase and consider policy responses ranging from an education campaign for motor vehicle dealers in that region up to a permanent, province-wide prohibition on the use of cash to purchase vehicles.

In a similar way to informing policy development, the information will allow the AML Commissioner to have a strong evidence-based understanding of the realities of what is occurring in the luxury goods sector. As I have noted throughout this chapter, such a “real world” understanding is currently lacking, and there is little information (or even avenues to obtain such information) available that can inform the Province’s or the new AML Commissioner’s work. Further, the information may very well assist with improved regulatory responses. Armed with this new data, the AML Commissioner will be in a much better position to recommend changes in particular sectors in order to respond to particular risks.

Though not the primary purpose of collecting this information, an ancillary effect of a reporting regime would be the preservation of this information and the

potential for law enforcement, using established law enforcement procedures, to access that information in appropriate cases. I do not propose, at this stage, to replicate the FINTRAC model of analysis and proactive disclosure to law enforcement. Instead, the reports should initially be held by the central authority and available to law enforcement through established and familiar legal processes. While the AML Commissioner would review and analyze them for the primary purpose of guiding policy development identified above, I do not propose that the reports also be routinely analyzed for the purpose of identifying whether there is a basis to provide them to law enforcement. The reason for this is that, at this stage, I have little sense as to the volume or nature of the reports that will be made and, as such, I am unable to assess whether the value of these reports to law enforcement justifies the potentially significant effort and expense of analyzing these reports for this purpose. Accordingly, I believe the most sensible approach is to allow the Province (in consultation with the AML Commissioner) to determine whether this expense is justified once it has a clear understanding of the volume and nature of the reports that will be received in response to this requirement. Again, the absence of this analytical capacity does not mean that law enforcement will not have access to these reports, only that the reports will not be proactively analyzed for this purpose. I add that, prior to implementing a process in which the reports could be disclosed to law enforcement, the Province would need to conduct an assessment of the impact of legal or constitutional issues on the manner and feasibility of such proactive disclosure, or whether certain safeguards, such as a standard for disclosure, would have to be included in the system to protect legal and/or constitutional interests.

I also note that the volume of reports and the intensity of the work for the AML Commissioner will be proportional to what is actually occurring in the luxury goods sector. If, for example, few businesses are in fact accepting cash in amounts over \$10,000, there will be few reports (and vice versa). It will be important for the AML Commissioner to assess, after a specified period of time, how many reports have been made and any utility gained from them. Further, the AML Commissioner should report to the Legislature on the progress of the regime.

In addition to the value of the reports submitted under this requirement to policy development (and preserved for potential access by law enforcement), I expect that a further ancillary, but significant, benefit of this recommendation will be to deter large cash transactions from occurring at all, especially by those seeking to avoid scrutiny. While I encourage government to streamline the reporting process to the extent possible, it is inevitable that the recommended record-keeping and reporting requirement will pose an administrative burden on businesses required to comply. I expect that this administrative burden will incentivize some businesses to simply refuse transactions of cash over \$10,000 altogether, which would reduce the opportunities for those intent on laundering proceeds of crime to spend illicit cash. Similarly, the reporting requirement may also deter customers from using large volumes of cash. The knowledge that a large cash transaction will result in the production of a report

identifying the customer and their personal information (including name, address, and date of birth), the details of the transaction, and their explanation as to the source of the funds will surely make those intent on avoiding scrutiny of those funds think twice before proceeding with any such transactions in British Columbia.

As a final note, I do, as indicated above, recognize that the implementation of this recommendation will impose a new burden on many honest and legitimate businesses throughout the province. Given this impact, I do not make this recommendation lightly. However, I am convinced that it is necessary and, due in part to the evidence before me of similar requirements in other jurisdictions,<sup>81</sup> viable. I also note that the burden is optional, in that each business will have the option of declining cash transactions of this size, completely absolving them of the burden. Still, I encourage the Province to bear in mind the impact on legitimate businesses when implementing this recommendation and to seek to minimize that impact, including through the use of technology to streamline the reporting process.<sup>82</sup> I note as well that this recommendation poses a significant communication challenge for the Province, as virtually every business in British Columbia will require notice of this new requirement. I encourage the Province to take steps to ensure that no business suffers consequences for failing to comply with this requirement if they have not been given fair notice of its existence. Conversely, it will be necessary for the government to determine a suitable compliance regime to encourage observance once businesses have been notified of the requirement.

### ***Role of the AML Commissioner***

The potential role that the AML Commissioner may play in ensuring visibility into activity in luxury goods markets is not limited to analysis of reports submitted under the requirement that I have recommended above. As discussed previously, this reporting requirement is intended as a starting point for gathering information about money laundering risk and activity in luxury goods markets, and it must not be treated as a complete solution.

Alongside the analysis of these reports, I envision that the AML Commissioner will be engaged in additional efforts to collect information about luxury goods and other markets on an ongoing basis. These efforts could include consulting with businesses, industry associations, and regulators; studying activity in specific markets or regions; and monitoring international money laundering trends. In order to fulfill this function, the AML Commissioner must have the resources to carry it out. The Province may also wish to consider providing the AML Commissioner with the ability to compel information from private entities for the purpose of studying money laundering risks. This would require careful consideration of the manner in which the compulsion power should be limited.

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81 Exhibit 966, Maria Bergstrom, “Report on the European Union Anti-Money Laundering Regulation – Draft,” pp 15–16; Evidence of J. Rense, Transcript, May 13, 2021, pp 96–97.

82 For this recommendation to succeed, the Province must offer an easily accessible and intuitive platform where reports can be submitted. In designing this platform, the Province should seek to minimize the potential for human error and different reporting styles; for example, options such as drop-down menus or checkboxes will lead to more consistent data than allowing the user to write in responses.

### **Vehicle Sales Authority Cash Study**

One innovative means of gaining insight into possible money laundering activity in the vehicle sales market that may serve as a model for the AML Commissioner's efforts in this regard was proposed by the Vehicle Sales Authority and the Ministry of Public Safety and Solicitor General in 2019 in response to Dr. German's second report.<sup>83</sup> The proposal would have seen the Vehicle Sales Authority conduct a study in which it would collect information from motor vehicle dealers regarding the use of cash and other anonymous forms of payment in transactions conducted by those dealers.<sup>84</sup> This data would have been collected voluntarily and in a form that would have preserved the anonymity of the dealer providing the information.<sup>85</sup>

In my view, there are clear deficiencies in this proposed study. Collecting information on a strictly voluntary basis would offer those intent on hiding their activities a simple means of doing so and would undermine the reliability of the results by allowing for the under-reporting of higher risk activity.<sup>86</sup> I understand as well that there were some concerns on the part of dealers about the suggestion that the data collected would be anonymous, as the source of some of the data may have been evident from the data itself.<sup>87</sup> It is necessary that these issues be resolved before any such study is undertaken; however, a study aimed at understanding the nature of activity in a particular market does strike me as a sound initial step in the process of creating necessary visibility into luxury goods markets. These types of studies may be an effective means of gathering information that will assist the AML Commissioner in understanding the types of activity prevalent in these markets and identifying the extent of the money laundering risk present, without undue disruption to the businesses involved. Based on the results of such studies, it may be possible to determine whether further, more permanent – and potentially more invasive – measures are required. For example, where the initial study reveals minimal activity of concern, it may be sufficient to plan a future follow-up study to ensure that there are no significant changes from the time of the first one. In contrast, where an initial study reveals significant high-risk activity, it may be necessary to consider enhanced regulation or additional reporting requirements.

### **Ongoing Assessment of Risk in Luxury Goods Markets**

Closely associated with the need to provide visibility into what is taking place in luxury goods markets is the second component of the proposed model for combatting money laundering in this sector: the need for ongoing assessment of risk. Creating visibility into activity within these markets is of value only if the information made available is reviewed and, if necessary, acted upon. Accordingly, it is essential that an appropriate authority be charged with the responsibility for examining this

<sup>83</sup> Exhibit 994, Affidavit No. 1 of Tobias Louie, Affirmed May 5, 2021 [T. Louie #1], para 8 and exhibits A, B, C, D.

<sup>84</sup> *Ibid*, para 8 and exhibits A, B, C, D.

<sup>85</sup> *Ibid*, para 8.

<sup>86</sup> *Ibid*, para 12.

<sup>87</sup> *Ibid*.

information and considering its implications for money laundering risk and the adequacy of existing measures.

As was the case with the first component, how this second component is enacted in practice is likely to vary between luxury goods markets. In general, this is clearly an appropriate task for the AML Commissioner; however, in markets that are already regulated, like the vehicle sales market, it may be prudent to empower – and provide necessary resources to – the existing regulator to review the available data and work in collaboration with the AML Commissioner to take action as needed.

In addition to examining previously identified luxury goods markets, the need to assess risk in the luxury goods sector on an ongoing basis also extends to the identification of new markets that fit the luxury goods risk profile described earlier in this chapter. It seems certain that new products and industries bearing a money laundering risk similar to that of existing luxury goods markets will emerge in the future. In order to adequately address this risk, it is essential that public authorities continuously examine new industries to determine whether they should be treated as luxury goods markets for anti-money laundering purposes. This again falls squarely within the anticipated role of the AML Commissioner.

## **Flexible and Adaptive Regulation**

As crucial as ensuring that available data is reviewed and risk is assessed on an ongoing basis is ensuring that timely and effective action can be taken in response to this information. As the risk landscape for money laundering in luxury goods markets evolves, it is essential that action to address new and emerging risks can be taken quickly. Such action must be tailored to the market in question so as to respond to the risk effectively, while ensuring minimal disruption to legitimate business within the industry.

In the course of receiving the reports discussed above, the AML Commissioner may become aware of new and evolving money laundering threats requiring timely action. For example, the reporting may demonstrate an increase in suspicious transactions among yacht brokerages in a particular region of the province. A timely measure to respond to that increase might be a requirement that yacht brokers obtain proof of the source of funds used in any transaction above an identified threshold, or a temporary prohibition on using cash or another medium of exchange.

Accordingly, there should be a mechanism through which targeted measures can be put in place in response to emerging threats or changing risk landscapes that require participants to take action aimed at those threats. These actions could include requirements to report certain types of transactions, collect specific information about customers, or refuse transactions with identified risk factors – such as the use of large quantities of cash. These measures could be permanent but could also be imposed for short durations of time to respond to specific intelligence or threats or increases in suspicious activity.

My expectation is that this model will allow for significantly greater flexibility and adaptability than anti-money laundering regimes like the *PCMLTFA* while minimizing interference in legitimate business. In place of a one-size-fits-all approach that imposes the same set of permanent requirements on a broad array of industries, the targeted measures envisioned in this model would allow authorities to respond to threats rapidly and to focus their response on specific activity of concern. The response could also take into account the nature of the market in question to maximize the effectiveness of anti-money laundering measures, while reducing disruption and cost to retailers. It could also impose new restrictions or requirements only for as long as they are needed – again minimizing the burden on legitimate participants in the market.

The Province is best suited to determine how this mechanism is set up. It may be, for example, appropriate to assign the task to a particular minister (for simplicity, I will refer simply to “the minister”). The measures I am envisioning here are meant to address new and evolving money laundering risks. Consequently, the minister should be able to implement the measures quickly – without the need for legislative amendment. While the Province will determine what authority is appropriate, it strikes me that a minister having the power to issue binding directives or regulations would be effective in this regard. I add that it is essential that the minister be in close contact with – and responsive to – suggestions from the AML Commissioner and the central authority receiving the reports on cash transactions.

**Recommendation 83:** I recommend that the Province establish a mechanism by which a minister, in consultation with the AML Commissioner, can implement timely measures to address new and evolving risks in the luxury goods sector (as defined in Chapter 34 of this Report).

I also anticipate that this authority may have value as an information-gathering tool. The imposition of temporary measures will provide further insight into the nature of suspicious activity and the impact of possible responses. Where, for example, a temporary restriction seems to result in the complete cessation of suspicious activity, this will suggest a different kind of problem – and call for a different kind of response – than where the temporary restriction appears to result in the displacement of suspicious activity to a different market or geographic location.

## Support for Voluntary Action by Industry

Based on the evidence before me, I am persuaded that coercive regulatory action is not the only means of addressing the risk of money laundering in luxury goods markets. The actions taken by the Canadian Jewellers Association and the BC Yacht Brokers Association, as described above, demonstrate that voluntary action by industry is a viable means of addressing money laundering risk. In my view, efforts to support and encourage such action should form an essential part of the Province’s efforts to combat money laundering in the luxury goods sector.

The experiences of both the Canadian Jewellers Association and the BC Yacht Brokers Association suggest that while industry groups may be willing and able to take voluntary action to address money laundering risks, they will often require prompting from government to do so. The action taken by the Canadian Jewellers Association, for example, was prompted by the inclusion of dealers in precious metals and stones in the *PCMLTFA*, while the action taken by the BC Yacht Brokers Association appears to have been prompted by contact from this Commission.

While it may not be possible to persuade every luxury goods retailer to adopt measures of the sort implemented by the BC Yacht Brokers Association, the potential benefits of voluntary action are substantial and worthy of investment. In my view, the Province ought to encourage and support voluntary action by industry by proactively reaching out to industry to educate retailers and trade associations on the risks of money laundering in the markets in which they operate and strategies that industry can employ to reduce those risks. I fully expect that the vast majority of luxury goods retailers in this province want nothing to do with business connected with the proceeds of crime and would be more than willing to voluntarily implement measures to ensure that their businesses are not used to launder money.

Again, this function is well suited to the AML Commissioner, and I suggest that public engagement and education be made part of his or her mandate. Given the Commissioner's role in assessing risk and access to information, he or she will be well equipped to identify the kind of voluntary measures that will best respond to the risks facing particular industries and support those industries in taking action.

## **Leveraging Existing Regulatory Capacity**

While the focus of the present discussion has primarily been on the role and functions of the AML Commissioner, this does not mean that there is no role for existing, industry-specific regulators in addressing the risk of money laundering. I encourage government to consider giving existing regulators, such as the Vehicle Sales Authority, explicit anti-money laundering mandates. In such instances, care should be taken to ensure that these regulators are able to work in coordination with the AML Commissioner and avoid duplication of efforts.

In my view, it is important to engage industry-specific regulators where possible for several reasons. First, as is the case with the Vehicle Sales Authority, regulators often already have access to – or at least the power to access – valuable information relevant to money laundering in the industries they regulate, which should be leveraged to advance anti-money laundering objectives. Secondly, where an industry is already regulated, it will often be the regulator and not government that is best positioned to implement new anti-money laundering measures, including those recommended by the AML Commissioner. By empowering regulators to directly implement anti-money laundering measures in the industries they already regulate, the Province can ensure that action to prevent money laundering can be taken as efficiently and effectively

as possible. Finally, adding the prevention of money laundering to the mandate of regulators reinforces that addressing this problem is a shared responsibility. There is a risk that creation of a distinct AML Commissioner can create the perception that “someone else” is responsible for solving the problem of money laundering. By explicitly tasking regulators with this responsibility, the Province can reinforce that they are an essential part of a society-wide response to this issue.

## **Sector-Wide Oversight and Coordination**

The final necessary component of an effective anti-money laundering model for the luxury goods sector is sector-wide oversight and coordination. As discussed previously, because of the similarity in the nature of the money laundering risk facing different luxury goods markets, they may be viewed as largely interchangeable by those intent on laundering money. Moreover, efforts to discourage or disrupt money laundering activity in one luxury goods market may result in displacement to another market rather than the elimination of that activity altogether.

For this reason, it is insufficient to attempt to address the money laundering risk in individual luxury goods markets independently of one another. These efforts must be coordinated and subject to some form of sector-wide oversight. While there may be an important role to be played by market-specific regulators like the Vehicle Sales Authority, there must also be coordination between markets to assess evolving threats and the impact of anti-money laundering measures between markets. This kind of coordination may be useful in a number of ways. First, it may assist in identifying and addressing trends affecting multiple markets. An increase in suspicious activity in a single market may have different implications and call for a different response than a similar phenomenon affecting multiple luxury goods markets simultaneously. Secondly, coordination and communication across the sector may assist in identifying activity as suspicious in instances where the suspicious nature of the activity may not be apparent until connected to activity or trends elsewhere in the economy. Finally, coordination within the sector may assist in determining whether measures enacted in one market have led to displacement to another.

There is an obvious role for the AML Commissioner in ensuring coordination across the luxury goods sector (and beyond). To the extent that regulators are empowered to take direct action on money laundering, it is imperative that they share information and work collaboratively with the AML Commissioner to ensure that their actions are not unnecessarily redundant and that they avoid working at cross-purposes. While the precise nature of the relationship between the AML Commissioner and regulators will necessarily vary depending on the nature of the industry and role of the regulator, there must always be a strong relationship between the commissioner and the regulator that enables coordinated action.

## Money Laundering Through Grey Market Vehicle Exports

Grey market export of vehicles involves the purchase of vehicles in British Columbia and their export and resale to purchasers in other jurisdictions for amounts that exceed the purchase price paid, resulting in a profit for the exporter. In theory, grey market vehicle exports could facilitate money laundering where the exported vehicle was initially acquired with the proceeds of crime. The export of such a vehicle would serve the purpose of transferring the illicit funds used to acquire it to another jurisdiction, while the resale of the vehicle would provide an apparently legitimate explanation for the funds and potentially facilitate their placement into the financial system.

This typology was the subject of some discussion in Dr. German’s second report, which identified the grey market vehicle exports as a possible form of trade-based money laundering.<sup>88</sup> Dr. German concluded, based largely on provincial sales tax data obtained from the provincial government, that grey market vehicle exports had increased substantially in recent years.<sup>89</sup> The relevance of this data is that, in some circumstances, individuals who resell or export a vehicle following purchase are exempt from paying provincial sales taxes that would normally be payable on the sale of a vehicle.<sup>90</sup> Where provincial sales tax was paid at the time of purchase but the exemption applies, the purchaser can apply to the provincial government for a rebate.<sup>91</sup> On this basis, Dr. German concluded that “[t]he number of applications for refunds of PST on vehicles is a strong indication of the size of the grey market for exported vehicles from B.C.”<sup>92</sup> He interpreted a substantial increase in applications for provincial sales tax rebates, beginning in 2016, as evidence of a substantial increase in vehicle exports.<sup>93</sup>

The Commission obtained further provincial sales tax data for years subsequent to those included in Dr. German’s review.<sup>94</sup> This data disclosed that although applications for provincial sales tax rebates associated with the resale of vehicles had declined from their peak in 2018, they remained elevated – relative to 2015 levels – in the two years subsequent to the last year for which Dr. German received data.<sup>95</sup>

In addition to the potential money laundering risk associated with grey market vehicle exports, this activity is clearly of significant concern to vehicle manufacturers. Dr. German alluded to this concern and the efforts made by manufacturers to prevent this activity in his second report.<sup>96</sup> The Commission also received evidence from

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88 Exhibit 833, *Dirty Money 2*, p 195.

89 Ibid, p 196.

90 Exhibit 779, Affidavit No. 1 of Michelle Lee, made on March 22, 2021 [M. Lee #1], paras 4–12.

91 Ibid, para 8.

92 Exhibit 833, *Dirty Money 2*, p 198.

93 Ibid, pp 198–99.

94 Exhibit 779, M. Lee #1.

95 Ibid, paras 19–20.

96 Exhibit 833, *Dirty Money 2*, p 197.

Norman Shields, vice-president of finance and administration at BMW Canada Inc., detailing the challenges that grey market exports pose for BMW and the efforts it has made to prevent and respond to this practice.<sup>97</sup>

I am persuaded that grey market vehicle exports pose a real risk of money laundering, and I accept that the practice has significant negative repercussions for vehicle manufacturers. The available data does not, however, allow me to draw conclusions as to the extent to which grey market vehicle exports from British Columbia are connected to actual money laundering.

While grey market vehicle exports present an opportunity for money laundering, they cannot be assumed to be connected to money laundering in all cases. Grey market exports may be contrary to the terms of agreements between motor vehicle dealers and purchasers, but do not amount to criminal activity per se.<sup>98</sup> It is apparent from the evidence before me that exporters engage in practices that may give their activities the appearance of criminality or illegality, such as the use of nominee or “straw” buyers.<sup>99</sup> However, it is unclear whether, and to what extent, these practices are motivated by a desire on the part of exporters to distance themselves from illicit proceeds used to purchase vehicles as opposed to a desire to circumvent manufacturer and dealer efforts to prevent grey market exports.<sup>100</sup>

The connection between grey market vehicle exports and criminality is rendered even more tenuous by the apparent economic rationality of engaging in grey market export of vehicles acquired with legitimate funds. Dr. German indicated in his report that international price differentials ensure “huge profits” for exported vehicles.<sup>101</sup> If this is the case, then the grey market export of vehicles offers the opportunity for profit and is economically viable even if the vehicles are acquired with legitimate funds.

Accordingly, while the grey market export of vehicles is often discussed in a manner that suggests it is synonymous with money laundering, in my view, the connection is not so clear. Based on the evidence before me, grey market export of vehicles is itself a potentially profitable business model, including where the exported vehicles are purchased with legitimate funds. Grey market vehicle exports may also be used by those intent on laundering money by offering a convenient market for the sale of vehicles purchased with the proceeds of crime; however, in my view, it is not the case that grey market vehicle exports invariably occur in the context of a money laundering scheme, nor is it necessarily the case that the increase in grey market vehicle exports in recent years correlates to an increase in money laundering.

97 Exhibit 778, Affidavit No. 1 of Norman Shields, made on March 26, 2021.

98 Exhibit 777, Affidavit No. 1 of Marko Goluzza, made on March 25, 2021 [M. Goluzza #1], p 210; Exhibit 779, M. Lee #1, exhibit E.

99 Exhibit 777, M. Goluzza #1, p 210; Exhibit 779, M. Lee #1, para 21, see also exhibit E; Exhibit 778, T. Shields #1, paras 18-35.

100 Exhibit 777, M. Goluzza #1, p 219.

101 Exhibit 833, *Dirty Money 2*, p 196.

In light of this tenuous connection between grey market vehicle exports and money laundering, I am not persuaded that such exports should be the primary point of focus for efforts to combat money laundering using motor vehicles. By the time a vehicle is exported, it will be difficult to immediately distinguish vehicles acquired with proceeds of crime from those purchased with legitimate funds and, consequently, difficult to distinguish those vehicles being exported as part of a money laundering scheme from those being exported in violation of a private agreement between dealer and purchaser – or even those being exported entirely legitimately. Further, by the time an attempt is made to export a vehicle purchased with proceeds of crime, the illicit funds have already successfully been converted into the vehicle and, to an extent, successfully laundered. For these reasons, in my view, the primary focus of efforts to combat money laundering through the trade of vehicles is at the point at which vehicles are acquired using illicit funds. It is at this stage that money laundering transactions can likely be most easily detected and money laundering most completely prevented.

This does not mean that vehicle exports are not a cause for concern. While the extent to which proceeds of crime are actually being laundered through vehicle exports is unclear, I am persuaded that the *risk* of vehicles purchased with illicit funds being exported through British Columbia's ports is sufficiently significant that some scrutiny should be applied to these activities. The Province should regulate the purchase and sale of vehicles for the purpose of export from British Columbia. Regulation of this activity should involve, at a minimum, a registration requirement for those who export more than an identified number of vehicles annually and a requirement that the export of all vehicles by registered exporters be reported prior to export. Failure to register and failure to report as required should amount to provincial offences. This reporting requirement will ensure that a clear record exists of what vehicles have been exported and by whom, obviating the need to rely on provincial sales tax data for this purpose. The Province should consult with the Vehicle Sales Authority in order to determine whether it is feasible and appropriate for the mandate of the Authority to be expanded to include vehicle exporters.

**Recommendation 84:** I recommend that the Province regulate the purchase and sale of vehicles for the purpose of export from British Columbia. This regulation should involve, at a minimum, a registration requirement for those who export more than an identified number of vehicles annually and a requirement that the export of all vehicles by registered exporters be reported prior to export.

To assist in the effective regulation of motor vehicle exports, the Province should amend the *Provincial Sales Tax Act*, SBC 2012, c 35, to ensure that information collected for the purpose of processing provincial sales tax rebates is available to the Vehicle Sales Authority or other body tasked with regulating this activity. Currently, the

limits on disclosure of this information<sup>102</sup> are so restrictive that the Commission was unable to obtain access to the complete records even through the use of its summons power.<sup>103</sup> While there is undoubtedly a need to limit dissemination of these records, I am convinced that this information – particularly that which was unavailable to the Commission – would be of significant assistance in efforts to regulate this practice.

**Recommendation 85:** I recommend that the Province amend the *Provincial Sales Tax Act* to ensure that information collected for the purpose of processing provincial sales tax rebates is available, at a minimum, to the Vehicle Sales Authority and the AML Commissioner.

## Insurance Council of British Columbia

A final issue I wish to address before concluding this chapter is money laundering risk and regulation in the insurance industry. Alongside evidence related to money laundering in the luxury goods market, the Commission received evidence from Marko Goluza, director of professional conduct for the Insurance Council of British Columbia, regarding the risk of money laundering in the insurance market and efforts being made by the Insurance Council of BC to address this risk.<sup>104</sup> The Insurance Council of BC is a regulatory body established under section 220 of the *Financial Institutions Act*, RSBC 1996, c 141, with responsibility for licensing and regulating insurance agents, insurance salespersons, insurance adjusters, and employed insurance adjusters.<sup>105</sup>

I would not consider insurance itself to meet the criteria for inclusion in the “luxury goods” category as outlined above. I have included it in the present chapter, however, because of the close connection between insurance and money laundering through vehicle sales, and particularly vehicle exports.

Mr. Goluza’s evidence touches briefly on an identified theoretical risk of money laundering through the life insurance market, involving individuals purchasing life insurance policies with the proceeds of crime and subsequently cashing in those policies, thereby obscuring the source of the funds used to purchase the original policy.<sup>106</sup> I refer to this risk as “theoretical” as the Insurance Council of BC has not confirmed any cases in which this money laundering typology has actually been employed, and as such, there is no evidence that money laundering using this method is actually occurring in this province.<sup>107</sup>

<sup>102</sup> *Provincial Sales Tax Act*, SBC 2012, c 35, s 228.

<sup>103</sup> *Public Inquiry Act*, SBC 2007, c 9, s 22.

<sup>104</sup> Exhibit 777, M. Goluza #1.

<sup>105</sup> *Ibid*, para 6.

<sup>106</sup> *Ibid*, paras 30–31.

<sup>107</sup> *Ibid*, para 30.

In his evidence, Mr. Goluza indicated that the indicators of money laundering that the Insurance Council of BC has actually observed have related predominantly to the motor vehicle insurance and the role of insurance professionals in facilitating the grey market export of vehicles.<sup>108</sup> These indicators include:<sup>109</sup>

- vehicle type (late-model, luxury vehicles);
- quick transfers of ownership from straw buyers to exporters;
- pre-determined and timely cancellation of one-year insurance policies;
- a contact known by a licensed insurance professional at a dealership; and
- a common exporter across multiple transactions.

Mr. Goluza's evidence also detailed the efforts being made by the Insurance Council of BC to take action to address money laundering in and connected to the insurance market.<sup>110</sup> Money laundering was specifically referred to in the following strategy identified in the Insurance Council's 2020–2023 Strategic Plan:

Assess regulatory processes and modify as needed to detect and counter money laundering activities in the insurance industry.<sup>111</sup>

Three key performance indicators connected to money laundering have also been identified as part of the Insurance Council's strategic planning:<sup>112</sup>

- a. to ensure staff are trained on money laundering detection techniques;
- b. to complete random practice audits to review licensee compliance with [FINTRAC] money laundering and terrorist finance guidelines; and
- c. to ensure applicants for licensure are screened for money laundering and terrorist financing activities per FINTRAC guidelines.

Since the 2020–2023 Strategic Plan has come into effect, the Insurance Council of BC has taken action to pursue these goals by increasing organizational competency, including via staff training; reviewing processes to ensure alignment with FINTRAC guidelines; identifying activity that may be associated with money laundering in practice audits and investigations; and actively participating in the Counter Illicit Finance Alliance of British Columbia, discussed in Chapter 39.<sup>113</sup>

Notably, Mr. Goluza indicates in his evidence that the actions taken by the Insurance Council of BC with respect to money laundering in the industry it regulates have led to

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<sup>108</sup> Ibid, paras 32–35 and exhibits 11–14.

<sup>109</sup> Ibid, para 32.

<sup>110</sup> Ibid, paras 21–29, 36–41.

<sup>111</sup> Ibid, para 18.

<sup>112</sup> Ibid, para 20.

<sup>113</sup> Ibid, para 21.

disciplinary action against two licensees related to the issuance of insurance connected to the grey market vehicle exports.<sup>114</sup> The Insurance Council was unable to confirm whether these matters were also connected to money laundering, and for the reasons discussed above, I caution against the assumption that they were. Mr. Goluza suggests, however, that it may have been possible to make this determination with access to additional information about the source of funds used to acquire the vehicles in question.<sup>115</sup>

In my view, the Insurance Council of BC should be commended for the efforts it has made to address money laundering in and connected to the insurance industry, and the Province should consider providing the Insurance Council with additional support to further enhance its efforts. The Insurance Council has managed to take these limited but meaningful steps to address money laundering risks in its industry in the absence of an explicit anti-money laundering mandate and using its existing authority and resources.<sup>116</sup>

I encourage the Province to work with the Insurance Council of BC to ensure that it has the support required to further advance its efforts to address money laundering in and connected to the insurance industry. This could include giving the Insurance Council an explicit anti-money laundering mandate. In his evidence, Mr. Goluza identified a number of additional measures that would assist the Insurance Council in effectively addressing money laundering in the industry it regulates.<sup>117</sup> On the evidence before me, I am unable to determine whether each of these measures should be implemented or to make a recommendation in this regard. However, given the efforts already made by the Insurance Council to address this issue – even in the absence of an explicit statutory mandate to do so – the Province should take these proposals seriously and begin consultations with the Insurance Council and other affected parties to determine how the efforts already being made by the Insurance Council can be supported and advanced by the Province. These consultations should include, in particular, consideration of the following measures proposed by Mr. Goluza:

- adding a “duty to report” provision to the *Financial Institutions Act* that would require licensees to report identified conduct to ensure that the Insurance Council of BC has timely access to information related to suspicious transactions and possible money laundering in the insurance industry;<sup>118</sup>
- clarifying section 231(1)(b) of the *Financial Institutions Act* to ensure that it clearly provides that the Insurance Council of BC may levy separate fines up to the maximum allowable fine for each individual contravention of “a term, condition or restriction of the licence of the licensee”;<sup>119</sup>

114 Ibid, paras 33–34.

115 Ibid, para 35.

116 Ibid, paras 12–14.

117 Ibid, paras 42–53.

118 Ibid, para 45.

119 Ibid, paras 46–48.

- increasing the maximum fines that can be levied by the Insurance Council of BC;<sup>120</sup>
- creating an administrative penalty regime for minor and technical breaches by licensees;<sup>121</sup>
- expanding the type of disciplinary measures that may be imposed by the Insurance Council of BC;<sup>122</sup> and
- exempting the Insurance Council of BC from the Public Sector Employees' Council Guidelines to ensure that it is able to offer remuneration adequate to permit hiring experienced insurance professionals.<sup>123</sup>

## Conclusion

For the reasons discussed above, it is clear to me not only that the luxury goods sector is at high risk for money laundering but that illicit funds are being used to purchase luxury goods in this province. While I am unable to identify with precision the extent to which such activity is occurring, I am convinced it is presently a significant problem that is largely unchecked. Because of the high value, capacity to retain value, transferability, and portability of luxury goods, there is the very real potential that enormous amounts of illicit funds are being converted, transferred, transported, and ultimately laundered through the markets that comprise this economic sector. It is clear that this potential has been realized in British Columbia. That there is limited data available about money laundering through the luxury goods markets in British Columbia is the product of the reality that, in this province, no one has been watching.

Given the elevated risk associated with luxury goods markets, this is unacceptable. The Province must proactively work to uncover money laundering and the use of illicit funds in this sector and take action to drastically reduce the elevated risk of money laundering present in this sector by implementing measures that give effect to the principles outlined above.

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120 Ibid, para 49.

121 Ibid, para 50.

122 Ibid, para 51.

123 Ibid, para 53.

## Chapter 35

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# Virtual Assets

Unlike other topics I have discussed in this Report, virtual assets are unique in that many cannot readily describe what they are, let alone imagine how they might be misused for money laundering purposes. By far the most well-known virtual asset is Bitcoin, which emerged roughly 13 years ago and continues to dominate the sector. Yet, some 7,700 other virtual assets exist, and their characteristics, functions, and uses – both legitimate and illegitimate – have developed rapidly in a relatively short period of time. That criminals are already exploiting this new technology is illustrative of the need for governments, regulators, and law enforcement to actively monitor new technologies and develop the expertise needed to disrupt the use of virtual assets in money laundering schemes.

It is challenging to define a virtual asset in simple terms. The Financial Action Task Force describes a virtual asset as “a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.”<sup>1</sup> In some ways, we can make an analogy between virtual assets and normal “fiat” currency (i.e., real-world money or bank-issued currencies<sup>2</sup>); however, as I elaborate below, the analogy is not a perfect fit. Further, alongside the term “virtual asset,” a new vocabulary has emerged, which includes terms such as “cryptocurrency,” “cryptography,” “blockchain,” “hot wallets,” “cold wallets,” and “mining.”

In this chapter, I first explain various concepts relating to virtual assets and how transactions are completed. Notably, many virtual asset transactions are, despite their complexity, highly visible: a good deal of information is publicly available on

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1 Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [FATF Recommendations], p 126, definition of “virtual asset.”

2 Evidence of A. Vickery, Transcript, November 23, 2020, p 21.

the blockchain, which essentially functions as a public ledger of transactions. I then set out the regulatory scheme applicable to virtual assets, which is largely contained in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*). The scheme is new, having come into force in June 2020 and June 2021, rendering it difficult to determine how effective it is at this stage. Nonetheless, it is a promising step. Finally, I discuss crime involving virtual assets and methods of investigation. The virtual asset space poses unique challenges for law enforcement, because it is a rapidly developing and complex area, as well as opportunities for disruption of money laundering activity, because a significant amount of information is available publicly on the blockchain. It is essential that law enforcement, regulators, and government develop and maintain expertise in the area of virtual assets, which will undoubtedly continue to be exploited by criminals.

## What Is a Virtual Asset?

As noted above, the Financial Action Task Force defines “virtual asset” as “a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.” It further notes that virtual assets do *not* include digital representations of fiat currencies, securities, or other financial assets covered in its 40 recommendations (discussed in Chapter 6).<sup>3</sup> As that definition suggests, a virtual asset can serve a few functions:

- as a medium of exchange, by operating like a currency in some environments;
- as a unit of account, by defining, recording, or comparing value; and/or
- as a store of value, by having value to a creditor willing to accept it.<sup>4</sup>

There are two broad categories of virtual assets. A **non-convertible virtual asset** has value only within the domain in which it is used. For example, some online games have their own “currency,” such as World of Warcraft Gold.<sup>5</sup> In contrast, a **convertible virtual asset** can be converted into fiat money; in other words, it has an equivalent value in real currency or acts as a substitute for real currency.<sup>6</sup> A convertible virtual asset can be centralized, meaning it has a single administering authority or a kind of central bank, or decentralized, meaning it lacks a central administrator and instead operates peer to peer.<sup>7</sup>

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3 Exhibit 4, Appendix E, *FATF Recommendations*, p 126, definition of “virtual asset.”

4 Exhibit 253, RCMP Virtual Assets Slideshow, slide 4; Evidence of A. Vickery, Transcript, November 23, 2020, p 17.

5 A “real life” comparison is Canadian Tire money, which has value at Canadian Tire but not elsewhere: Evidence of A. Vickery, Transcript, November 23, 2020, p 19.

6 Exhibit 253, RCMP Virtual Assets Slideshow, slide 5; Evidence of A. Vickery, Transcript, November 23, 2020, pp 19–21; Exhibit 248, Overview Report: FATF Publications on Virtual Assets, Appendix H, *US Department of Justice, Report of the Attorney General’s Cyber Digital Task Force: Cryptocurrency Enforcement Framework* [US Cryptocurrency Enforcement Framework], pp 2–3.

7 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3; Exhibit 253, RCMP Virtual Assets Slideshow, slide 5; Evidence of A. Vickery, Transcript, November 23, 2020, p 20.

Bringing the above points together, a cryptocurrency is a type of virtual asset that (a) is convertible; (b) is decentralized; and (c) uses cryptography, which is a method of securing transactions.<sup>8</sup> Unlike traditional currencies, cryptocurrencies do not have legal tender status in any country, and their exchange value depends on agreement or trust among their community of users.<sup>9</sup> As I elaborate below, cryptocurrency can be exchanged directly from person to person, through a cryptocurrency exchange, or through other intermediaries.

Bitcoin is the most popular and well-known cryptocurrency. Although more than 7,700 cryptocurrencies exist, over 62 percent of cryptocurrency transactions are done in bitcoin.<sup>10</sup> Its popularity is due mostly to its accessibility: it was the first widely accepted and used cryptocurrency and is the most widely featured, accepted, and exchanged, rendering it more accessible for new users.<sup>11</sup> People sometimes use the term “Bitcoin” when generically referring to cryptocurrency,<sup>12</sup> and much of the focus in the evidence before me was on Bitcoin rather than cryptocurrencies generally.

The value of Bitcoin has varied considerably since its inception. In 2017, its value notably reached \$20,000, at which time its market capitalization<sup>13</sup> was approximately \$20 billion. At that time, 10 other cryptocurrencies had a market capitalization of over \$100,000. The value of Bitcoin varied between 2017 and 2020, falling to \$10,000 in 2018. However, in 2020, Bitcoin’s market capitalization had grown to approximately \$300 billion, and the values of the other top 10 cryptocurrencies were 10 times those of 2017.<sup>14</sup> As of April 19, 2022, Bitcoin’s value was \$52,186.30.<sup>15</sup>

## How Does a Cryptocurrency Transaction Work?

Understanding how a cryptocurrency transaction works requires a review of some key concepts. First, transactions require the use of a “private key” and a “public key.”

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- 8 Exhibit 253, RCMP Virtual Assets Slideshow, slide 5; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3; Evidence of A. Vickery, Transcript, November 23, 2020, pp 20–21.
- 9 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, pp 2–3. However, Sgt. Vickery noted that some countries, such as China and Venezuela, are considering the possibility of a virtual currency tied to or managed by a national banking authority. Canada is part of a working group with other countries seeking to identify best practices and approaches in this regard: Evidence of A. Vickery, Transcript, November 23, 2020, p 26.
- 10 Evidence of A. Vickery, Transcript, November 23, 2020, p 88. “Bitcoin” with an uppercase B refers to the payment system, whereas units of bitcoin take a lowercase b: Exhibit 254, Senate Report, *Digital Currency: You Can’t Flip This Coin!* (June 2015), p 6.
- 11 Evidence of J. Spiro, Transcript, November 24, 2020, pp 55–56; Evidence of A. Gilkes, Transcript, November 23, 2020, pp 24–25.
- 12 Evidence of A. Gilkes, Transcript, November 23, 2020, p 25.
- 13 Market capitalization refers to the overall value of a cryptocurrency, which is obtained by multiplying the value of each coin by the number of coins in circulation: Evidence of A. Gilkes, Transcript, November 23, 2020, p 21.
- 14 Exhibit 253, RCMP Virtual Assets Slideshow, slides 6 and 7; Evidence of A. Gilkes, Transcript, November 23, 2020, pp 21–22.
- 15 Coinbase, “Price Charts: Bitcoin Price,” online: <https://www.coinbase.com/price/bitcoin>.

A private key functions as a PIN or password and is needed to spend cryptocurrency.<sup>16</sup> A public key is roughly akin to a bank account number and is used to actually send or receive cryptocurrency.<sup>17</sup> Private and public keys consist of lengthy combinations of numbers and letters.<sup>18</sup>

Cryptocurrency is stored in a digital wallet, which is similar to a virtual account. Wallets interface with blockchains and generate or store the public and private keys.<sup>19</sup> There are several kinds of wallets:

- **Online wallets** are associated with cryptocurrency exchanges, which, as I discuss below, are services that provide a forum to exchange cryptocurrency with other users. Online wallets provide the least amount of control for the user, as the exchange maintains control of the user’s private key through a “custodial wallet.”<sup>20</sup>
- **Desktop wallets** are generated on a computer. Users maintain control of both the private and the public keys and have full control over their transactions. Conducting transactions using a desktop wallet tends to be very fast.<sup>21</sup>
- **Mobile wallets** are essentially the same as desktop wallets except that they are generated on a smartphone.<sup>22</sup>
- **Hardware wallets** are small, encrypted devices similar to USB keys, which are created specifically to store private keys. With a hardware wallet, users can spend cryptocurrency completely free from the internet. However, because they cost around \$100, they tend to be less popular for casual users.<sup>23</sup>
- **Paper wallets** are private and public keys printed on paper. They can be generated automatically through a visit to a cryptocurrency ATM, which, as I elaborate below, is a machine similar to a traditional ATM that allows a user to buy or sell cryptocurrency.<sup>24</sup>

Wallets can be “hot” or “cold.” A hot wallet is one where the user’s private key is or has been online, whereas with a cold wallet, the private key has never been online.

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16 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3; Evidence of A. Gilkes, Transcript, November 23, 2020, p 50.

17 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3; Evidence of A. Gilkes, Transcript, November 23, 2020, pp 51–52.

18 See Exhibit 253, RCMP Virtual Assets Slideshow, slide 12 for examples.

19 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3.

20 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 53–54; Evidence of A. Vickery, Transcript, November 23, 2020, p 62.

21 Evidence of A. Gilkes, Transcript, November 23, 2020, p 54; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3.

22 Evidence of A. Gilkes, Transcript, November 23, 2020, p 54; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3.

23 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 56–58; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3.

24 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 56–57; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 3.

The first three wallets listed above are hot wallets, and the last two are cold wallets. Cold wallets are more secure than hot wallets in that, if prepared properly, they have never been online and are therefore not at risk of being targeted by malware or related threats. The trade-off is that spending cryptocurrency using a cold wallet requires a little more time and effort. Desktop and mobile wallets are less secure insofar as users risk losing their keys or cryptocurrency if a device becomes corrupted, lost, or subject to malware. However, a user may be able to use a “seed phrase,” which is a combination of 12 to 24 words, to recover a wallet. Finally, an online wallet with an exchange is secure in the sense that the exchange takes care of the private keys and uses its network security to ensure that no one else has access. The exchange can also help a user who loses their wallet or login information to recover the wallet.<sup>25</sup>

Cryptocurrency transactions occur on the blockchain,<sup>26</sup> which is a public ledger that captures the history of all verified transactions.<sup>27</sup> (Note, however, that not all cryptocurrencies have a public blockchain;<sup>28</sup> the discussion that follows relates primarily to those that do.) A report prepared by the Standing Senate Committee on Banking, Trade, and Commerce explains the concept of a public ledger as follows:

The public ledger is exactly what it sounds like – a large bulletin board (written in a cryptic computer database called the blockchain). The public ledger logs and broadcasts transactions to the entire network.

Everyday transactions – using, for example, a debit or credit card to buy a cup of coffee – are tied to a bank. If you have enough money in your account, or credit on the card, the bank authorizes the transaction and you get your coffee. If you bought that same cup of coffee with bitcoin, you would simply announce it on the public ledger without the bank or any other financial institution (and all their transaction fees) being involved. The merchant gets their money and you get your coffee.

The public ledger is always accessible through computers literate in the blockchain. It cannot be forged or changed. It provides a permanent record of all bitcoin transactions that have ever happened, a history that within an hour is unalterable.<sup>29</sup>

Each block in the blockchain consists of a group of reported transactions in chronological order.<sup>30</sup> Once a transaction has been verified and added to the

25 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 54–59.

26 While my focus here is on blockchain technology used in cryptocurrencies, I note that blockchain can also be used for non-cryptocurrency purposes. For example, Walmart has used it to track the movement of produce from the crops through to the distribution centre and the store shelf, which can assist with tracking outbreaks of listeria and the like: Evidence of A. Vickery, Transcript, November 23, 2020, p 92. Blockchain has also been used in situations such as digital voting, art, music, and collective decision-making: Transcript, November 25, 2020, p 142.

27 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 4.

28 Evidence of A. Gilkes, Transcript, November 23, 2020, p 33.

29 Exhibit 254, Senate Report, *Digital Currency: You Can't Flip This Coin!* (June 2015), pp 6–7.

30 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 4.

blockchain, the block is permanent and cannot be modified, deleted, or removed. In this way, the use of a blockchain prevents double-spending and counterfeiting.<sup>31</sup>

The blockchain is often called “pseudo-anonymous” because almost all the information is publicly available except the identity and location of the person who conducted the transaction.<sup>32</sup> The blockchain shows information such as the date and time of transactions, the accounts that the cryptocurrency was sent from and to, the transaction number, the transaction fee, and the amount transacted.<sup>33</sup> As I elaborate later in this chapter, the public nature of the blockchain is helpful for law enforcement when investigating crime involving virtual assets.

Transactions are verified and added to the blockchain through a process called “mining.” When a user initiates a transaction, it is encrypted with a private key and then submitted on the network for verification by special users known as “miners.” Miners verify that the units have not already been spent and validate the transaction by solving a complex algorithm called a “random hash algorithm.” In exchange for mining, miners are paid transaction fees by the sender of the funds. These fees do not depend on the size of the transaction but rather by demand: if there is a high demand for transactions, senders may increase their transaction fee to incentivize miners to validate the transaction faster.<sup>34</sup>

As Sergeant Aaron Gilkes of the RCMP explained, the mining process is competitive. He noted that there is a finite number of bitcoins that will exist. To ensure that there are enough bitcoins to be distributed at a proper pace, it has to take approximately 10 minutes for each block of the blockchain to be solved. Depending on how many miners are working to solve the blocks, the software will adjust the difficulty of solving the random hash algorithm. The first miner to reach the “hash” number set by the software is awarded the block and receives transaction fees as well as the initial coins that are discovered.<sup>35</sup> Thus, “it is a competition as to who can solve that equation the fastest and who can add that block of transactions to the blockchain the fastest.”<sup>36</sup>

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31 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 27–28; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 4.

32 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 35–36.

33 Ibid, pp 34–35. For an example of information available on the blockchain see Exhibit 253, RCMP Virtual Assets Slideshow, slide 10.

34 Exhibit 254, Senate Report, *Digital Currency: You Can't Flip This Coin!* (June 2015), p 29; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 4; Evidence of A. Gilkes, Transcript, November 23, 2020, pp 28–29, 30–31, 35; Evidence of A. Vickery, Transcript, November 23, 2020, pp 31–32.

35 Sgt. Gilkes noted that the term “miners” is used because when a block is added, the miners are paid in newly minted bitcoin, that is, coins that “didn't exist before or they weren't in circulation before, but now they're being distributed through the discovery of a new block”: Transcript, November 23, 2020, p 30.

36 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 30–31. Sgt. Gilkes explained that mining requires special, powerful computers that generate an enormous amount of heat and require an enormous amount of electricity to function. He added that, given the cold climate, inexpensive electricity, and minimal regulation in Quebec, it has become a popular place for miners to locate their computers: Evidence of A. Gilkes, Transcript, November 23, 2020, pp 38–39; Exhibit 253, RCMP Virtual Assets Slideshow, slide 9.

## Alternative Coins

While Bitcoin is by far the most popular cryptocurrency, some of its features are unattractive to certain users, both legitimate and illicit. First, the fact that the blockchain is transparent poses obvious problems for criminals and may also be unattractive for legitimate users concerned about privacy. Second, there is the potential for high transaction fees during times of high demand. For example, when Bitcoin was at its highest value in 2017, transaction fees were US\$55 per transaction. Third, the volatility of Bitcoin's value leads to unstable purchasing power. Fourth, there can be long wait times because only about seven transactions can be processed per second (compared to around 24,000 Visa transactions or 200 PayPal transactions per second). Fifth, as Bitcoin is not backed by a central authority, there is no insurance or legal recourse if a user's account is compromised. Finally, transactions are irreversible: if a user sends funds to the wrong key, there is no way to undo the transaction.<sup>37</sup>

Alternative coins have developed to address these deficiencies.<sup>38</sup> Stable coins are backed by fiat currency, a stable commodity such as gold, other cryptocurrencies, or algorithms. This backing addresses the volatility issue, rendering the coin less vulnerable to fluctuation.<sup>39</sup> Meanwhile, privacy coins (also known as “anonymity-enhanced cryptocurrencies”) offer enhanced encryption and privacy features that potentially obfuscate the ability to trace transactions. Privacy coins are very attractive for illicit users, as they allow the movement of funds across borders without detection by law enforcement, government, regulators, or the private sector. They can, however, also be attractive to legitimate users, such as those who are particularly concerned about data privacy or who are living under authoritarian regimes.<sup>40</sup>

Privacy coins pose obvious money laundering vulnerabilities. Notably, aftermarket software tools are not able to provide services with respect to closed blockchain ledgers, with the result that these tools cannot provide analysis on transactions involving privacy coins.<sup>41</sup> This is an area requiring further study and attention, as criminals will undoubtedly seek to take advantage of the anonymity provided by privacy coins and the difficulties in investigating transactions on closed blockchains.

## Modes of Exchange

There are various methods of exchanging cryptocurrency, each with its own advantages and risks. I review each in turn.

37 Evidence of A. Vickery, Transcript, November 23, 2020, pp 88–90; Evidence of A. Gilkes, Transcript, November 23, 2020, pp 32–33.

38 Evidence of A. Vickery, Transcript, November 23, 2020, p 90.

39 Exhibit 253, RCMP Virtual Assets Slideshow, slide 25; Evidence of J. Spiro, Transcript, November 24, 2020, p 56; Evidence of A. Vickery, Transcript, November 23, 2020, pp 90–91.

40 Evidence of J. Spiro, Transcript, November 24, 2020, pp 54–60; Evidence of A. Vickery, Transcript, November 23, 2020, p 91; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 4; Exhibit 253, RCMP Virtual Assets Slideshow, slide 25.

41 Evidence of J. Spiro, Transcript, November 24, 2020, p 57.

## Public Exchanges

Public exchanges, also known as centralized exchanges, are the most popular method for individuals to purchase cryptocurrency. They allow users to purchase or sell cryptocurrency, as well as convert it into other cryptocurrencies, and are usually funded through transaction fees. They can be brick-and-mortar businesses or online businesses.<sup>42</sup>

As I noted above, exchanges take custody of a user's private key through a custodial wallet. As a result, users are not really in control of their private keys.<sup>43</sup> The private keys are not retained within the exchange itself – an arrangement meant to protect both the exchange and users from potential hacks. Most private keys are stored in a cold wallet, and the exchange keeps only what is necessary to meet the supply and demand of transactions in its hot wallet. As the reserve depletes, the exchange can replenish it from the cold wallet.<sup>44</sup>

Concerns about the storage of private keys by exchanges were raised in the case of an exchange called QuadrigaCX (Quadriga), whose co-founder and chief executive officer was found by staff at the Ontario Securities Commission to have engaged in fraudulent activities. I discuss Quadriga and the Ontario Securities Commission report below.

As of June 2021, public exchanges are deemed to be money services businesses under the *PCMLTFA* and therefore have all the typical customer due diligence and other obligations under that regime. They are also required to register with FINTRAC. However, prior to the amendments, most exchanges gathered a significant amount of information from clients, including their name, address, phone number, a photo of the client holding their government-issued photo identification, bank account information, and transaction history.<sup>45</sup> The exchange would usually run an algorithm on the photo of the client holding their government-issued ID to confirm that they were who they said they were.<sup>46</sup>

Sergeant Adrienne Vickery, the national cryptocurrency coordinator at the RCMP, characterized exchanges as being the “on ramps” or “off ramps” of cryptocurrencies in the sense that they provide methods of cashing out cryptocurrency into fiat currency. When law enforcement can trace a transaction going to an exchange, it can seek a production order to obtain the information in their possession.<sup>47</sup>

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42 Exhibit 253, RCMP Virtual Assets Slideshow, slide 15; Evidence of A. Vickery, Transcript, November 23, 2020, p 62; Evidence of A. Gilkes, Transcript, November 23, 2020, p 59.

43 Evidence of A. Vickery, Transcript, November 23, 2020, p 62.

44 Ibid, p 63.

45 Exhibit 253, RCMP Virtual Assets Slideshow, slide 16.

46 Some exchanges had been victims of fraud where corrupt entities had bought images of individuals holding a driver's licence on the dark web. The algorithm was meant to prevent that from happening: Evidence of A. Vickery, Transcript, November 23, 2020, pp 60–62.

47 Evidence of A. Vickery, Transcript, November 23, 2020, pp 45–46. See also Evidence of J. Spiro, Transcript, November 24, 2020, pp 63–64.

## Private Exchanges

A private exchange is a peer-to-peer platform that connects buyers and sellers of cryptocurrency. In a similar way to Craigslist or Kijiji, a seller or purchaser of cryptocurrency can post an advertisement to buy or sell cryptocurrency.<sup>48</sup> Many private exchanges exist. One of the most common is Paxful, which advertises over 300 payment methods, including cash and gift cards.<sup>49</sup>

Sergeant Vickery testified that from a law enforcement perspective, private exchanges are a very risky way to purchase cryptocurrency. They are very expensive compared to public exchanges: whereas a public exchange typically charges fees of ¼ to 4 percent, private exchanges charge around 10 to 15 percent. Users are willing to pay those fees because the exchange offers anonymity.<sup>50</sup> Further, the variety of payment options makes it difficult for law enforcement to follow the flow of funds.<sup>51</sup>

Individuals using private exchanges often meet in person to exchange cash. Although transactions on the blockchain take at least 10 minutes, it may take an hour or more for the transaction to be validated and to appear on the blockchain. As individuals meeting in person are unlikely to wait the 30 to 60 minutes to ensure a transaction is validated, there is a risk of fraud. In some cases, individuals have been assaulted or had bags of cash stolen.<sup>52</sup>

## Cryptocurrency ATMs

Cryptocurrency ATMs or “kiosks” are “stand-alone machines that allow users to convert fiat currency to and from Bitcoin and other currencies.” Users can buy or sell cryptocurrency with their mobile devices or have it delivered in the form of a paper wallet.<sup>53</sup>

Fees associated with using cryptocurrency ATMs are typically higher than with exchanges. There are certainly uses for legitimate users: for example, ATMs can be useful for traditionally unbanked people to be able to deal with and transact currency all over the world.<sup>54</sup> Further, they are attractive to those who do not want to rely on a third party holding assets for them or to share personal information with companies.<sup>55</sup> However, as I elaborate later in this chapter, there are significant money laundering risks associated with the use of cryptocurrency ATMs.

The use of cryptocurrency ATMs has increased substantially in recent years. Sergeant Vickery testified that, at the time of the hearings, there had been a 100 percent

<sup>48</sup> Evidence of A. Vickery, Transcript, November 23, 2020, p 68.

<sup>49</sup> Ibid, p 70.

<sup>50</sup> Ibid, pp 68–69.

<sup>51</sup> Ibid, p 70.

<sup>52</sup> Ibid, pp 69–70.

<sup>53</sup> Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 38.

<sup>54</sup> Evidence of A. Vickery, Transcript, November 23, 2020, p 75.

<sup>55</sup> Evidence of C. Cieslik, Transcript, November 25, 2020, pp 98–100.

increase in a year, from around 6,000 to 12,000 ATMs worldwide. Of approximately 1,000 such machines in Canada at the time of the hearings, 101 were in Vancouver.<sup>56</sup>

There are different ways to run a cryptocurrency ATM. An operator may have an open account with an exchange, such that transactions will be mirrored on an open account at an exchange. This arrangement ensures that the wallet used to support the ATM is fully replenished and will meet the supply and demand of the machine. It also helps with volatility, ensuring the operator of the machine is paying the same for cryptocurrency as it is being sold for. Alternatively, operators may purchase machines and support them with their own hot wallets – a practice requiring a lot of cryptocurrency reserves.<sup>57</sup>

As of June 2021, cryptocurrency ATMs are considered money services businesses under the *PCMLTFA* and are therefore subject to that regime’s customer due diligence and other measures.<sup>58</sup> Sergeant Vickery testified that there is not much incentive for operators to do more than is required under the *PCMLTFA*, noting that operators have reported that business has dropped since implementing even basic customer due diligence measures.<sup>59</sup> She expressed the view that the vast majority of cryptocurrency ATMs will not be doing any form of customer due diligence under the required threshold of \$1,000 (discussed below).<sup>60</sup>

## Prepaid Cryptocurrency Cards

Although cryptocurrency is increasingly accepted by merchants as a form of payment, it is still relatively uncommon. This is due to the volatility of cryptocurrency: merchants cannot be sure of their purchasing power from one day to the next. Prepaid cryptocurrency cards offer a solution. These cards involve a user transferring cryptocurrency to a third-party operator that funds the cards, which can then be spent anywhere.<sup>61</sup> As I discuss below, these cards present money laundering risks.

## Over-the-Counter Brokers

Over-the-counter (OTC) brokers facilitate trades between buyers and sellers who cannot or do not want to transact on an open cryptocurrency exchange. They are usually associated with – but operate independently from – exchanges.<sup>62</sup> This arrangement is sometimes referred to as being “nested” within an exchange and means that a transaction conducted by an OTC broker may show up on the blockchain as being conducted by the exchange.<sup>63</sup>

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56 Evidence of A. Vickery, Transcript, November 23, 2020, pp 70, 75, 78; Exhibit 253, RCMP Virtual Assets Slideshow, slide 19.

57 Evidence of A. Vickery, Transcript, November 23, 2020, pp 71–72.

58 Evidence of C. Cieslik, Transcript, November 25, 2020, pp 100–1.

59 Transcript, November 23, 2020, pp 76–77.

60 Ibid, p 80.

61 Ibid, pp 80–81.

62 Exhibit 257, Chainalysis, *The 2020 State of Crypto Crime* (January 2020) [Chainalysis 2020 Report], p 12.

63 Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 1, Chainalysis, *The 2021 Crypto Crime Report* (February 16, 2021) [Chainalysis 2021 Report], p 13.

OTC brokers provide an avenue to exchange large amounts of cryptocurrency outside of an open exchange.<sup>64</sup> Large cryptocurrency transactions can have an impact on the liquidity of the market and pricing, with the result that there are usually limits set on how much cryptocurrency can be converted or transferred at a given time. OTC brokers are therefore attractive to those looking to move large amounts of cryptocurrency. They are generally seen as off-market service providers and provide increased privacy in that transactions are not directly connected to individuals on an exchange.<sup>65</sup>

An exchange's level of insight into the activities of a nested OTC broker varies. Further, customer due diligence practices among OTCs vary wildly, with some being very compliant and others not requiring any customer due diligence.<sup>66</sup>

Chainalysis, a company that provides blockchain forensics investigative services (discussed further below), observes in an annual report that there is a “huge range in how much illicit transaction volume nested services process – some are just as compliant as mainstream exchanges, while others appear to cater specifically to cybercriminals.” It continues:

Many appear to be large businesses for whom illicit activity is just a small share of total transaction volume, suggesting that these services are likely inadvertently moving illicit funds due to lax compliance policies, but could continue to operate if they stopped. However, some of these deposit addresses receive such a high percentage of their funds from illicit addresses that it seems impossible the activity could be accidental, or that the services could even continue to operate without serving cybercriminals.<sup>67</sup>

Chainalysis has identified 100 “rogue” OTCs that have processed trades with bad actors and wallets associated with large volumes of illicit cryptocurrency or proceeds of crime.<sup>68</sup> Jesse Spiro, global head of policy and regulatory affairs at Chainalysis, agreed that OTCs are disproportionately favoured by bad actors, including money launderers. In his estimation, this is likely because they either solicit that kind of business or have been identified as OTCs conducting little or no customer due diligence. Indeed, some OTCs are nested within exchanges that conduct little or no due diligence.<sup>69</sup>

There are clear money laundering vulnerabilities associated with OTC brokers. This is evident from their business model, which involves facilitating large cryptocurrency transactions for individuals without accounts at exchanges, and the absence of regulation over their activities. To borrow Sergeant Vickery's terminology, OTC brokers can be seen as “on ramps” or “off ramps” of virtual currencies, potentially allowing criminals

64 Evidence of A. Vickery, Transcript, November 23, 2020, p 82; Exhibit 253, RCMP Virtual Assets Slide-show, slide 23.

65 Evidence of J. Spiro, Transcript, November 24, 2020, pp 61–62, 85.

66 Ibid, pp 85–86.

67 Exhibit 1021, Appendix 1, Chainalysis 2021 Report, p 13.

68 Exhibit 257, Chainalysis 2020 Report, p 13; Evidence of J. Spiro, Transcript, November 24, 2020, p 87.

69 Evidence of J. Spiro, Transcript, November 24, 2020, pp 88–89.

to launder and cash out large amounts of cryptocurrency with little or no oversight.<sup>70</sup> However, I am mindful that there are legitimate uses of these services as well.<sup>71</sup>

It appears that OTC brokers may constitute dealers of virtual currencies for the purposes of the *PCMLTFA*. FINTRAC may wish to work in co-operation with exchanges to identify OTC brokers and, where appropriate, ensure that they are registered.

## Private Off-Chain Transactions

Private off-chain transactions are another way of exchanging cryptocurrency. These are transactions that are not recorded on the blockchain. For example, an individual might give their private key to someone else in exchange for cash, thereby allowing the recipient of the key to access the cryptocurrency. In that way, the recipient has essentially received cryptocurrency without a formal transfer appearing on the blockchain.<sup>72</sup>

## Lightning Network

A final way of exchanging cryptocurrency is through the lightning network. This network essentially runs like a tab: it enables users to perform multiple transactions outside the main blockchain and be recorded as a single transaction at the end.<sup>73</sup> Sergeant Vickery testified that, from a law enforcement perspective, the lightning network poses problems because it is not possible to see what occurred in the various transactions leading up to the final one that is recorded. In fact, it may not be possible to see that more than one transaction has occurred.<sup>74</sup>

## Regulation of Cryptocurrencies

Regulation of cryptocurrencies is fairly recent both at the international and domestic level. In what follows, I review the Financial Action Task Force’s recommendations<sup>75</sup> and guidance on virtual assets, the recent amendments to the *PCMLTFA*, and the potential for provincial regulation.

## The Financial Action Task Force’s Recommendations and Guidance

The Financial Action Task Force first addressed virtual assets in 2012 as a “new technology” in Recommendation 15. Over the years, the recommendation has become

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70 Exhibit 257, Chainalysis 2020 Report, p 12.

71 Evidence of J. Spiro, Transcript, November 24, 2020, p 89; Exhibit 257, Chainalysis 2020 Report, p 12.

72 Evidence of A. Vickery, Transcript, November 23, 2020, pp 83–84; Exhibit 253, RCMP Virtual Assets Slide-show, slide 23.

73 Evidence of A. Vickery, Transcript, November 23, 2020, pp 84–85; Exhibit 253, RCMP Virtual Assets Slide-show, slide 23.

74 Transcript, November 23, 2020, pp 84–85.

75 I discuss the recommendations, which set out anti-money laundering and counterterrorist financing measures that member countries are encouraged to adopt, in Chapter 6.

more precise and new guidance has been made available.<sup>76</sup> Recommendation 15, “new technologies,” currently states:

Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to (a) the development of new products and new business practices, including new delivery mechanisms, and (b) the use of new or developing technologies for both new and pre-existing products. In the case of financial institutions, such a risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies. They should take appropriate measures to manage and mitigate those risks.

To manage and mitigate the risks emerging from virtual assets, countries should ensure that virtual asset service providers are regulated for [anti-money laundering / counterterrorist financing] purposes, and licensed or registered and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the [Financial Action Task Force] Recommendations.<sup>77</sup>

The recommendations also contain the following definitions of “virtual asset” and “virtual asset service provider”:

A virtual asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the [Financial Action Task Force] Recommendations.

...

Virtual asset service provider means any natural or legal person who is not covered elsewhere under the Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i. exchange between virtual assets and fiat currencies;
- ii. exchange between one or more forms of virtual assets;
- iii. transfer of virtual assets;
- iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and

<sup>76</sup> For a chronology of the evolution of the FATF standards and guidance, see Exhibit 249, Overview Report: Federal Regulation of Virtual Currencies, pp 1, 5–9.

<sup>77</sup> Exhibit 4, Appendix E, *FATF Recommendations*, p 15.

- v. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.<sup>78</sup>

The interpretive note to Recommendation 15 clarifies a number of points, of which I highlight a few. First, it notes that all value-based terms in the recommendations (namely “property,” “proceeds,” “funds,” “funds or other assets,” or other “corresponding value”) should include virtual assets. As a result, all relevant measures under the recommendations should apply to virtual assets and virtual assets service providers.<sup>79</sup> Second, it states that virtual asset service providers should be required to be licensed or registered. Licensing or registration should be done at minimum in the jurisdiction in which the virtual asset service provider is created, but countries may also require virtual asset service providers that offer products and/or services to customers in, or conduct operations from, their jurisdiction to be licensed or registered in that jurisdiction.<sup>80</sup> Third, member jurisdictions must ensure that virtual asset service providers are supervised and regulated by a competent authority (which should not be a self-regulatory body) with recourse to a range of different disciplinary and financial sanctions.<sup>81</sup>

Virtual asset service providers should be subject to the same customer due diligence, record-keeping, and reporting requirements as other reporting entities, with two qualifications: (a) the threshold for requiring customer due diligence should be US\$1,000 or 1,000 euros, and (b) virtual asset service providers should be required to gather originator and beneficiary information on virtual asset transfers, submit the information to the beneficiary provider or financial institution immediately and securely, and make it available on request to appropriate authorities.<sup>82</sup>

The latter qualification, referred to as the “travel rule,” is based on Recommendation 16, which relates to wire transfers.<sup>83</sup> The travel rule is an anti-money laundering and counterterrorist financing measure that ensures originators and beneficiaries of financial transactions are identifiable and not anonymous.<sup>84</sup> It is meant to track and have a record of the movement of funds: who sends and receives them, which jurisdictions they are in, and which accounts are used.<sup>85</sup>

The Financial Action Task Force has also released a number of guidance documents, including its *Guidance for a Risk-Based Approach: Virtual Assets and Virtual*

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78 Exhibit 4, Appendix E, *FATF Recommendations*, pp 126–27.

79 Exhibit 248, Overview Report: FATF Publications on Virtual Assets, Appendix D, Interpretive Note to FATF Recommendation 15, para 1.

80 *Ibid*, para 3.

81 *Ibid*, paras 5, 6.

82 *Ibid*, para 7.

83 Financial Action Task Force, *Updated Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asset Service Providers* (October 2021), online: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf>, para 178.

84 Exhibit 248, Overview Report: FATF Publications on Virtual Assets, Appendix F, FATF, *12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers* (June 2020), para 38.

85 Evidence of P. Warrack, Transcript, November 25, 2020, p 45–46.

*Asset Service Providers*, which was most recently updated in October 2021.<sup>86</sup> This lengthy guidance document explains how each of the 40 recommendations should be applied in the virtual asset space, provides examples of measures in place in certain jurisdictions, and sets out best practices in terms of information sharing and co-operation by supervisors.

In July 2020, the Financial Action Task Force published a 12-month review of members' implementation of the recommendations relating to virtual assets.<sup>87</sup> It found that 35 of 54 reporting jurisdictions had implemented the revised standards and emphasized the need for all members to implement the standards to ensure their effectiveness.<sup>88</sup> Jurisdictions were encountering issues in implementing the travel rule, with many noting that technological solutions were lacking.<sup>89</sup> The review provided some observations on the use of virtual assets for money laundering and terrorist financing purposes, including:

- The value of virtual assets involved in detected cases had been relatively small so far compared to cases using more traditional services and products, though ongoing monitoring is necessary.
- The most prominent typology observed so far has been the use of virtual assets for layering, possibly due to the ease of rapid transfer.
- Professional money laundering networks appeared to be starting to exploit this vulnerability and use virtual assets as a means of laundering.
- Bad actors tended to use virtual assets service providers registered or operating in jurisdictions lacking effective anti-money laundering or counterterrorist financing regulation, as well as multiple providers, rendering it challenging for authorities to follow the trail of funds.
- Bad actors tended to use tools and methods to increase the anonymity of transactions, including anonymizing domain names, tumblers or mixers, privacy coins, chain hopping, and other techniques (many of which I review below).<sup>90</sup>

The July 2020 review concluded that there was no clear need to amend the recommendations or the interpretive note as of yet. It committed to publishing a further

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86 Financial Action Task Force, *Updated Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asset Service Providers* (October 2021), online: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf>.

87 Exhibit 248, Overview Report: FATF Publications on Virtual Assets, Appendix F, FATF, *12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers* (June 2020).

88 Ibid, paras 2–3.

89 Ibid, paras 2, 43.

90 Ibid, paras 16, 18.

review in July 2021,<sup>91</sup> which it subsequently did.<sup>92</sup> Among the second review’s findings were the following:

- Fifty-eight of 128 jurisdictions had introduced the necessary legislation to implement the revised Financial Action Task Force standards, but global implementation is uneven.
- Although there had been clear progress in the implementation of the standards by the public sector, there was not yet sufficient implementation to enable a global anti-money laundering and counterterrorist financing regime for virtual assets and providers.
- As in 2020, there was not yet sufficient implementation of the travel rule or the development of associated technological solutions.
- There had been strong and rapid growth in the virtual assets sector since the revised standards, including a large increase in the use of virtual assets to collect ransomware payments and to launder proceeds.
- There was no need to amend the standards or interpretive note as of yet.<sup>93</sup>

In September 2020, the Financial Action Task Force released a series of “red flag indicators” associated with virtual assets.<sup>94</sup> These indicators were developed by examining over 100 case studies contributed by member jurisdictions between 2017 and 2021 as well as other Financial Action Task Force reports and information in the public domain.<sup>95</sup> The cases revealed that the majority of offences focused on predicate or money laundering offences, with the most common type of misuse being illicit trafficking in controlled substances and the second most common being frauds, scams, ransomware, and extortion.<sup>96</sup> The various indicators are divided into six categories: transactions, transaction patterns, anonymity, senders or recipients, source of funds or wealth, and geographical risks. Several case studies are included to illustrate the involvement of red flags. I would encourage law enforcement bodies in British Columbia tasked with investigating money laundering or cryptocurrency-related crime to carefully review these red flag indicators.

Notably, the Financial Action Task Force red flag indicators were significantly influenced by a private sector initiative. Peter Warrack, a consultant specializing in blockchain technology, anti-money laundering, and cryptocurrency, testified that the

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91 Ibid, paras 4, 70.

92 Financial Action Task Force, *Second 12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers* (July 2021), online: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Second-12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf>.

93 Ibid at paras 2–7.

94 Exhibit 248, Overview Report: FATF Publications on Virtual Assets, Appendix G, *FATF Report: Virtual Assets: Red Flag Indicators of Money Laundering and Terrorist Financing* (September 2020).

95 Ibid, para 6.

96 Ibid, p 4.

Financial Action Task Force document was based on a report that he and peers in the industry (including exchanges, aftermarket software companies, and law enforcement) developed through an initiative called Project Participate (discussed below).<sup>97</sup> While I applaud this private sector initiative, I emphasize that law enforcement, regulators, and government must develop their own expertise in cryptocurrency.<sup>98</sup> The evidence before me showed that many private sector actors are committed to implementing measures to fight cryptocurrency-related crime, and this is certainly positive. However, the ultimate responsibility to investigate cryptocurrency-related crime, as with other criminal activity, lies with the state. It is crucial that law enforcement, government, and regulators – whose primary motivation is to act in the public interest – develop their own expertise in this area. Although private sector initiatives are to be welcomed, state actors must remain the primary investigators of this activity and ensure they are not overly dependent on private sector expertise and activity, given that law enforcement will likely need to investigate private sector actors in some cases. I recommend that the government, in consultation with the proposed AML Commissioner (see Chapter 8), ensure that law enforcement and regulators are trained to recognize indicators and typologies of money laundering through virtual assets. Prosecutors who are routinely tasked with advising on or supporting proceeds-of-crime and money laundering investigations may also benefit from such training. Members of the new anti-money laundering intelligence and investigation unit (discussed in Chapter 41), who will have or will need to develop a high degree of expertise in this area, would be well placed to develop and deliver such training.

**Recommendation 86:** I recommend that the Province, in consultation with the AML Commissioner and the dedicated provincial money laundering intelligence and investigation unit, ensure that law enforcement, regulators, and Crown counsel with relevant duties are trained to recognize indicators and typologies of money laundering through virtual assets.

## The *PCMLTFA*

Amendments to the *PCMLTFA* to include virtual assets were introduced in June 2014. However, these and subsequent amendments needed to be brought into force

<sup>97</sup> Transcript, November 25, 2020, pp 105–8.

<sup>98</sup> In this regard, I agree with Detective Inspector Craig Hamilton of New Zealand’s Financial Crime Group: “[Virtual assets are] an emerging area of opportunity for money laundering. It’s also an emerging area of opportunity for regular career enhancement and policing response. It’s here to stay. We need to understand it, and our people need to understand it. We need to be vigilantly looking for it. It’s not something to be scared of or intimidated by. Quite the reverse. And it’s an area that ... law enforcement globally need to work together to respond to because the way it operates is that money can obviously transfer very, very quickly between people and certainly almost in other parts of the world, and it can finance illegal activity. And we need to be responsive to those issues”: Transcript, May 12, 2021, p 62.

by regulation, which ultimately occurred in June 2020 and June 2021.<sup>99</sup> With these amendments, dealers in virtual currencies have been deemed to be money services businesses, and foreign money services businesses now include virtual currency dealers that do not have a place of business in Canada.<sup>100</sup> The *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, define “virtual currency” and “virtual currency exchange transaction” as follows:

*virtual currency* means

- (a) a digital representation of value that can be used for payment or investment purposes, that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds; or
- (b) a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value referred to in paragraph (a). (*monnaie virtuelle*)

*virtual currency exchange transaction* means an exchange, at the request of another person or entity, of virtual currency for funds, funds for virtual currency or one virtual currency for another. (*opération de change en monnaie virtuelle*)

Dealers in virtual currencies must now, among other things, do the following:

- register with FINTRAC;
- report various transactions to FINTRAC, including large cash and large virtual currency transactions and suspicious transactions;
- engage in client identification and verification measures in various circumstances, including:
  - when remitting \$1,000 or more at the request of a customer;
  - conducting a foreign exchange transaction of \$1,000 or more;
  - entering into an ongoing service agreement with a customer; and
  - conducting a large cash or large virtual currency transaction;
- take efforts to identify individuals who attempt to undertake a suspicious transaction; and
- implement compliance programs and policies.<sup>101</sup>

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<sup>99</sup> For a chronology of the amendments and regulations, see Exhibit 249, Overview Report: Federal Regulation of Virtual Currencies.

<sup>100</sup> *PCMLTFA*, ss 5(h)(iv) and 5(h.1)(iv); *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 1, “money service business” and “foreign money service business.”

<sup>101</sup> *PCMLTFA*, ss 7, 11.1; *PCMLTF Regulations*, ss 30–37, 84, 85, 95, 156.

In line with the Financial Action Task Force’s recommendations, the regulations also implement a travel rule:

**124.1 (1)** A financial entity, money services business or foreign money services business that is required to keep a record under these Regulations in respect of a virtual currency transfer shall

- (a) include, with the transfer, the name, address and, if any, the account number or other reference number of both the person or entity who requested the transfer and the beneficiary; and
- (b) take reasonable measures to ensure that any transfer received includes the information referred to in paragraph (a).

(2) Every person or entity referred to in subsection (1) shall develop and apply written risk-based policies and procedures for determining, in the case of a virtual currency transfer received by them that, despite reasonable measures taken under paragraph (1)(b), does not have included with it any of the information required under paragraph (1)(a), whether they should suspend or reject the virtual currency transfer and any follow-up measures to be taken.

The evidence before me revealed that there have been some difficulties in the implementation of the travel rule. Mr. Warrack testified that no single workable technological solution for the travel rule existed when the Financial Action Task Force formulated the corresponding recommendation. However, he noted that the industry has come together to establish technology solutions, common standards, and common language.<sup>102</sup> Ryan Mueller, chief compliance officer at the cryptocurrency platform Netcoin, added that there are many ways to move cryptocurrency, not all of which require customer due diligence measures, and that not all providers are willing to share information. Cryptocurrency exchanges have different ways of identifying the device initiating a transaction and of encrypting information, and “not all of those methods [can] talk to each other.” Further, techniques exist to obfuscate the trail of funds.<sup>103</sup> Mr. Warrack added that the travel rule applies only between virtual asset service providers – it does not apply when a transaction is between a virtual asset service provider and a private wallet.<sup>104</sup>

The amendments have also placed obligations on other reporting entities. For example, all reporting entities that deal in virtual currencies (such as financial entities, casinos, securities dealers, and traditional money services businesses) must report large and suspicious transactions conducted in virtual currency.<sup>105</sup> Similarly, as part of their compliance programs, reporting entities must perform a risk assessment before using new technologies.<sup>106</sup>

<sup>102</sup> Transcript, November 25, 2020, pp 46–47.

<sup>103</sup> Transcript, November 25, 2020, pp 44–45.

<sup>104</sup> Transcript, November 25, 2020, p 47.

<sup>105</sup> Evidence of C. Cieslik, Transcript, November 25, 2020, pp 49–51.

<sup>106</sup> *PCMLTF Regulations*, s 156(2).

In February 2022, in the context of the so-called “Freedom Convoy” protests in Ottawa, Windsor, and elsewhere in Canada, the federal government took swift and unprecedented action to expand the ambit of the *PCMLTFA* as it applies to virtual assets. On February 15, 2022, it invoked the *Emergencies Act*<sup>107</sup> for the first time and implemented various measures intended to target the blockades and their funding.<sup>108</sup> The measures were in force from February 15 to 23, 2022.<sup>109</sup> Significantly, some of the emergency measures related to virtual assets and reporting under the *PCMLTFA*: an emergency economic measures order required various financial entities to (a) cease dealing with property – including virtual assets – owned, held, or controlled by members of the Freedom Convoy, and (b) determine on a continuing basis whether they were in possession or control of such property.<sup>110</sup>

Notably, the financial entities targeted by the order were *not* limited to banks, credit unions, and other similar institutions; the order also extended to crowdfunding platforms that raise funds or virtual currency through donations.<sup>111</sup> Crowdfunding platforms were also required to register with FINTRAC and report suspicious and other transactions involving Freedom Convoy participants to FINTRAC.<sup>112</sup> It appears that the federal government intends to bring crowdfunding platforms into the *PCMLTFA* on a permanent basis.<sup>113</sup>

The amendments to the *PCMLTFA* that brought virtual assets into the regime were not in force at the time of the Financial Action Task Force’s 2016 mutual evaluation of Canada.<sup>114</sup> The evaluation accordingly concluded that Canada was non-compliant with Recommendation 15, but noted that legislative steps had been taken to include virtual currencies in the regime.<sup>115</sup> In its recent re-rating of Canada, the Financial Action Task Force re-rated the country as largely compliant with Recommendation 15, given the amendments to the *PCMLTFA*.<sup>116</sup> The re-rating noted with approval the broad

107 RSC, 1985, c 22 (4th Supp).

108 Proclamation Declaring a Public Order Emergency, SOR/2022-20, *Canada Gazette*, Part II, Vol 156, No 1, Extra, February 15, 2022; Emergency Measures Regulations, SOR/2022-21, *Canada Gazette*, Part II, Vol 156, No 1, Extra, February 15, 2022; Emergency Economic Measures Order, SOR/2022-22, *Canada Gazette*, Part II, Vol 156, No 1, Extra, February 15, 2022.

109 Proclamation Revoking the Declaration of a Public Order Emergency, SOR/2022-26, *Canada Gazette*, Part II, Vol 156, No 2, Extra, February 23, 2022.

110 Emergency Economic Measures Order, SOR/2022-22, *Canada Gazette*, Part II, Vol 156, No 1, Extra, February 15, 2022, ss 2, 3.

111 *Ibid*, s 3(k), (l).

112 *Ibid*, ss 1, 4.

113 Melissa Tait, “Video: Trudeau Invokes Emergencies Act to End Convoy Blockades,” *Globe and Mail*, February 14, 2022, 3:19, online: <https://www.theglobeandmail.com/canada/video-trudeau-invokes-emergencies-act-to-end-convoy-blockades/>; Rita Trichur, “Trucker blockades expose the weaknesses of Canada’s anti-money-laundering regime,” *Globe and Mail*, February 17, 2022, online: <https://www.theglobeandmail.com/business/commentary/article-trucker-blockades-expose-the-weaknesses-of-canadas-anti-money/>.

114 Exhibit 4, Overview Report: FATF, Appendix N: FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016). See Chapter 6 for an explanation of the mutual evaluation regime.

115 Exhibit 4, Overview Report: FATF, Appendix N: FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), pp 77, 83, 150.

116 Exhibit 1061, FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, 1st Regular Follow-up Report & Technical Compliance Re-Rating* (October 2021), p 5.

definitions of “virtual asset” and “virtual asset service providers,” the requirement for the latter to register with FINTRAC and take preventive measures, and the steps taken by Canada to understand the money laundering and terrorist financing risks associated with virtual assets.<sup>117</sup>

In Mr. Warrack’s view, deeming virtual asset service providers as money services businesses is not a perfect fit. He noted that a traditional money services business, such as one used to remit funds to another country, “is a very different model to the way that a lot of [virtual asset service providers] operate where in fact they are actually trading platforms with very, very different rules – a very, very different activity to what would be expected in a traditional [money services business].” He observed that rapid trading and rapid movement of funds might be very normal for a virtual asset service provider but a red flag in the traditional financial sector.<sup>118</sup> He also expressed the view that the requirement to report the receipt of virtual currency of more than \$10,000 seems “somewhat ridiculous,” as it would be “very normal for a customer who’s a trader to have maybe thousands of transactions in an hour above that amount in and out of their account, particularly if they’re using automated trading bots, et cetera”; nor does it take into account change transactions<sup>119</sup> or the fact that exchanges may value a cryptocurrency differently at any given time.<sup>120</sup>

Charlene Cieslik, a consultant on anti-money laundering and counterterrorist financing matters for financial and virtual currency businesses, testified that the \$10,000 “magic number” was set around 30 years ago as a high amount but is not necessarily a good fit for cryptocurrency, given the price fluctuations. In her view, this threshold results in noise being reported to FINTRAC, and the number should be revisited.<sup>121</sup> Ms. Cieslik was also concerned that some virtual asset service providers and money service providers can allow various transactions under the \$1,000 threshold for conducting client identification and verification to avoid doing those measures. In her view, some guidance on this matter is needed.<sup>122</sup> Conversely, Mr. Mueller noted that in some situations, such as with liquidity providers, every single transaction will meet the \$1,000 threshold because they are servicing other high-volume entities.<sup>123</sup>

117 Ibid.

118 Transcript, November 25, 2020, pp 53–54.

119 Mr. Warrack explained a “change transaction” as follows. In the same way as an individual might pay for something worth \$10 with a \$20 bill and receive \$10 in change, an individual may send 20 bitcoins worth \$300,000 and want to send 10 bitcoins elsewhere. To do so, the individual would have to send the 20-bitcoin transaction through the blockchain and then receive 10 bitcoins in change. Mr. Warrack understands that the change transaction – the 10 bitcoins back – would trigger the \$10,000 reporting rule, despite its being, in his view, “noise” being reported to FINTRAC that could obscure information that might actually lead to valuable information: Transcript, November 25, 2020, pp 54–57. Ms. Cieslik added that it would be helpful for FINTRAC to clarify whether change transactions need to be reported, as there is a wide discrepancy in industry practice: Transcript, November 25, 2020, p 57.

120 Transcript, November 25, 2020, pp 54–55.

121 Transcript, November 25, 2020, pp 57–58, 168–69.

122 Ibid, pp 63–65.

123 Transcript, November 25, 2020, p 167.

Sergeant Vickery testified that she would like to see FINTRAC be able to issue higher monetary penalties for non-compliance. She noted that the US Financial Crimes Enforcement Network (FinCEN) issued a US\$250 million penalty for a former exchange called BTC-e, which was found to have facilitated money laundering. In her view, penalties such as these would be good deterrents.<sup>124</sup>

Having just come into force in June 2020 and June 2021, the *PCMLTFA* amendments are very new, and it is too soon to evaluate their effectiveness. Although the above concerns are well taken and could very well materialize, the amendments appear to be promising and long overdue. Nonetheless, criminals are adaptive and will certainly find ways around them.<sup>125</sup> It is therefore crucial that the federal government, FINTRAC, and industry members closely monitor the implementation of these new amendments as well as new trends and money laundering techniques that emerge.

## Potential Provincial Regulation

The inclusion of virtual currencies in the *PCMLTFA* regime is a good first step for regulation in this industry. It does not, however, preclude complementary provincial regulation. As the *PCMLTFA* is focused on money laundering and terrorist financing risks, it does not address the internal activities of virtual asset service providers, consumer and investor protection, consumer fraud, or the regulation of third-party payment processors.<sup>126</sup>

In the next section, I review the rise and fall of QuadrigaCX (Quadriga), a Canadian cryptocurrency exchange that operated from December 2013 to February 2019. In a 2020 report, staff at the Ontario Securities Commission<sup>127</sup> concluded that Quadriga had committed various types of fraud. While Quadriga's story does not involve money laundering specifically, the circumstances leading to its downfall are illustrative of regulatory gaps in the virtual asset space and how lack of provincial regulation in this sector may facilitate criminal activity.

It seems likely that provincial regulation of virtual assets could have prevented many of the issues, including likely criminality, that arose in relation to Quadriga. In my view, the Province should regulate virtual asset service providers. The virtual asset space is developing quickly – as is cryptocurrency-related crime. It is essential that the Province put a regulatory regime in place promptly to address the risks that arise in this sector.

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124 Transcript, November 23, 2020, p 157.

125 Ibid, pp 149–50; Evidence of A. Gilkes, Transcript, November 23, 2020, p 150.

126 Evidence of R. Mueller, Transcript, November 25, 2020, pp 65–66.

127 Exhibit 265 is a report prepared by Ontario Securities Commission staff. It notes that, in normal circumstances, there would likely have been an enforcement action before the Ontario Securities Commission itself against Mr. Cotten and/or Quadriga; however, this was not practical because Mr. Cotten was deceased and Quadriga was bankrupt. Instead, staff at the Ontario Securities Commission prepared a report summarizing their findings: Exhibit 265, Ontario Securities Commission, *QuadrigaCX: A Review by Staff of the Ontario Securities Commission* (April 14, 2020) [OSC Quadriga Report], p 4.

In Chapter 21, I have recommended that the Province regulate money services businesses and that this regulation be carried out by the British Columbia Financial Services Authority (BCFSA). Given that virtual asset service providers are deemed to be money services businesses for the purposes of the *PCMLTFA*, it may be that subjecting them to the same provincial regulation as money services businesses is appropriate. However, as I explain further below, securities regulators are developing guidance specifying when virtual asset service providers are engaged in activities that fall under their purview. It is not clear at this stage what proportion of virtual asset service providers engage in activities that would require them to register with a securities regulator. If many or most are engaged in such activity, there would seem to be a risk of duplication between a regulator of virtual asset service providers and regulation by the BC Securities Commission. It is also notable that Quebec – the only province that regulates money services businesses at the time of writing – has not included virtual asset service providers in its regime.<sup>128</sup>

Given the foregoing, I am not prepared to recommend that a particular body be responsible for regulation of virtual asset service providers. The Province is best placed to determine whether this regulation should be carried out by the BCFSA, the BC Securities Commission, or some other authority. In doing so, it should consult with the AML Commissioner, the BCFSA, the BC Securities Commission, industry members, and other stakeholders.

**Recommendation 87:** I recommend that the Province implement a regulatory regime for virtual asset service providers. In determining which authority is best placed to act as the regulator, the Province should consult with the AML Commissioner, the British Columbia Financial Services Authority, the British Columbia Securities Commission, industry members, and other stakeholders.

## Quadriga

As I noted above, the circumstances of the rise and fall of Quadriga illustrate that an absence of regulation in the virtual asset field at the provincial level may allow criminal activity to occur undetected. Quadriga’s story illustrates the pitfalls that can arise when an industry is able to operate free from meaningful scrutiny. I emphasize, however, that my discussion should not be taken as suggesting that all cryptocurrency-based entities are risky and non-compliant. To the contrary, the evidence before me indicates that many cryptocurrency exchanges seek to be compliant and had been long awaiting the amendments to the *PCMLTFA*.<sup>129</sup>

<sup>128</sup> See Chapter 21 for a more detailed discussion of Quebec’s regime. Under the *Money Services Businesses Act*, CQLR c E-12.000001, money services are defined to include currency exchange, funds transfer, the issue or redemption of traveller’s cheques, money orders or bank drafts, cheque cashing, and the operation of automated teller machines: s 1.

<sup>129</sup> Evidence of R. Mueller, Transcript, November 25, 2020, p 29; Evidence of C. Cieslik, Transcript, November 25, 2020, pp 22–23, 30–31; Evidence of P. Warrack, Transcript, November 25, 2020, pp 31–32.

Quadriga was a Canadian cryptocurrency exchange that operated from December 2013 to February 2019. Its downfall – which staff at the Ontario Securities Commission concluded was caused by fraud perpetrated by its co-founder and CEO, Gerald Cotten – led to over 76,000 clients being owed a combined \$215 million in assets.

The Quadriga platform allowed users to store, buy, and sell various cryptocurrencies. Fuelled by rising cryptocurrency asset prices, Quadriga became the largest cryptocurrency asset trading platform in Canada between 2016 and 2017.<sup>130</sup> Staff at the Ontario Securities Commission considered that its business model<sup>131</sup> meant that clients' entitlements constituted securities or derivatives; however, Quadriga did not register with any securities regulator.<sup>132</sup>

When the price of virtual assets began to fall in 2018, Quadriga became unable to meet client withdrawal requests. In January 2019, Quadriga announced that Mr. Cotten had died in India in December 2018. By February 2019, Quadriga had ceased operations and filed for creditor protection.<sup>133</sup>

Initial media reports said that Mr. Cotten had died without sharing the passwords to Quadriga's cold storage, which meant that client assets were inaccessible. However, the Ontario Securities Commission staff determined that this was not the case; rather, Mr. Cotten had been engaged in various forms of fraud, and, even before his death, Quadriga did not have enough assets to support its clients' holdings.<sup>134</sup> The report concludes that Mr. Cotten's fraud took many forms:

- Most of the shortfall (approximately \$115 million) arose from fraudulent trading on the Quadriga platform. Mr. Cotten opened accounts under aliases and credited himself with fictitious currency and crypto-asset balances, which he traded with clients. He sustained real losses when the price of crypto assets fell, leading to a shortfall in assets to satisfy client withdrawals. He then covered clients' shortfalls with other clients' deposits – effectively, a Ponzi scheme.<sup>135</sup>
- He lost \$28 million while trading client assets on three external crypto-asset trading platforms, without his clients' authorization or knowledge.<sup>136</sup>
- He misappropriated millions in client assets to fund his own lavish lifestyle. He transferred approximately \$24 million of client funds to himself and his partner

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130 Exhibit 246, Overview Report: Quadriga CX, p 1; Exhibit 265, OSC Quadriga Report, pp 10, 18.

131 The report notes that “this custody model – whereby Quadriga retained custody, control, and possession of its clients' crypto assets and only delivered assets to clients following a withdrawal request – meant that clients' entitlements to the crypto assets held by Quadriga constituted securities or derivatives”: Exhibit 265, OSC Quadriga Report, p 11.

132 Exhibit 265, OSC Quadriga Report, p 11.

133 Ibid, pp 3, 20–22.

134 Exhibit 246, Overview Report: Quadriga CX, p 1; Exhibit 265, OSC Quadriga Report, p 3.

135 Exhibit 265, OSC Quadriga Report, pp 3, 15.

136 Ibid, p 3.

and bought a Tesla, a Lexus, a luxury yacht, a plane, a share in a private jet, and multiple properties.<sup>137</sup>

The Ontario Securities Commission staff and Ernst & Young (which was appointed monitor for the *Companies' Creditors Arrangement Act* proceedings) identified various problems with the way that Quadriga had handled its clients' assets, both virtual and fiat. These problems included:

- holding all client assets in a central Quadriga account rather than separate client accounts;<sup>138</sup>
- storing clients' assets primarily in hot wallets and other crypto-asset trading platforms, despite assuring clients that their assets would be stored in cold storage;<sup>139</sup>
- relying almost exclusively on third-party payment processors to hold clients' fiat assets, since banks refused to hold the funds;<sup>140</sup>
- doing millions of dollars of business in cash, despite Mr. Cotten knowing that such cash would surely not be accepted by banks;<sup>141</sup>
- failing to maintain boundaries between client assets and business administration assets;<sup>142</sup> and
- failing to maintain proper accounting ledgers or accounting records.<sup>143</sup>

The Ontario Securities Commission report determined that of the \$215 million that Quadriga owed, \$46 million was recovered – a collective loss of \$169 million.<sup>144</sup> The RCMP and the FBI have confirmed that they have opened investigations into Quadriga.<sup>145</sup>

### **Access to Banking Services**

The Quadriga case also illustrates the difficulty that some cryptocurrency exchanges have in securing banking services. Prior to the *PCMLTFA* amendments, these businesses were not covered by the regime and had no obligation to register with

137 Ibid, pp 3, 21; Exhibit 266, Ernst & Young, Fifth Monitor Report (June 19, 2019) [EY Monitor Report], para 10(f).

138 Exhibit 265, OSC Quadriga Report, p 12; Exhibit 266, EY Monitor Report, para 10(a).

139 Exhibit 265, OSC Quadriga Report, p 12; Exhibit 266, EY Monitor Report, para 10(f).

140 Exhibit 265, OSC Quadriga Report, p 13; Exhibit 266, EY Monitor Report, para 10(e).

141 Exhibit 265, OSC Quadriga Report, p 13; Exhibit 266, EY Monitor Report, para 10(c).

142 Exhibit 265, OSC Quadriga Report, p 14; Exhibit 266, EY Monitor Report, para 10(b).

143 Exhibit 265, OSC Quadriga Report, p 15.

144 Ibid, p 2. Of the \$215 million owing, \$115 million was due to Mr. Cotten's trading losses on the Quadriga platform; \$28 million was lost by Mr. Cotten on other crypto-asset trading platforms; \$2 million was misappropriated for himself; \$1 million was attributed to Quadriga's operating losses; and \$23 million was unaccounted for: *ibid*, pp 25–26.

145 Exhibit 246, Overview Report: Quadriga CX, p 3; Evidence of A. Vickery, Transcript, November 23, 2020, p 64.

FINTRAC or otherwise comply with the scheme. Further, some businesses obtained bank accounts through “less than transparent methods,” with the result that “banks were not at all happy with people using their accounts for crypto-services when they found out and started closing all of their accounts.”<sup>146</sup> Many financial institutions decided that the risk of dealing with virtual asset service providers was too high and declined to provide access to them.<sup>147</sup> This is known as “de-marketing” or “de-risking,” and a similar issue has occurred with money services businesses (see Chapter 21). The lack of access to banking poses difficulties for virtual asset service providers, who lose access to “fiat on-ramp[s] and off-ramp[s]” and therefore have difficulty serving their clients, supporting their businesses, making payroll, and generally running their businesses.<sup>148</sup> To address the need for banking services, virtual asset service providers have turned to third-party service providers, including providers with less stringent concerns about regulatory status and some offshore financial institutions willing to provide banking services.<sup>149</sup> Indeed, Quadriga initially had access to banking services, but, over time, banks began to refuse to hold Quadriga-related funds. As a result, by 2017, Quadriga relied almost exclusively on third-party payment processors to hold its clients’ fiat assets.<sup>150</sup>

Mr. Mueller testified that third-party service providers are a “grey area” when it comes to the *PCMLTFA*. Technically, businesses that remit funds need to register as money services businesses; however, there is “no clear designation” that payment processors constitute money services businesses.<sup>151</sup> As a result, use of these processors creates a “black box” from FINTRAC’s perspective because engaging a third-party service provider – rather than a bank with reporting obligations – means that transactions may not be reported.<sup>152</sup> Further, from a law enforcement perspective, the use of third-party service providers tends to further distance the funds from the source, which can in turn facilitate money laundering.<sup>153</sup>

With the introduction of the *PCMLTFA* amendments and the requirement for cryptocurrency exchanges to register with FINTRAC, it appears that access to banking services for virtual asset service providers has been improving.<sup>154</sup> The AML Commissioner recommended in Chapter 8 would be well placed to monitor developments in this area, including whether access to banking services is improving and whether continued reliance on third-party service providers is problematic from an anti-money laundering perspective. The Commissioner should report on these matters to the Province and make recommendations as needed.

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146 Evidence of C. Cieslik, Transcript, November 25, 2020, pp 88–89.

147 Ibid, pp 89–90.

148 Ibid, pp 90–91.

149 Ibid, pp 92–93.

150 Exhibit 265, OSC Quadriga Report, p 13.

151 Evidence of R. Mueller, Transcript, November 25, 2020, pp 94–95.

152 Ibid, p 95.

153 Evidence of A. Vickery, Transcript, November 23, 2020, p 60.

154 Evidence of C. Cieslik, Transcript, November 25, 2020, pp 90–91.

### **Availability of Auditing Services**

Virtual asset service providers have had difficulties obtaining the kinds of auditing services available to “traditional” financial institutions. Giles Dixon, an anti-money laundering advisor to the financial services and virtual currency industries at Grant Thornton Canada, explained that traditional financial institutions obtain audits or reports on matters including the risks associated with their businesses and the efficacy of their financial and system controls. They can also obtain “public-facing” reports meant to assure the public of the efficacy of the financial and system controls.<sup>155</sup>

Some virtual asset service providers in the United States have begun to seek such reports.<sup>156</sup> However, in Canada, it has been difficult to identify auditors with the skills and capabilities required to conduct audits involving virtual assets, and there has been a lack of guidance from central bodies about how audit standards apply in this context.<sup>157</sup> Further, as virtual asset service providers are focused on getting their businesses “up and running,” they do not necessarily have all the controls in place that an auditor would be assessing, and the cost of obtaining audits can be high.<sup>158</sup>

### **Regulation of Virtual Asset Service Providers by Securities Regulators**

As noted above, staff at the Ontario Securities Commission considered that Quadriga’s business model meant that it was engaging in securities or derivatives activities requiring it to register with a securities regulator. Indeed, the Canadian Securities Administrators (the umbrella organization of Canada’s provincial and territorial securities regulators) has issued guidance on virtual asset services and when registration with a securities regulator will be necessary.<sup>159</sup> This guidance has explained when “initial coin offerings” and “initial token offerings” will constitute securities or derivatives,<sup>160</sup> as well as when platforms that facilitate buying and selling of crypto assets will be considered to fall under securities legislation.<sup>161</sup> The Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada have also prepared a joint consultation paper setting out a proposed regulatory framework for crypto-asset trading platforms.<sup>162</sup>

<sup>155</sup> Transcript, November 25, 2020, pp 73–75.

<sup>156</sup> *Ibid.*, pp 75–79.

<sup>157</sup> Evidence of C. Cieslik, Transcript, November 25, 2020, pp 79–81; Evidence of G. Dixon, Transcript, November 25, 2020, pp 81–82.

<sup>158</sup> Evidence of G. Dixon, Transcript, November 25, 2020, pp 83–85.

<sup>159</sup> See Exhibit 247, Overview Report: Canadian Securities Administrators Publications on Virtual Assets.

<sup>160</sup> Exhibit 247, Appendix A, Canadian Securities Administrators, “CSA Staff Notice 46-307: Cryptocurrency Offerings” (August 24, 2017); Exhibit 247, Appendix B, Canadian Securities Administrators, “CSA Staff Notice 46-308: Securities Law Implications for Offerings of Tokens” (June 11, 2018).

<sup>161</sup> Exhibit 247, Appendix C, Canadian Securities Administrators, “CSA Staff Notice 21-327: Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets” (January 16, 2020).

<sup>162</sup> Exhibit 247, Appendix D, Canadian Securities Administrators and Investment Industry Regulatory Organization of Canada, “Joint Canadian Securities Administrators / Investment Industry Regulatory Organization of Canada Consultation Paper 21-402: Proposed Framework for Crypto-Asset Trading Platforms” (March 14, 2019).

As of the hearings in November 2020, there were representatives of at least two virtual asset service providers who were in the process of applying for status as securities dealers.<sup>163</sup> Mr. Mueller testified that obtaining this status can be beneficial for cryptocurrency exchanges that are seeking to show customers – particularly new customers – that they are established, stable, and abiding by regulations.<sup>164</sup>

It is encouraging that securities regulators are developing frameworks for virtual assets and providing guidance to businesses about when they will be subject to securities regulation. I expect that this work will continue, which will provide an additional layer of oversight over activities in the virtual asset space.

## **Cryptocurrency and Crime**

The 2015 national risk assessment assessed virtual assets – particularly convertible, decentralized virtual currencies – as posing a high money laundering and terrorist financing risk. It noted that they are highly vulnerable due to their anonymity, ease of access, and complexity and that these characteristics pose significant challenges for law enforcement in determining the beneficial ownership of virtual currency involved in criminal activities.<sup>165</sup>

It is true that virtual assets pose money laundering risks and must be regulated accordingly. In what follows, I review some key areas of risk and ways in which the virtual asset space has been misused for money laundering and other criminal purposes. However, it is important to keep in mind that there are many legitimate users of cryptocurrency and that, by some estimates, the criminality associated with virtual assets appears to be a fairly low percentage. Regulation must strike a careful balance to take care not to stifle innovation in this area or penalize legitimate users, while also addressing key risks that arise.

### **How Much Crime Is Related to Cryptocurrencies?**

It is difficult to ascertain with certainty how much crime involving cryptocurrencies is occurring. Sergeant Gilkes testified that it is more prevalent than most of us know, noting that many of the phone scams we regularly receive demand payment in cryptocurrencies. He added that many of these crimes go unreported or under-reported because people may be unsure whether they have fallen victim to them, may be ashamed that they have fallen victim, or may think they are encountering a technological issue rather than fraud.<sup>166</sup>

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163 Evidence of R. Mueller, Transcript, November 25, 2020, p 85; Evidence of C. Cieslik, Transcript, November 25, 2020, p 86.

164 Evidence of R. Mueller, Transcript, November 25, 2020, pp 86–87.

165 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015), p 41.

166 Transcript, November 23, 2020, p 15.

Conversely, in its recent annual report on trends in the cryptocurrency universe, Chainalysis concludes that the number of cryptocurrency transactions involving illicit activity is low, at 2.1 percent of the transaction volume it analyzed from 2019 and 0.34 percent in 2020. Those low percentages do, however, translate into large numbers, totalling approximately US\$2.4 billion and US\$10 billion, respectively.<sup>167</sup> Chainalysis concludes that although the number may in fact be higher due to unreported criminal activity, the “good news is three-fold: Cryptocurrency-related crime is falling, it remains a small part of the overall cryptocurrency economy, and it is comparatively smaller than the amount of illicit funds involved in traditional finance.”<sup>168</sup> Importantly, however, the Chainalysis report relies on transactions involving entities and would not capture, for example, peer-to-peer activity or other activity outside the “controlled ecosystem”; in other words, it does not purport to summarize the entire blockchain ledger.<sup>169</sup> Further, as noted above, companies such as Chainalysis do not have visibility into cryptocurrencies that do not have a public blockchain, including privacy coins.

The Chainalysis numbers do highlight that there is a large proportion of legitimate cryptocurrency activity. Its 2020 report notes that the use of cryptocurrency is increasing, with 18 percent of all Americans and 35 percent of American millennials purchasing it in one year. Further, mainstream financial institutions including JP Morgan Chase and popular retailers such as Amazon and Starbucks have made use of cryptocurrency.<sup>170</sup> Proponents of cryptocurrency also point to various advantages for legitimate users, including the potential to minimize transaction costs, avoid inflation in fiat currencies, grant access to individuals in the developing world who are not served by banks or other financial institutions, and provide increased privacy.<sup>171</sup>

Given the limitations on the Chainalysis data and the anecdotal nature of evidence suggesting that cryptocurrencies are regular features in some crimes and are increasingly prevalent in money laundering operations, I am unable to arrive at definitive conclusions on the precise magnitude of the problem. Nonetheless, the available information is sufficient to convince me that cryptocurrencies offer significant benefits to criminals, including those seeking to launder illicit funds, and that cryptocurrencies and those offering services associated with them present a significant money laundering risk. Indeed, as I discuss below, there have been several cases in which investigations have identified virtual assets being used to facilitate criminal activity, including money laundering. These cases are likely only the tip of the iceberg, given that there are obvious benefits virtual assets offer to criminals looking to launder illicit funds, that this area of economic activity and criminality is relatively new, and that law enforcement is still developing its knowledge and expertise in this area.

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<sup>167</sup> Exhibit 1021, Appendix 1, Chainalysis 2021 Report, pp 4–5.

<sup>168</sup> *Ibid.*

<sup>169</sup> Evidence of J. Spiro, Transcript, November 24, 2020, pp 12–13.

<sup>170</sup> Exhibit 257, Chainalysis 2020 Report, p 5.

<sup>171</sup> Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 5.

I expect that cases will continue to come into public view as law enforcement, regulator, and government expertise in cryptocurrency continues to develop. I encourage government and law enforcement to monitor developments in the use of cryptocurrencies by the criminal element and be progressive in developing strategies to combat such use. The many benefits of cryptocurrency for criminals suggest that its use will only increase and that this is an area of significant money laundering vulnerability.

It is convenient to consider crime involving cryptocurrencies in four broad categories. First, and of most obvious importance to this Commission, is the use of cryptocurrency in money laundering. Second, cryptocurrency has been used to engage in financial transactions and activities associated with the commission of crimes such as scams, ransomware, and activities on the dark web. Third, cryptocurrency can be used to support terrorist activity. Finally, crimes occur on the cryptocurrency platform itself, such as theft or fraud. Although the last three categories do not squarely relate to money laundering, it is useful to review them as the categories tend to overlap.

## **Using Cryptocurrency for Money Laundering**

Money laundering using cryptocurrency dates back at least to the early 2000s. In this section, I review some early cases before describing methods of money laundering using cryptocurrency and the advantages and disadvantages of doing so.

### **Early Cases**

Sergeant Gilkes testified that identified criminality associated with virtual assets dates back at least to a virtual asset called E-gold. In 2003 or 2004, law enforcement determined that a group called Shadowcrew was engaged in laundering funds from stolen credit cards, identity theft, selling counterfeit identities, and other criminal activities through E-gold. Law enforcement arrested around 20 people involved in the scheme. Further, E-gold itself, which was based in the United States, was indicted in 2007 and had many bank accounts and assets seized.<sup>172</sup>

Some years later, a company called Liberty Reserve became what Sergeant Gilkes termed “version 2.0 of E-gold.”<sup>173</sup> Liberty Reserve was an international online payment processor based in Costa Rica.<sup>174</sup> It had more than a million users worldwide and processed approximately 55 million transactions, almost all of which were illegal. It had its own virtual currency, Liberty Dollars, but at each end, transfers were denominated and stored in US dollars. Liberty Reserve required its users to make deposits and withdrawals through recommended third-party exchangers, which were typically unlicensed money-transmitting businesses operating in countries without significant money laundering oversight or regulation. As users

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172 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 99–100.

173 Ibid, p 100.

174 Exhibit 254, Senate Report, *Digital Currency: You Can't Flip This Coin!* (June 2015), p 41.

could not directly deposit or withdraw from their Liberty Reserve account, the company “evaded collecting information about them through banking transactions or other activity that would create a paper trail.”<sup>175</sup> For an extra “privacy fee” of 75 cents per transaction, users could hide their Liberty Reserve account numbers when transferring funds, rendering the transfers completely untraceable.<sup>176</sup> As Sergeant Gilkes explained, Liberty Reserve’s practices attempted to avoid pitfalls that had occurred with E-gold:

Now, what we can see is a variation on a theme, right? So, I mean, rather than starting another virtual assets company within the United States, they started it overseas. Rather than dealing with actual fiat money and potentially being accused of money laundering, they were dealing simply with virtual currency, which didn’t mean anything or had no actual intrinsic value to anyone. And by dealing with a broker, a middleman, then they could simply say that they had no involvement or had no way of knowing who was actually behind the funds that were actually being transacted.<sup>177</sup>

In May 2013, the US Department of Justice charged Liberty Reserve with operating an unregistered money transmitter and money laundering for facilitating the movement of more than US\$6 billion in illicit proceeds. The Department of the Treasury identified Liberty Reserve as a financial institution of primary money laundering concern under the US *Patriot Act*, which effectively cut it off from the US financial system.<sup>178</sup>

Sergeant Gilkes explained that Bitcoin was very popular for those who lost money through E-gold and Liberty Reserve because it responded to two issues. First, it created a decentralized network, which meant that police could not simply go to one place and seize all the accounts belonging to clients. Second, it provided anonymity because, at the time, there were no tools or means to aid police in tracking people behind a transaction.<sup>179</sup>

### **Methods of Obfuscating the Source of Funds**

Criminals have resorted to a number of techniques to obfuscate the source of funds in cryptocurrency transactions.

First, criminals seek out unregulated exchanges – those that operate in countries with little to no customer due diligence requirements or anti-money laundering regulation, or properly registered exchanges that operate under lax rules or flout anti-

175 Exhibit 248, Overview Report: FATF Publications on Virtual Currencies, Appendix A, *FATF Report: Virtual Currencies: Key Definitions and Potential AML/CFT Risks* (June 2014), p 10; Evidence of A. Gilkes, Transcript, November 23, 2020, p 101.

176 Exhibit 248, Overview Report: FATF Publications on Virtual Currencies, Appendix B, FATF, *Guidance for a Risk-Based Approach: Virtual Currencies* (June 2015), p 33.

177 Transcript, November 23, 2020, p 102.

178 Exhibit 248, Overview Report: FATF Publications on Virtual Currencies, Appendix B, FATF, *Guidance for a Risk-Based Approach: Virtual Currencies* (June 2015), p 10.

179 Transcript, November 23, 2020, pp 102–3.

money laundering protocols.<sup>180</sup> Chainalysis has observed that jurisdictions with lax regulation and low to no enforcement are particularly attractive for illicit activity.<sup>181</sup> The Financial Action Task Force has made similar observations.<sup>182</sup> Given that virtual assets remain a relatively new technology and that the Financial Action Task Force’s recommendations on this subject are fairly recent, it is not surprising that some countries have experienced delays in implementing anti–money laundering measures. It is my hope that this loophole will become less pronounced as more countries implement robust anti–money laundering regimes relating to virtual assets.

In the meantime, there is unfortunately an effect on compliant Canadian exchanges. Ms. Cieslik testified that Canadian exchanges find it challenging that other exchanges can operate in countries with less regulation and still offer services to Canadians.<sup>183</sup> Mr. Dixon added that many exchanges are compliant and are seeking to understand what they can do proactively to better recognize risk. He has observed increased levels of co-operation between stakeholders in which they, for example, alert each other to hacks and potential thefts. Stakeholders have also participated in public-private initiatives such as Project Participate (discussed below).<sup>184</sup>

A second method of obfuscating the source of funds is through cryptocurrency ATMs. As I noted above, these are now considered money services businesses under the *PCMLTFA* and therefore have ensuing obligations. However, previously the standards of customer due diligence varied widely,<sup>185</sup> and there are examples of criminals exploiting loopholes. For example, in May 2019, a criminal organization was found to be importing drugs from a Colombian cartel, selling them in Spain, feeding the proceeds into two Bitcoin ATMs, and then instantly sending the money back to the cartel. The organization had created a fictitious money services business and fabricated its books to justify this influx of cash. They were caught by the Spanish police.<sup>186</sup> A similar situation arose in California when a man pled guilty in July 2020 for exchanging \$25 million in cash through 17 cryptocurrency ATMs and creating a fictitious money services business to justify the proceeds.<sup>187</sup>

A third method of obfuscating the source of funds is through services known as “mixers” or “tumblers.” These are third parties that, for a fee, mix cryptocurrency provided by a user with cryptocurrencies from other users before delivering it to its ultimate recipient. The result is that the cryptocurrency received by the recipient is not connected to the initial

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180 Exhibit 253, RCMP Virtual Assets Slideshow, slide 47; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, pp 13–14.

181 Evidence of J. Spiro, November 24, 2020, pp 79–80.

182 Financial Action Task Force, *Second 12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers* (July 2021), para 26, online: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Second-12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf>.

183 Transcript, November 25, 2020, pp 116–18.

184 Transcript, November 25, 2020, pp 25–27.

185 Exhibit 253, RCMP Virtual Assets Slideshow, slide 49; Evidence of A. Vickery, Transcript, November 23, 2020, pp 77–80.

186 Evidence of A. Vickery, Transcript, November 23, 2020, pp 72–73.

187 Ibid, pp 73–74.

sender.<sup>188</sup> Mr. Spiro testified that FinCEN recently issued a penalty to a money services business that was providing mixing and tumbling services to customers it solicited off the darknet. The money services business was not conducting record keeping and, in fact, was specifically deleting user information. Nor was it filing suspicious transaction reports.<sup>189</sup> Mr. Spiro testified that there may be some legitimate users of tumblers and mixers who are concerned with privacy, but he expressed the view that most users are illegitimate.<sup>190</sup>

A fourth method of obfuscating the source of funds is through prepaid cryptocurrency cards. Sergeant Vickery testified that such cards are extremely vulnerable to money laundering: criminals can buy several of them online using a fake ID or straw buyer and then transfer the PIN or virtual card number to a bad actor. She noted that many of the websites ask for very little customer information. Similarly, gift cards bought with cryptocurrency are considered “closed loop” and therefore do not have any customer due diligence requirements.<sup>191</sup>

A fifth method is through online gaming websites. Cryptocurrency can be used to buy credit or virtual chips, which users can cash out after just a few transactions. When users cash out, they do not necessarily receive the same cryptocurrency back, which effectively cleans it.<sup>192</sup> Online gambling also allows for direct deposit from an ATM to the online account.<sup>193</sup>

A sixth method is through crowdsourcing or angel investor websites such as GoFundMe. Criminals may fund those websites with deposits from their own cryptocurrency addresses. Sergeant Vickery testified that a money laundering threat arises because there is no limit on how many addresses or wallets someone can hold, such that a money launderer could create a GoFundMe page and funnel transactions to it through various addresses. A bad actor may also commingle the transactions with legitimate ones. The result is a large reserve of cryptocurrency that is difficult for law enforcement to trace.<sup>194</sup> Further, as I discuss below, websites such as these have been used to fund terrorist activity.

Criminals may also conduct special kinds of transactions on the blockchain to obfuscate the source of funds. “Peel chains” involve conducting a number of transactions that are then consolidated.<sup>195</sup> Meanwhile, “chain hopping” involves moving

188 Exhibit 253, RCMP Virtual Assets Slideshow, slide 51; Evidence of J. Spiro, Transcript, November 24, 2020, p 54; Evidence of A. Vickery, Transcript, November 23, 2020, p 125; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 41. Mr. Spiro walked me through a diagram illustrating how mixers work: see Exhibit 257, Chainalysis 2020 Report, p 21; Evidence of J. Spiro, Transcript, November 24, 2020, pp 94–95.

189 Evidence of J. Spiro, Transcript, November 24, 2020, pp 97–99.

190 Ibid, p 99.

191 Evidence of A. Vickery, Transcript, November 23, 2020, pp 81–82.

192 Exhibit 253, RCMP Virtual Assets Slideshow, slide 47; Evidence of A. Vickery, Transcript, November 23, 2020, p 119.

193 Evidence of A. Gilkes, Transcript, November 23, 2020, p 119.

194 Evidence of A. Vickery, Transcript, November 23, 2020, pp 120–21.

195 Evidence of J. Spiro, Transcript, November 24, 2020, p 54. Mr. Spiro walked me through a diagram illustrating a peel chain, which shows several wallets being used by the same individual processing a number of different transactions, ending with a consolidation point: Exhibit 257, Chainalysis 2020 Report, p 22; Evidence of J. Spiro, Transcript, November 24, 2020, p 96.

one cryptocurrency to another, often in rapid succession. Converting cryptocurrency into another kind, and thus a different kind of blockchain, makes it difficult to trace the flow of funds, even using aftermarket software.<sup>196</sup>

Finally, Sergeant Vickery highlighted some particular practices that may be indicative of money laundering, which combine a number of the above techniques:

- depositing funds into an account from a cryptocurrency exchange, followed by rapid deletion via cash, email, or wire transfers;
- making several cash deposits into a cryptocurrency ATM and then immediately crediting them to a cryptocurrency exchange (a variation on smurfing);
- making frequent deposits or withdrawals from cryptocurrency exchanges;
- the presence of unusual third-party deposits from online wallets or payment processors; and
- prolonged meets in vehicles with smartphones, which, as noted above, may indicate that individuals are waiting for transactions to clear on the blockchain.<sup>197</sup>

As the above discussion demonstrates, criminals have already identified ways to launder money through cryptocurrency despite the industry being relatively new. While new federal regulation will help, it will not eliminate the risk. Law enforcement must stay on top of the evolving risks and money laundering methods involving cryptocurrencies. The rapid development of virtual assets technology and the uptake by criminals highlight the pressing need for law enforcement, government, and regulators to maintain expertise in this area and monitor developments in technology.

In Chapter 41, I recommend the creation of a dedicated provincial money laundering intelligence and investigation unit. As I expand in that chapter, the new unit should be staffed with individuals who have experience and expertise in virtual assets and the money laundering typologies that make use of them.

### ***Advantages and Disadvantages of Using Cryptocurrency for Money Laundering***

As my discussion thus far has shown, cryptocurrency contains some obvious attractions to money launderers but also some pitfalls. Having reviewed various money laundering techniques using cryptocurrency, it is useful to tie together the various advantages and disadvantages identified thus far.

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<sup>196</sup> Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 44; Exhibit 253, RCMP Virtual Assets Slideshow, slide 51; Evidence of J. Spiro, Transcript, November 24, 2020, pp 54, 97; Evidence of A. Vickery, Transcript, November 23, 2020, pp 124–25.

<sup>197</sup> Exhibit 253, RCMP Virtual Assets Slideshow, slide 52; Evidence of A. Vickery, Transcript, November 23, 2020, pp 127–28.

Some advantages of using cryptocurrency for money laundering are:

- **fast transactions with minimal fees** (which are, on average, about \$11 per transaction);
- **accessibility:** as noted above, the availability of cryptocurrency ATMs has rapidly increased;
- **easy conversion:** a bitcoin is a bitcoin anywhere in the world and can be converted into different fiat currencies;
- **ease of moving value globally:** cryptocurrency can be moved across borders instantaneously, in any amount, for minimal fees, which is in contrast to difficulties in moving large amounts of cash;
- **pseudo-anonymity:** although cryptocurrency is not as anonymous as cash, its pseudo-anonymous nature makes up for it, as transactions are very fast and information about the account holder is not immediately available to law enforcement;
- **lack of understanding by law enforcement:** there is a lack of understanding worldwide by law enforcement on what cryptocurrencies are, how to investigate crime involving them, and how to seize them; and
- **lack of global regulations:** although Canada now has regulations in place, many countries do not, and there is nothing to stop Canadians from using services operating in other countries.<sup>198</sup>

There are, however, disadvantages to laundering money through cryptocurrencies:

- **volatility of value:** as criminals cannot be sure of the purchasing power of cryptocurrencies, holding on to them for long periods may be a disadvantage if the value drops exponentially;
- **traceability:** criminals may realize that law enforcement can purchase aftermarket software tools and trace the flow of funds; and
- **lack of understanding by criminals:** although cryptocurrencies have been used by criminals, many may still not understand them.<sup>199</sup>

The transparency, visibility, and traceability of many virtual assets are unprecedented.<sup>200</sup> As I elaborate below, aftermarket software tools have been developed that have assisted law enforcement in their investigations.

198 Exhibit 253, RCMP Virtual Assets Slideshow, slide 27; Evidence of A. Vickery, Transcript, November 23, 2020, pp 95–97.

199 Exhibit 253, RCMP Virtual Assets Slideshow, slide 27; Evidence of A. Vickery, Transcript, November 23, 2020, pp 97–98; Evidence of J. Spiro, Transcript, November 24, 2020, pp 60–61.

200 Evidence of J. Spiro, Transcript, November 24, 2020, pp 62–63; Evidence of P. Warrack, Transcript, November 25, 2020, pp 24–25.

## Using Cryptocurrency to Commit Other Crimes

In addition to money laundering, criminals use cryptocurrency to facilitate other crimes and avoid detection in ways that would be more difficult with fiat currency. Such crimes include, among others, scams, ransomware, distributed denial of service attacks, and money muling. It is useful to discuss these crimes as they can serve as predicate offences for money laundering, and there is often overlap between the predicate and money laundering offences.

In its 2021 report on crime, Chainalysis notes that scams are the highest-grossing form of cryptocurrency-based crime. In 2019, six Ponzi schemes took in nearly US\$7 billion in cryptocurrency, and total scam revenue was roughly US\$9 billion. In 2020, when there were no large-scale Ponzi schemes, the total revenue fell to US\$2.7 billion. Chainalysis observes that scammers in 2020 primarily moved cryptocurrency received from victims to exchanges to convert it into cash, noting an increase in proceeds being sent to mixers and high-risk exchanges (being those with weak or non-existent compliance programs).<sup>201</sup> A report from the US Department of Justice notes that the FBI has noticed an increase in cryptocurrency fraud scams during the COVID-19 pandemic, with scammers threatening to infect victims and their families unless they sent payment via bitcoin or selling phony or defective products that would cure or prevent the disease.<sup>202</sup> Further, some phishing scams, such as emails or phone calls that purport to be from the Canada Revenue Agency (CRA), attempt to extort bitcoin from their victims.<sup>203</sup>

Another common crime involving cryptocurrency is ransomware, which is a type of malicious software that encrypts or blocks access to a victim's data. To regain access, the victim must pay a ransom, typically in bitcoin.<sup>204</sup> Chainalysis observed a significant increase in ransomware attacks in 2020, with the total amount paid by victims reaching nearly \$350 million in cryptocurrency (a 311 percent increase from 2019). This large figure is likely lower than the amounts that were actually paid due to under-reporting.<sup>205</sup>

Cryptocurrency has also been used in distributed denial of service (known as “DDoS”) attacks. These are a process of flooding a network with traffic so that websites hosted on it can no longer operate unless the victim pays an amount of bitcoin. Sergeant Gilkes explained that this disruption can be a big problem for certain websites, such as gambling websites, that can sustain considerable losses if shut down for even half an hour.<sup>206</sup>

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201 Exhibit 1021, Appendix 1, Chainalysis 2021 Report, pp 71–74.

202 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 7.

203 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 104–5; Exhibit 253, RCMP Virtual Assets Slideshow, slide 33.

204 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 103–4; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 7.

205 Exhibit 1021, Appendix 1, Chainalysis 2021 Report, pp 6, 26; Exhibit 253, RCMP Virtual Assets Slideshow, slide 32.

206 Evidence of A. Gilkes, Transcript, November 23, 2020, p 105; Exhibit 253, RCMP Virtual Assets Slideshow, slide 34.

Criminals have also used cryptocurrency for money muling. Sergeant Gilkes gave the example of a cybercriminal who breaches an account, such as by stealing credentials, at a bank. The criminal then transfers the stolen funds to money mules, who are individuals recruited in various ways. The money mules buy cryptocurrency with the funds and transfer the cryptocurrency back to the cybercriminal.<sup>207</sup>

A significant amount of crime using cryptocurrency occurs on the dark web or darknet.<sup>208</sup> Between 50 and 70 percent of the websites hosted on the dark web are illegal. They include websites to buy drugs, child exploitation materials, weapons, counterfeit identification documents, unlawfully obtained personal information, and the like. However, there is also some legal activity, such as journalists trying to transmit messages without being intercepted.<sup>209</sup>

A number of darknet markets selling a variety of these illegal products and services exist. A well-known example was Silk Road, which was similar to eBay but with illicit products (including drugs, guns, and child exploitation material). Silk Road's payment system was novel. Buyers purchased bitcoin through an exchange or broker and sent the bitcoin to Silk Road. The latter would then hold the bitcoin in escrow until the product was delivered, at which point it would release the funds, minus a commission, to the vendor.<sup>210</sup> The FBI dismantled Silk Road in 2013. It was estimated to have generated sales revenue of over 9.5 million bitcoin (US\$1.2 billion) and the operators collected over 600,000 bitcoin (US\$80 million) in commission. In 2015, the creator was found guilty in the United States of seven charges, including money laundering, narcotics trafficking, and computer hacking.<sup>211</sup>

Another well-known darknet market was AlphaBay, which Sergeant Gilkes described as “Silk Road on steroids.”<sup>212</sup> At the time of its takedown by law enforcement in 2017, it was the dark web's largest criminal marketplace, serving over 200,000 users and facilitating the sale of illegal drugs, firearms, malware, toxic chemicals, counterfeit identification documents, and more. It used a number of different kinds of virtual assets and had approximately 200,000 users, 40,000 vendors, and 250,000 listings, and facilitated more than US\$1 billion in virtual asset transactions between 2015 and 2017. The administrator was arrested in 2017 in

207 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 107–8. For a diagram of a money mule transaction, see Exhibit 253, RCMP Virtual Assets Slideshow, slide 36.

208 Sgt. Gilkes explained that there are three layers to the internet. First, the “surface web” contains the websites that most of us interact with, such as Wikipedia and Google. Second, most of the internet is in the “deep web,” which contains information that we do not want indexed, such as medical records, and is usually accessed through portals that require credentials. Finally, the “dark web” is an alternate internet hosted on voluntary computers. It is encrypted, rendering it very difficult to trace traffic coming to, from, or through it: Transcript, November 23, 2020, pp 108–9.

209 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 109–10, 167–68; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 6.

210 Evidence of A. Gilkes, Transcript, November 23, 2020, pp 110–11.

211 Exhibit 254, Senate Report, *Digital Currency: You Can't Flip This Coin!* (June 2015), p 41; Exhibit 248, Overview Report: FATF Publications on Virtual Assets, Appendix A, *FATF Report: Virtual Currencies: Key Definitions and Potential AML/CFT Risks* (June 2014), p 11.

212 Transcript, November 23, 2020, p 112.

Thailand and had 1,600 bitcoins seized (worth US\$16 million at the time, around US\$38 million today).<sup>213</sup>

A third and well-known example of illegal darknet activity is Welcome to Video, a child pornography website that was the world’s largest online child sexual exploitation market at the time of its seizure. It offered child sexual exploitation photos and videos for sale using virtual currency. The alleged operator was arrested in the United States in October 2019, and at least 337 users have been arrested around the world.<sup>214</sup>

Finally, the Chainalysis 2021 report on crime indicates that alt-right groups and personalities involved in the January 2021 US Capitol riot received cryptocurrency donations prior to the storming of the US Capitol Building. The largest recipient received 13.5 bitcoin, worth approximately US\$250,000 at the time of the transfer. Other recipients included the anti-immigration organization VDARE and an alt-right streamer.<sup>215</sup> Similarly, the 2022 “Freedom Convoy” appears to have received a large amount of cryptocurrency funding.<sup>216</sup> On February 17, 2022, a proposed class action lawsuit obtained an order (referred to as a “Mareva injunction”) that froze various cryptocurrency wallets connected with members of the convoy.<sup>217</sup>

## Using Cryptocurrency to Support Terrorism

Terrorist groups have also begun to use cryptocurrency as a method of funding their activities. A high-profile case involved “SamSam” ransomware. A terrorist group extorted US\$6 million from various hospitals, universities, and government institutions by installing the ransomware and demanded a ransom to be paid in bitcoin.<sup>218</sup> US law enforcement determined that the scammers had supplied the same two bitcoin addresses to the entities that were extorted; as a result, they were able to use aftermarket software tools to trace and identify the suspects. The two bitcoin addresses were the first ever to be added to the US Office of Foreign Assets Control list.<sup>219</sup> Sergeant Vickery testified that the SamSam case was a great success, except that

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213 Ibid; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 47; Exhibit 248, Appendix G, FATF Report: *Virtual Assets: Red Flag Indicators of Money Laundering and Terrorist Financing* (September 2020), p 11.

214 Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 9.

215 Exhibit 1021, Appendix 1, Chainalysis 2021 Report, pp 99–105.

216 Temur Durrani and James Bradshaw, “Crypto Enthusiasts Keep Funding Convoy Protests as Traditional Banks Take Action Against It,” *Globe and Mail*, February 11, 2022, online: <https://www.theglobeandmail.com/business/article-crypto-enthusiasts-keep-funding-convoy-protests-as-traditional-banks/>.

217 Mareva Injunction, Ontario Superior Court of Justice, Court File No CV-22-00088514-00CP, February 17, 2022; Priscilla Ki Sun Hwang, “Court Extends Rare Order to Freeze Up to \$20M in Crypto, Cash Donations to ‘Freedom Convoy,’” February 28, 2022, online: <https://www.cbc.ca/news/canada/ottawa/mareva-injunction-order-extended-freedom-convoy-crypto-financial-donations-frozen-1.6366975>.

218 Exhibit 253, RCMP Virtual Assets Slideshow, slide 50; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 8.

219 Evidence of A. Vickery, Transcript, November 23, 2020, pp 122–23.

it alerted the criminal element that law enforcement can trace transactions and that they would be caught if they used the same bitcoin address every time.<sup>220</sup>

Indeed, a case involving the al-Qassam Brigades sought to avoid the pitfalls in the SamSam case. The group posted requests for bitcoin donations on its social media page and official websites, claiming that the donations would be untraceable and used to support violent causes. However, unlike SamSam, the donation process involved creating a link that would generate a new bitcoin address for every donation.<sup>221</sup> The group then used a mainstream cryptocurrency exchange, cryptocurrency merchant services provider, and two unlicensed money services businesses to convert the cryptocurrency into cash.<sup>222</sup> Despite these measures, US law enforcement tracked and sought forfeiture of 150 cryptocurrency accounts used to launder funds to and from the al-Qassam Brigades' account.<sup>223</sup>

Al-Qaeda and ISIS have also engaged in criminal activities using cryptocurrency. Al-Qaeda has conducted social media campaigns to solicit donations that claim to be for charities but in fact solicit funds for terrorist attacks. US law enforcement identified and sought forfeiture of 155 virtual currency assets linked to the group.<sup>224</sup> Similarly, US law enforcement determined that individuals associated with ISIS marketed fake personal protective equipment such as N95 respirator masks to customers around the world during the COVID-19 pandemic.<sup>225</sup>

## Crime Within the Cryptocurrency Space

A final type of crime associated with virtual assets is that occurring in the cryptocurrency space itself. This includes theft that occurs when criminals exploit vulnerabilities in wallets and exchanges. The Chainalysis 2021 report on crime indicates that cryptocurrency worth over US\$520 million was stolen from services and individuals through hacks and other attacks in 2020.<sup>226</sup>

Another form of crime in the cryptocurrency space is cryptojacking. This occurs when a criminal makes unauthorized use of someone else's computer to generate or mine cryptocurrency. This can be done through the use of malware or compromised websites that cause the victim's computer to run crypto-mining code.<sup>227</sup>

<sup>220</sup> Ibid, p 123.

<sup>221</sup> Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 11; Evidence of A. Vickery, Transcript, November 23, 2020, p 123.

<sup>222</sup> Exhibit 1021, Appendix 1, Chainalysis 2021 Report, p 96.

<sup>223</sup> Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 11.

<sup>224</sup> Evidence of A. Vickery, Transcript, November 23, 2020, p 124; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 11.

<sup>225</sup> Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 11.

<sup>226</sup> Exhibit 1021, Appendix 1, Chainalysis 2021 Report, p 82; Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 15.

<sup>227</sup> Exhibit 248, Appendix H, US Cryptocurrency Enforcement Framework, p 16.

Finally, fraud can occur in the cryptocurrency space. The events leading to Quadriga’s downfall (discussed above) illustrate how fraud can take place in the cryptocurrency space. Indeed, as the staff at the Ontario Securities Commission put it, Quadriga is an example of “an old-fashioned fraud wrapped in modern technology.”<sup>228</sup>

### ***Investigating Cryptocurrency-Related Crime***

The evidence before me revealed that law enforcement in Canada has begun to identify the risks with cryptocurrency and investigate cryptocurrency-related crime. It was clear to me that Sergeants Vickery, Gilkes, and Warren Krahenbil (RCMP Federal Cybercrime Operations Group team leader) understood the risks, have developed some expertise in relation to virtual currencies, and have made good use of aftermarket software tools to aid in their investigations. It is less clear whether other units have developed the same expertise and abilities. I have recommended above that the Province and the AML Commissioner ensure that training is accessible for all law enforcement units, which will be crucial to ensure that this new area of criminality is investigated and prosecuted effectively in this province. It will also be important for the new provincial anti-money laundering unit to have particular expertise in this area. I also encourage law enforcement, regulators, and government to continue exploring innovative ways to investigate crime relating to virtual assets.

### **Law Enforcement’s Ability to Investigate Cryptocurrency-Related Crime in Canada**

Sergeant Vickery testified that a notable file in May 2018 provided an impetus for the RCMP to significantly ameliorate its capacity to handle cryptocurrency-related investigations. That file involved a prolific darknet vendor that was selling fentanyl. The RCMP’s Milton detachment, despite most of its members only recently learning what Bitcoin was, became aware of cryptocurrency to be seized and contacted the digital forensics unit to re-create the wallet and facilitate the seizure. The case resulted in a conviction and around 22 seized bitcoins with a value of approximately \$200,000 successfully forfeited as offence-related property.<sup>229</sup>

Sergeant Vickery testified that, although the investigation was a success, it made clear to the RCMP that, from a national headquarters level, it was deficient at the time in its ability to handle these investigations and support its members. It became clear that they needed policies, guidelines, and training to be put in place. The RCMP named Sergeant Vickery as the national cryptocurrency coordinator to put these in place and ensure that they could meet operational demands and support officers.<sup>230</sup>

The RCMP has since developed guidelines that direct members on how to conduct these investigations and how to seize virtual currencies. It also offers

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228 Exhibit 265, OSC Quadriga Report, p 4.

229 Evidence of A. Vickery, Transcript, November 23, 2020, p 136.

230 Ibid, pp 136–37.

national financial crime courses on topics such as proceeds of crime, counterfeiting, financial integrity, terrorist financing, cybercrime, and online undercover activities. The RCMP has also organized one-day workshops and are putting together an online cryptocurrency 101 course that will be available to all RCMP members and, hopefully, to municipal and provincial law enforcement through the Canadian Police Knowledge Network.<sup>231</sup> The RCMP also created a virtual currency working group in 2017 in response to several initiatives across different divisions that were encountering cryptocurrency in their investigations.<sup>232</sup>

The RCMP also works with other government agencies. For example, the Canadian Anti-Fraud Centre is the “first point of contact” for RCMP members in cases involving frauds facilitated by cryptocurrency. The RCMP also has partnerships with the CRA, the federal Department of Finance, FINTRAC, and the Forensic Accounting Management Group.<sup>233</sup> Further, the RCMP has international partnerships through the Five Eyes Cryptocurrency Readiness Group, which discusses best practices and trade craft as well as strategies to build capacity internally and how to leverage it.<sup>234</sup>

The Seized Property Management Directorate is a government entity designed to manage seized offence-related property and proceeds of crime. It manages the seized property until it is either ordered returned upon no conviction or forfeited. Although the directorate’s services were previously limited to federally prosecuted crimes, a June 2019 amendment now allows it to be used for all seized assets, including cryptocurrency, and by municipal and provincial police forces as well. Sergeant Vickery testified that the directorate has been a strong partner of the RCMP for 25 years and that its services save government money because it has contracts across the country allowing for storage of seized assets for a limited fee.<sup>235</sup>

A new unit in the RCMP “E” Division, the Federal Cybercrime Operations Group, was created in April 2020 and has a mandate to investigate cybercrime in accordance with federal policing strategic priorities. The unit currently has three members and an analyst, with plans to expand the unit.<sup>236</sup>

Finally, a notable public-private partnership called Project Participate<sup>237</sup> warrants discussion. A working group made up of virtual asset service providers, Project Participate focuses on increasing compliance and implementation of anti-money

231 Ibid, pp 137–38.

232 Ibid, pp 138–39.

233 Ibid, pp 140–41.

234 Ibid, p 141.

235 Ibid, pp 143–44, 147–48.

236 Evidence of W. Krahenbil, Transcript, November 23, 2020, pp 145–46; Closing submissions, Government of Canada, para 59.

237 A similar working group focused on anti-human trafficking efforts called Project Protect was created in 2016 by Mr. Warrack. The working group came together to share best practices, indicators of suspicion, and the like, with the result that a massive number of suspicious transaction reports and disclosures to law enforcement were made: Evidence of P. Warrack, Transcript, November 25, 2020, pp 112–13.

laundering and customer due diligence measures within the exchanges. The RCMP has a representative in the working group. Sergeant Vickery testified that the working group has helped law enforcement to identify virtual assets and targets of transactions. For example, it produced a list of information that virtual asset service providers regularly capture through their normal business activity and provided it to law enforcement as a starting point or template for how to get information through production orders.<sup>238</sup>

The above demonstrates that the RCMP has taken steps to address the cryptocurrency threat. I am encouraged that there appears to be a desire to share tools and training with provincial and municipal police units. It remains to be seen whether the RCMP's new cybercrime unit from 2020 will be expanded and achieve success in investigating and prosecuting these offences. Although federal efforts are important and should continue, provincial law enforcement units – particularly the dedicated provincial money laundering intelligence and investigation unit – must also develop their own expertise in virtual assets, provide training to their members, and ensure that they have access to the tools needed to effectively investigate this form of crime. These tools include aftermarket software tools, to which I turn now.

## **Aftermarket Software Tools**

Aftermarket software tools and open-source technology allow law enforcement to analyze transactions and obtain a history of the movement and flow of funds. Companies providing these services can analyze the blockchain, attribute, and cluster addresses together, and then link them to criminality, risky cryptocurrency addresses, exposure to the darknet, and mixing services. Specialized law enforcement officers are trained to use the software and analyze the information. In doing so, they may identify IP addresses or other data, enabling them to seek judicial authorization for information from exchanges or third-party service providers.<sup>239</sup>

The largest software companies used by Canadian law enforcement are Chainalysis and CipherTrace. The National Cybercrime Coordination Centre has acquired several licences to these services to support Canadian law enforcement at the municipal, provincial, and federal level.<sup>240</sup> Below I review services provided by Chainalysis in further detail.

While there are undoubtedly advantages to using these tools, Sergeant Gilkes emphasized that they are not an exact science:

I would like to add that the tools are not an exact science. So we're thinking about heuristics here. So there is clustering, basically trying to attribute multiple transactions to the control of one or several individuals. There are

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238 Transcript, November 23, 2020, pp 141–43.

239 Ibid, pp 45, 47–48.

240 Ibid, pp 48–49, 139–40.

also some properties inherent in the blockchain which ... aid in providing a location for where a transaction may have occurred. But a lot of, I would say – I don't want to call it guesswork because [these are] educated guesses. But [a lot is] based on information which is collected in the clearnet, the darknet ... circle information, reports from police ... journalistic reports, [which] will provide information that will help to attribute ownership or attribute usership of particular addresses. But, like I mentioned, [it is] not an exact science, and regular policework has to be done in collaboration.<sup>241</sup>

As I have emphasized throughout this chapter, although private sector initiatives and tools are certainly useful and to be encouraged, it is crucial that law enforcement develop its own expertise and capabilities and should be cautious about overreliance on private sector tools.

## Chainalysis

Mr. Spiro and Ian Place, director of solutions architecture at Chainalysis, gave detailed evidence about the operation and uses of Chainalysis' services. In what follows, I describe a few of Chainalysis' services as an example of how aftermarket software tools work and can assist law enforcement.

Chainalysis provides several services to its clients, which include virtual asset service providers, governments, regulatory agencies, and domestic and international police.<sup>242</sup> It also has a professional services team of investigators specialized in cryptocurrency investigations that is available to assist clients with investigations. Mr. Spiro testified that this team is particularly helpful in complex cases or those requiring a quick turnaround (for example, if there is an urgent need to freeze funds) or limited resources.<sup>243</sup> Chainalysis also produces publications, which include:

- an annual cryptocrime report, which reviews blockchain data and information Chainalysis has collected to generate new insights to share with the community;
- geography reports, which identify and map out cryptocurrency-related activity around the world and identify trends;
- occasional case studies about a certain kind of illicit activity and how Chainalysis was able to investigate and generate information; and
- thought leadership about regulatory developments and how the regulation aligns with different products and services.<sup>244</sup>

<sup>241</sup> Transcript, November 23, 2020, pp 46–47.

<sup>242</sup> Evidence of J. Spiro, Transcript, November 24, 2020, pp 143, 149.

<sup>243</sup> Ibid, pp 14–16.

<sup>244</sup> Ibid, pp 8–9, 11–12. Two examples of annual cryptocrime reports that I have discussed already can be found in Exhibit 257, Chainalysis, *The 2020 State of Crypto Crime* (January 2020), and Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 1, Chainalysis, *The 2021 Crypto Crime Report* (February 16, 2021).

Mr. Place walked me through three services provided by Chainalysis: Know Your Transaction (KYT), Reactor, and Kryptos. I will discuss each in turn.

KYT is a transaction-monitoring tool that provides real-time alerts to identify potential risks and transaction histories.<sup>245</sup> It is predominantly used by virtual asset service providers for compliance purposes.<sup>246</sup> KYT shows when a client has “direct exposure” or “indirect exposure” to risks. The former refers to a risk connected to a direct counterparty to a transaction – that is, the entity receiving or sending funds. Meanwhile, indirect exposure refers to funds that go indirectly from the platform to intermediary addresses; KYT therefore identifies a potential change of ownership or intermediaries conducting a transaction.<sup>247</sup> Alerts can include things such as darknet market flags, which identify transactions into and out of darknet markets.<sup>248</sup>

Reactor is a graphing, mapping, and investigative tool used to follow the flow of funds visually and to perform enhanced due diligence.<sup>249</sup> It can be used to identify entities that control wallets and to discover related entities.<sup>250</sup> Reactor is predominantly used by law enforcement rather than private sector clients. It is currently only able to look at Bitcoin transactions, not other cryptocurrencies.<sup>251</sup> Mr. Place walked me through a real-world example in which a client received an alert that it had indirect exposure to a sanctioned entity. Reactor generated a graphic representation of the various entities that provided funding for the transaction. The way the transaction was structured suggested that the person who sent the funds to an intermediary was the same person who sent funds to the entity designated by the US Office of Foreign Assets Control. It also suggested that the person was using a personal unhosted wallet, which is a common obfuscation technique.<sup>252</sup>

Finally, Kryptos provides “market intelligence and specific information in relation to entities that are within the cryptocurrency ecosystem.”<sup>253</sup> It allows users to see what kinds of services they are interacting with (e.g., whether a service is a hosted wallet, a mining pool, or an exchange) and whether services are engaged in risky or non-risky activities.<sup>254</sup> Users can flag particular businesses that they want to monitor. Each business has a profile that shows information such as a risk rating given by Chainalysis, the kind of fiat currencies used, the country of headquarters, legal names, place and

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245 Evidence of I. Place, Transcript, November 24, 2020, pp 18–19; Evidence of J. Spiro, Transcript, November 24, 2020, p 8.

246 Evidence of I. Place, Transcript, November 24, 2020, p 39; Evidence of J. Spiro, Transcript, November 24, 2020, p 8.

247 Evidence of I. Place, Transcript, November 24, 2020, pp 28–31.

248 Evidence of J. Spiro, Transcript, November 24, 2020, pp 27–28.

249 Evidence of I. Place, Transcript, November 24, 2020, p 19.

250 Evidence of J. Spiro, Transcript, November 24, 2020, pp 129–30. Mr. Spiro explained that an “entity” might be a company, a kind of service, a darknet market, or an unidentified wallet. However, Chainalysis would never have any information pertaining to the identities or personal identifying information for owners of wallets: Transcript, November 24, 2020, pp 153–54.

251 Evidence of I. Place, Transcript, November 24, 2020, pp 39, 48–49.

252 Evidence of I. Place and of J. Spiro, Transcript, November 24, 2020, pp 41–48.

253 Evidence of J. Spiro, Transcript, November 24, 2020, p 8.

254 Evidence of I. Place, Transcript, November 24, 2020, pp 19, 22–23.

country of incorporation, assets traded or accepted on the platform, stable and privacy coins offered, trading pairs, and recent news.<sup>255</sup>

Aftermarket software tools can therefore assist law enforcement in being able to trace transactions on the blockchain and monitor entities. I expect that they will also be useful for virtual asset service providers in fulfilling their new obligations under the *PCMLTFA*. I encourage law enforcement in this province to remain current on available software and technology that might assist them in identifying and investigating the potential use of cryptocurrency in money laundering and to trace and seize such illicit funds.

## Conclusion

Virtual assets are a relatively new technology whose functionality and uses have rapidly developed in a short amount of time. Just as this technology has developed swiftly, criminals have learned to exploit it. Law enforcement in this country has begun to develop capacity and expertise in this area, and specialized tools and services now exist to assist in tracing transactions that use cryptocurrency. The virtual asset space will undoubtedly continue to transform, and new methods of criminality will certainly emerge. It is crucial that government, law enforcement, and regulators stay current on the risks facing this sector.

It will be important for the AML Commissioner to keep a particular focus on money laundering techniques using virtual assets. The virtual asset space is a rapidly evolving sector, and its complexities mean that state actors whose work involves identifying crime in this space – including law enforcement and regulators – must receive regular updates and training on emerging and developing typologies in this space. It will be key for the AML Commissioner to monitor whether that training occurs and report to government on any additional measures that should be taken.

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<sup>255</sup> Ibid, pp 20-22.

# Part X

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## The Underground Economy

Much of what I have discussed in this Report focuses on the legitimate economy – money laundering that occurs in the context of legitimate business sectors and takes advantage of regulatory gaps or a lack of understanding. However, money laundering occurs in the informal or “underground” economy as well, in the sense that it takes place outside the regulated financial system and may not be caught by countermeasures put in place by countries that have adopted the Financial Action Task Force model.

In Chapter 36, I discuss bulk cash smuggling, which, as its name suggests, involves physically transporting large quantities of cash across international borders. Chapter 37 considers informal value transfer systems, which allow for the transfer of *value* from one location to another without actually transferring *funds*. Finally, in Chapter 38, I examine trade-based money laundering, in which individuals abuse trade transactions to avoid the scrutiny of more direct forms of transfer and to move illicit funds (or more accurately, *value*) from one location to another. I have chosen to address trade-based money laundering in Part X because it is another way of moving value outside of the regulated financial system and is sometimes used in conjunction with informal value transfer systems.

## Chapter 36

# Bulk Cash Smuggling

Bulk cash smuggling is an important part of the underground economy. It is often thought of as the oldest and most basic form of money laundering – however, it still occurs frequently today.<sup>1</sup>

As the name suggests, bulk cash smuggling refers to the practice of moving large quantities of cash (that is, physical dollars or euros or other banknotes) across international borders. As I explain below, the Financial Action Task Force (FATF) has urged member countries, through its 40 recommendations, to require declarations or disclosure by travellers transporting cash over a certain threshold. With that in mind, another way of conceiving of bulk cash smuggling is as the “transfer of cash across the border in violation of currency reporting requirements, that is, above the permitted maximum threshold and without justification.”<sup>2</sup>

The money laundering risks associated with bulk cash smuggling are self-evident. Given that much criminal activity continues to occur primarily in cash<sup>3</sup> and that it is increasingly difficult to conduct all of one’s transactions in cash, criminals need to find ways to move large quantities of cash back into the legitimate economy. This often involves transporting the cash to another jurisdiction. Simon Lord, a senior officer with the UK’s National Crime Agency and one of the world’s leading experts on money laundering, explained the criminal’s dilemma as follows:

- 1 Exhibit 4, Overview Report: Financial Action Task Force, Appendix LL, *FATF Report: Money Laundering Through the Physical Transportation of Cash* (October 2015) [*FATF Bulk Cash Report*], p 3; Evidence of J. Gibbons, Transcript, December 10, 2020, p 18.
- 2 Exhibit 24, Michele Riccardi and Michael Levi, “Cash, Crime and Anti-Money Laundering,” in Colin King, Clive Walker and Jimmy Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Cham: Palgrave Macmillan, 2018), p 143.
- 3 Evidence of S. Lord, Transcript, May 29, 2020, p 5; Evidence of J. Sharman, Transcript, May 6, 2021, pp 15-16.

[C]ash is still the raw material of most criminal activity – certainly all of the commodity-based crime that you can think of, so drug trafficking, robbery, smuggling cigarettes ... even things like the trafficking of human beings, modern slavery, and all the rest of it.

... [A]ll that type of crime generates cash. And so, criminals have to find something to do with the cash that they have made in part with their criminal activities. And cash actually, when you see it in large amounts, the thing that strikes you about it is just how big and heavy it is ... it ceases almost to become money, but becomes a commodity in its own right. And so, what that means is, in order to sort of enjoy the fruits of your ill-gotten gains, you've got to try and find something to do with it. And in most western societies now, and certainly anybody who sort of complies with the [Financial Action Task Force's] 40 recommendations, it's actually extremely difficult to get rid of large amounts of cash now.

So, one of the ways in which people deal with their cash is to move it away from the jurisdiction where it is, where maybe you can't get it into the banking system, and move it somewhere else ... either to break the audit trail in between the possession of the cash and the commission of the crime, or ... move it to a jurisdiction where you can bank it much more easily ... And so physically moving the cash across borders is something that's on the up.<sup>4</sup>

In this chapter, I first review the regulation applicable to transportation of cash across international borders. In this area, the province of British Columbia is heavily reliant on the federal government, which is responsible for international trade, imports, exports, and national borders. I then discuss the continued prevalence of cash in the legitimate economy, despite the rise of alternative payment methods such as credit cards. Finally, I examine the role of cash in the criminal economy, ways in which it is smuggled across borders, and difficulties in detecting this activity.

## **Legal and Regulatory Framework**

The transportation of cash across borders is addressed by both the FATF's 40 recommendations and domestically in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*).

### **FATF Recommendation 32**

FATF has addressed the movement of cash across international borders in Recommendation 32, titled "Cash Couriers," which states:

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<sup>4</sup> Evidence of S. Lord, Transcript, May 29, 2020, pp 5–6.

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments,<sup>5</sup> including through a declaration system and/or disclosure system.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing, money laundering or predicate offences, countries should also adopt measures, including legislative ones consistent with Recommendation 4,<sup>6</sup> which would enable the confiscation of such currency or instruments.<sup>7</sup>

The interpretive note to Recommendation 32 expands on the obligations set out above.<sup>8</sup> I highlight a few points from it. First, Recommendation 32 is meant to ensure that countries can:

- detect physical cross-border transportation of currency and bearer negotiable instruments;
- stop or restrain currency and bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering;
- stop or restrain currency or bearer negotiable instruments that are falsely declared or disclosed;
- apply appropriate sanctions for making a false declaration or disclosure; and

5 A “bearer instrument” is a type of instrument that requires no ownership information to be recorded: Exhibit 64, Europol Financial Intelligence Group, *Why Is Cash Still King? A Strategic Report on the Use of Cash by Criminal Groups as a Facilitator for Money Laundering* (European Police Office, 2015) [*Europol Cash Report*], p 51. The FATF recommendations define “bearer negotiable instrument” as including monetary instruments such as traveller’s cheques; negotiable instruments (such as cheques, promissory notes, and money orders) that are in bearer form, endorsed without restriction, made out to a fictitious payee, or in some other form that allows title to pass upon delivery; and incomplete instruments that are signed but omit the payee’s name: Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [*FATF Recommendations*], p 113, general glossary.

6 Recommendation 4 refers to the confiscation of proceeds of crime and related measures: Exhibit 4, Appendix E, *FATF Recommendations*, p 10, Recommendation 4.

7 Ibid, p 23, Recommendation 32.

8 Ibid, pp 102–5, interpretive note to Recommendation 32.

- enable confiscation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering.<sup>9</sup>

“Physical cross-border transportation” is defined to include:

- physical transportation by a natural person or in their accompanying luggage or vehicle;
- shipment of currency or bearer negotiable instruments through containerized cargo; and
- mailing of currency or bearer negotiable instruments by a natural or legal person.<sup>10</sup>

Countries can meet their obligations under Recommendation 32 by implementing either a declaration or disclosure system. A **declaration system** should require all persons transporting over 15,000 US dollars or euros to submit a truthful declaration (written, oral, or a combination of the two) to competent authorities.<sup>11</sup> Meanwhile, a **disclosure system** should require travellers to provide appropriate information to authorities upon request.<sup>12</sup> Whether the country adopts a declaration or disclosure system, the information should be available to the financial intelligence unit, and authorities should be able to stop or restrain cash when it is suspected to be connected to money laundering, terrorist financing, or a false declaration or disclosure.<sup>13</sup> There should also be effective, proportionate, and dissuasive sanctions for false declarations or disclosures, and authorities should be able to confiscate cash related to money laundering, terrorist financing, or a predicate offence.<sup>14</sup>

A 2015 FATF report entitled *Money Laundering Through the Physical Transportation of Cash* found that the methods of implementing Recommendation 32 varied considerably among the countries surveyed.<sup>15</sup> For example, some countries required cash declarations to be checked for accuracy by actually counting the cash; other countries said this was done only occasionally.<sup>16</sup> Further, some countries kept statistics on the amount of cash transported, while others did not.<sup>17</sup> The report also found that there was little collaboration between neighbouring countries in developing their systems, which led to significant incongruences.<sup>18</sup>

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9 Ibid, p 102, para 1.

10 Ibid, p 105.

11 Ibid, p 102, para 3.

12 Ibid, p 103, para 4.

13 Ibid, para 5.

14 Ibid, p 104, para 6.

15 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 15, 60–61.

16 Ibid, p 15.

17 Ibid.

18 Ibid, pp 15–16.

## The *PCMLTFA*

Canada has implemented the requirements of Recommendation 32 in Part II of the *PCMLTFA* and the *Cross-Border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 (*Currency Regulations*). The Canada Border Services Agency (CBSA) is responsible for administering the cross-border currency reporting regime.<sup>19</sup>

Travellers carrying, importing, or exporting \$10,000 or more across Canada's borders must declare those funds to CBSA officers using one or more currency reporting forms.<sup>20</sup> CBSA shares all completed currency reporting forms with FINTRAC for further analysis.<sup>21</sup> It also gathers and analyzes intelligence in order to detect contraband and provide intelligence on travellers or transportation of funds that portray indicators of illicit activity.<sup>22</sup>

CBSA officers can search persons or vehicles when they have reasonable grounds to suspect that a person has concealed or failed to declare funds of \$10,000 or more.<sup>23</sup> They can seize those funds if they have reasonable grounds to believe a person has concealed or failed to declare funds of \$10,000 or more.<sup>24</sup> Officers are also empowered to open international mail where they have reasonable grounds to suspect that it contains \$10,000 or more of undeclared funds, and they can seize the funds.<sup>25</sup>

Where a CBSA officer has seized undeclared funds, the latter will be forfeited if the officer has reasonable grounds to suspect that they are proceeds of crime or for use in the financing of terrorist activities.<sup>26</sup> This is referred to as a “Level 4 seizure.”<sup>27</sup> Where the officer does not have reasonable grounds to suspect that funds are illicit, the funds will be returned upon payment of a penalty of \$250 (a “Level 1 seizure”), \$2,500 (“Level 2 seizure”), or \$5,000 (“Level 3 seizure”) depending on the circumstances of the concealment.<sup>28</sup>

Table 36.1 provides a summary of the number and total value of seizures of undeclared funds in British Columbia between 2016 and 2020:

19 Exhibit 1000, Affidavit #1 of Sara D'Ambrogio, affirmed May 3, 2021 [D'Ambrogio Affidavit], paras 7, 16–25.

20 *PCMLTFA*, s 12; *Currency Regulations*, s 2.

21 Exhibit 1000, D'Ambrogio Affidavit, paras 29–30.

22 *Ibid*, para 10.

23 *PCMLTFA*, ss 15, 16; Exhibit 1000, D'Ambrogio Affidavit, para 27.

24 *PCMLTFA*, s 18(1); *Currency Regulations*, s 18; Exhibit 1000, D'Ambrogio Affidavit, paras 31–37.

25 *PCMLTFA*, ss 17, 18(1); *Currency Regulations*, s 18; Exhibit 1000, D'Ambrogio Affidavit, paras 28, 31–37.

26 *PCMLTFA*, s 18(2); Exhibit 1000, D'Ambrogio Affidavit, paras 37, 40.

27 Closing submissions, Government of Canada, para 65.

28 *PCMLTFA*, s 18(1); *Currency Regulations*, s 18; Exhibit 1000, D'Ambrogio Affidavit, paras 33–36. The individual from whom the funds were seized or the lawful owner of the funds can request a review of the seizure and/or fine imposed: *PCMLTFA*, ss 24–35.

**Table 36.1: Number and value of undeclared funds seizures in BC, 2016–2020**

	2016		2017		2018		2019		2020	
	#	\$	#	\$	#	\$	#	\$	#	\$
Level 1	597	9,190,847	496	7,511,148	564	8,637,316	365	5,459,126	103	1,551,367
Level 2	74	1,588,271	60	1,370,590	68	1,540,858	40	858,817	8	157,565
Level 3	NIL	NIL	2	148,734	NIL	NIL	3	30,049	NIL	NIL
Level 4	47	926,878	50	771,527	48	1,006,079	57	973,455	16	207,367

Source: Closing submissions, Government of Canada, para 66.

The total value of funds that were reported entering or leaving Canada through BC ports of entry between 2016 and 2020 are as follows:

- \$1,380,679,435.88 (2016)
- \$1,463,351,600 (2017)
- \$1,879,120,057.97 (2018)
- \$923,734,249.37 (2019)
- \$161,761,260.26 (2020)<sup>29</sup>

FATF’s 2016 mutual evaluation of Canada rated Canada as largely compliant with Recommendation 32, noting a few minor deficiencies.<sup>30</sup> The evaluators noted that the penalty provisions in the *PCMLTFA* – the fact that Level 1, 2, and 3 seizures of cash must be returned to the individual upon payment of a penalty of \$250, \$2,500, or \$5,000 – was not proportionate or dissuasive for undeclared or falsely declared cash over the threshold.<sup>31</sup> Cambridge Professor Jason Sharman described this result as a “forgiving policy of often returning undeclared cash to those detected carrying it in through the border, with very small penalties. To an outsider, this policy seems like an incredible favour to international money launderers.”<sup>32</sup> Given that penalties are low, these may seem to a criminal to be simply a cost of doing business, payable only in the event they are caught.<sup>33</sup> However, as I noted above, funds will be forfeited under the Canadian regime where a CBSA officer has

29 Exhibit 990, Affidavit #1 of Annette Ryan, affirmed April 27, 2021, para 8; Exhibit 991, Exhibit A to Affidavit #1 of Annette Ryan – FINTRAC CBCR Reports Data.

30 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N: FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), pp 189–91.

31 Ibid, p 190.

32 Exhibit 959, Jason Sharman, *Report to the Cullen Commission: Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 2; see also Evidence of J. Sharman, Transcript, May 6, 2021, pp 17–18.

33 Evidence of J. Sharman, Transcript, May 6, 2021, p 18.

reasonable grounds to suspect that they are proceeds of crime or for use in the financing of terrorist activities.<sup>34</sup>

A 2018 report by the federal Department of Finance acknowledges that Canada's penalties are low and advises that it is "revising the penalty structure is under consideration."<sup>35</sup> The report also notes some differences between the Canadian penalties and other countries:

- Some countries, such as Spain, impose a blanket minimum penalty over double the Canadian minimum of \$250.
- In Australia, the minimum penalty varies based on the value of the currency that was not declared.
- In the United States, all currency may be seized and forfeited when there is a false or no declaration by assessing a penalty equal to the amount not declared.<sup>36</sup>

I expect that Canada will consider the view of the FATF evaluators and ensure that the fines under the *PCMLTFA* are proportionate and dissuasive.

## Legitimate Cross-Border Transfer of Cash

It is important to emphasize that people transport cash across borders every day, and much of this activity is legitimate. It is not, in itself, illegal to transport cash. Movement of cash across borders *becomes* unlawful once it is not declared when required. In addition, bulk cash smuggling does not, in itself, necessarily constitute money laundering, though it is often a required step in the money laundering process.<sup>37</sup>

Despite increasing use of non-cash payment methods, cash "remains an important means of settlement across the globe, with an estimated USD 4 trillion in circulation and between 46% and 82% of all transactions in all countries being conducted in cash."<sup>38</sup> The FATF report notes that some 2 billion adults in the world today do not have access to banking services, which means that cash is the only form of payment they can rely on day to day. Indeed, the economies of many of the world's poorest and least developed countries rely on cash.<sup>39</sup>

34 *PCMLTFA*, s 18(2); Exhibit 1000, D'Ambrogio Affidavit, paras 37, 40.

35 Exhibit 960, Department of Finance, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime* (February 7, 2018), p 38.

36 *Ibid.*

37 Canada's 2015 national risk assessment noted that bulk cash smuggling is frequently used, including by professional money launderers and organized crime groups, as the first step in the money laundering process: Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015), pp 21, 25, 42.

38 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 3, 11.

39 *Ibid*, p 8.

That said, cash is also prevalent in many of the world's largest and wealthiest economies. Some reasons for a preference for cash include:

- **Cultural preference:** some cultures may prefer to use cash because of a distrust of governments and large financial institutions.
- **Retailer preference:** some retailers prefer cash for low-value transactions because it avoids processing fees.
- **Speed:** unlike transactions through the banking system that can take days, weeks, or months to clear, cash transactions occur immediately.
- **Reduction of spending:** people who purchase goods and services with cash tend to spend less than those who use credit or debit.
- **Reduction of debt:** using cash can help reduce indebtedness by limiting the individual to spending what they actually possess.
- **Discounts:** in some countries, it is possible to negotiate a lower price when paying in cash because the merchant can avoid paying fees for processing credit, debit, or cheque transactions.
- **Avoiding interest and fees:** using cash avoids paying interest and fees that would be charged for credit balances or bank accounts.
- **Dependable in a crisis:** cash is dependable in the event that a financial institution's operations are affected by a crisis or otherwise.
- **Store of value:** cash is often used to store wealth in volatile economies or jurisdictions threatened by war or natural disaster (including foreign currencies that are perceived to be more stable than the local one).<sup>40</sup>

However, cash also has some disadvantages:

- Large amounts are heavy and bulky.
- Large amounts are vulnerable to theft.
- Cash hoarding can restrict wealth, as the individual collecting the cash loses access to currency markets and investments and does not earn interest.
- Cash reduces purchasing options, given that it cannot be used for certain goods or in large amounts due to anti-money laundering regulations.
- To make a remote payment using cash, the cash needs to be physically transported.
- It can be costly to count and process cash.

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<sup>40</sup> Ibid, p 9.

- Using cash can restrict access to other financial services because, by deliberately choosing to transact in cash, an individual does not build a financial profile that is needed to save, invest earnings, or apply for loans, insurance, and the like.<sup>41</sup>

The FATF report found that although legitimate cross-border transportation of cash is common, it is not well understood by many countries both in terms of the methods and extent. This in turn hinders the ability of customs officials to determine if a shipment is legitimate or not.<sup>42</sup> A 2015 report by the European Police Office (Europol) Financial Intelligence Group similarly notes that there is little, if any, concrete data available on the legitimate use of cash beyond figures relating to the volume and value of bank notes issued and in circulation. As a result, much is unknown about the legitimate use of cash, although observations on consumer patterns show that cash continues to be the preferred method of payment for low-value purchases.<sup>43</sup>

The Europol report notes that, despite the steady growth of non-cash payment methods and a decline in the use of cash, the total number of euro banknotes in circulation continues to rise beyond the rate of inflation year after year. It states that cash is used mostly for low-value payments, and its use for transaction purposes is estimated to account for approximately one-third of bank notes in circulation. Yet, the demand for high-denomination notes that are not commonly associated with payments (for example, the 500-euro note) has been sustained. This apparent contradiction is likely explained by criminal activity.<sup>44</sup> High-value banknotes are not convenient for the average shopper, but they are highly convenient for money laundering and cash smuggling, as they can substantially reduce the size and weight of the funds and make them easier to transport.

## Capital Flight

At various points of this Report, I have referred to “capital flight,” which has been defined as “a large scale exodus of financial assets and capital from a nation due to events such as political or economic instability, currency devaluation or the imposition of capital controls.”<sup>45</sup> The last factor (imposition of capital controls) refers to situations where a state places restrictions on the amount of cash that can legally be exported, by whom, and for what purpose.<sup>46</sup> The main “driver” for capital flight is that funds are perceived to be under threat for some reason (for example, avoidance of strict exchange controls, an illicit source, or cultural considerations), which causes the owner to want to move the funds abroad to a place of safety.<sup>47</sup>

41 Ibid, pp 9–10.

42 Ibid, pp 13–14.

43 Exhibit 64, *Europol Cash Report*, pp 6, 11.

44 Ibid, pp 6, 11–16.

45 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, p 36.

46 Ibid, p 15.

47 Ibid, p 36.

Capital flight is, in a sense, in a grey zone between legitimate and illegitimate transfer of cash. The capital being moved in such a situation is often *not* derived from criminal activity. However, according to the FATF report, anecdotal evidence suggests that the capital may sometimes be derived from tax fraud or other illicit activity.<sup>48</sup>

## **Criminal Cross-Border Transportation of Cash**

As I noted above, there is a disconnect between the fact that cash use is generally on the decline and yet circulation of cash, particularly high-denomination notes, is on the rise. The Europol report posits that this disparity is due at least in part to criminal activity.<sup>49</sup> In this section, I discuss the prevalence of cash in criminal activity, methods in which it is smuggled across borders, and difficulties in detecting such activity.

### **Why Do Criminals Rely on Cash?**

Despite the rise of non-cash payment methods, cash continues to be “the raw material of most criminal activity.”<sup>50</sup> Professor Sharman testified that people often assume cash laundering is no longer relevant or common, given that “cash is something of the oldest and crudest way of money laundering” and that anti-money laundering policies have been in place for almost 30 years. But in his view, that assumption is wrong: “cash is probably still one of the most important mechanisms for laundering the proceeds of crime.”<sup>51</sup> He added that while cash is perhaps more common in low-value crimes,

even very recently, even in jurisdictions that have had anti-money laundering laws for 30 years, there are still cases of drug dealers coming to banks with bags of millions of dollars in cash and being able to deposit that over the counter repeatedly and not being detected through this most unsubtle and unsophisticated style of money laundering.<sup>52</sup>

In other words, money launderers “don’t innovate when they don’t have to. If old ways still work, then there’s not much incentive to go with new ways.”<sup>53</sup> As cash is still effective for many forms of criminality, it continues to be used.<sup>54</sup>

Most suspicious transaction reports in Europe relate to cash or cash smuggling.<sup>55</sup> Suspicious cash is also a problem in Canada, as indicated in a 2018 report prepared by the federal Department of Finance:

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48 Ibid, p 36.

49 Exhibit 64, *Europol Cash Report*, pp 6, 11-16.

50 Evidence of S. Lord, Transcript, May 29, 2020, p 5.

51 Evidence of J. Sharman, Transcript, May 6, 2021, p 15.

52 Ibid, pp 15-16.

53 Ibid, p 16.

54 Ibid, p 16.

55 Exhibit 24, M. Riccardi and M. Levi, “Cash, Crime and Anti-Money Laundering,” p 135; Exhibit 64, *Europol Cash Report*, pp 7, 16.

In Canada, there are criminal networks across the country that are responsible for the processing of hundreds of millions of proceeds of crime in cash. These transactions are often observed by law enforcement in public places as bags or boxes of cash are exchanged. Those who are providing cash in these situations have links to criminal organizations and criminal activity and do not otherwise have legitimate reasons for possessing these amounts in cash. However, the use of multiple cash transfers, the recourse to professional money movers, and the placement of cash in the financial system often make it difficult for law enforcement to establish the link between the cash and the commission of a specific criminal offence.<sup>56</sup>

Cash remains attractive for criminals today because it is relatively untraceable, readily exchangeable, and anonymous.<sup>57</sup> However, the FATF report notes that cash is only truly anonymous in smaller amounts; it is easier to justify small to medium amounts of cash, but harder to justify the possession or movement of large amounts of cash with no explanation of its origin or purpose.<sup>58</sup>

Cash plays a role at all three of the traditional “stages” of money laundering (see Chapter 2 for a discussion of the three-stage model and critiques of it). As the Europol report notes, “Although not all use of cash is criminal, all criminals use cash at some stage in the money laundering process.”<sup>59</sup> Cash can be generated in any number of predicate offences, including drug trafficking, illegal trafficking of commodities (such as alcohol or tobacco), tax fraud, weapons and arms smuggling, organized immigration fraud, or the financing of terrorism. The FATF report concludes that there is seemingly no predicate offence that is more commonly associated with one method of cash smuggling.<sup>60</sup>

Cash smuggling often begins the money laundering cycle:

Criminals who generate cash proceeds seek to aggregate and move these profits from their source, either to repatriate funds or to move them to locations where one has easier access to placement in the legal economy, perhaps due to the predominant use of cash in some jurisdictions’

56 Exhibit 960, Department of Finance, *Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime* (February 7, 2018), p 36.

57 Exhibit 33, Her Majesty’s Treasury and Home Office, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (October 2015), p 75, para 8.2; Exhibit 24, M. Riccardi and M. Levi, “Cash, Crime and Anti-Money Laundering,” p 135; Exhibit 64, *Europol Cash Report*, p 9; Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, p 27.

58 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, p 27.

59 Exhibit 64, *Europol Cash Report*, p 7.

60 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 3, 30–31. Riccardi and Levi note that most European anti-money laundering units report drug trafficking as the predicate offence most closely linked to the use of cash in money laundering schemes; however, other crimes (such as extortion, sexual exploitation, and smuggling of migrants) are likely to generate cash proceeds as well. Corruption (e.g., through bribes) is the second predicate offence most frequently reported by law enforcement agencies: Exhibit 24, M. Riccardi and M. Levi, “Cash, Crime and Anti-Money Laundering,” pp 141–42.

economies, more lax supervision of the financial system or stronger banking secrecy regulations, or because they may have greater influence in the economic and political establishment.<sup>61</sup>

Cash smuggling can also occur at other stages of the money laundering cycle. Moreover, it is also used by non-cash generating offences: for example, criminals engaged in cybercrime such as phishing or hacking make use of money mules to receive and withdraw funds fraudulently obtained and then send the funds by wire transfer to other jurisdictions where they are then collected in cash, likely for onward transportation.<sup>62</sup>

## Smuggling Cash Across Borders

A key finding of the FATF report was that the more countries impose restrictions on the use of cash, the more people start to smuggle it across borders.<sup>63</sup> Although there are no reliable estimates on the amount of cash laundered through smuggling cash across borders and then introducing it into the financial system in another country, the figure “would seem to be between hundreds of billions and a trillion US dollars per year.”<sup>64</sup>

Other key findings in the FATF report include the following:

- Physical transportation of cash distances criminal proceeds from the predicate offence and breaks the audit trail.<sup>65</sup>
- The amounts of cash being concealed in cargo and adapted freight are in excess of what can be carried by a natural person.<sup>66</sup>
- The currencies most frequently encountered in consignments of criminal cash are those that are the most stable, widely used, and readily traded in the world.<sup>67</sup>
- While not universally seen, high-denomination notes are often used to reduce the bulk and weight of criminal cash when seeking to conceal it.<sup>68</sup>
- Criminals exploit cash declaration systems, including by:
  - using the fact that cash has been declared on entry as a way of legitimizing criminal cash paid into a bank account;

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61 Exhibit 64, *Europol Cash Report*, p 18.

62 Ibid, p 18.

63 Evidence of S. Lord, Transcript, May 29, 2020, p 6; Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 27–29.

64 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 3, 31–32.

65 Ibid, p 4.

66 Ibid.

67 Ibid.

68 Ibid.

- reusing cash declarations several times for the same purpose; or
  - over-declaring cash on entry.<sup>69</sup>
- Although most countries seem to have reasonable knowledge and understanding of cash transported by natural persons (and measures in place to monitor and control this activity), much less attention is paid to money being moved by cargo.<sup>70</sup>

While a review of the entire FATF report is beyond the scope of this chapter, it is worth examining some of these findings in more detail.

### ***Breaking the Audit Trail***

A key driver of moving criminally derived cash from one jurisdiction to another is to break the audit trail – in other words, make it difficult for authorities in the second jurisdiction to establish that the cash is the proceeds of a crime in the first jurisdiction.<sup>71</sup> Relatedly, criminals may choose to move cash to a jurisdiction with less stringent anti-money laundering regulation, such that they can introduce large amounts of cash into the financial sector without attracting scrutiny.<sup>72</sup>

The Europol report notes that the most significant challenge reported by law enforcement in regard to cash is linking it to criminal activity. It explains that “[m]ost European law enforcement agencies are required to demonstrate the predicate offence in order to prosecute money laundering: given that cash is a bearer instrument, this is a challenging task, and successful investigations involving cash usually entail the use of traditional techniques.”<sup>73</sup> Although difficulties in linking predicate offences to money laundering is not limited to cash, “the inability to trace physical cash money movements intensifies the problem when compared to other instruments for which records are kept.”<sup>74</sup>

As I discuss in Chapter 40, the need to establish the predicate offence has also been identified as one of the barriers to effective law enforcement in this province.

### ***Currencies and Denominations***

As noted above, the currencies most frequently encountered in consignments of criminal cash are those that are the most stable, widely used, and readily traded.

69 Ibid, pp 16, 61–62. As Simon Lord, one of the authors of the FATF report, explained: “One of the things that we found, for example, is people were occasionally declaring cash that didn’t actually exist so that they could then walk into a bank with a big pile of cash and say, look, this is entirely legitimate, here’s the cash declaration form I filled in, so would you mind paying it into the bank account for me. And so that happens quite a lot. And it’s the sort of adaptation you might expect actually when people are getting used to the way that regulatory systems work”: Transcript, May 29, 2020, p 8.

70 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 4–5.

71 Ibid, p 40.

72 Ibid, p 41.

73 Exhibit 64, *Europol Cash Report*, p 7.

74 Ibid, p 11.

These include the US dollar, euro, British pound, and Swiss franc. While less common than the foregoing currencies, the Canadian dollar is high on the list as well.<sup>75</sup>

The FATF report notes that high-denomination bills are more likely to be encountered when there is an element of concealment involved in the transportation of cash.<sup>76</sup> It explains:

The reason for this is self evident ... Taking the British pound as an example, measurements of the size and weight of the relevant banknotes shows that GBP 250 000 in “street cash”, a mixture of GBP 10 and GBP 20 notes, weighs between 15–20 kg and is bulky enough to fill an average sports holdall [gym duffel bag]. The same value in EUR 500 notes would weigh about 0.6 kg and would fit in a fat envelope. High-denomination notes therefore facilitate the concealment of large values of cash.<sup>77</sup>

Authorities in the Netherlands believe that almost all 500-euro notes are used for criminal activity and have even noted that in some cases, a 500-euro note costs more than 500 euros because of demand.<sup>78</sup>

Despite the foregoing, the denominations most commonly held by criminals can vary depending on the country. For example, the UK and the Netherlands see many high-denomination bills, whereas Germany has made many more seizures of low to medium denominations.<sup>79</sup> The UK ultimately withdrew the 500-euro note from circulation after determining that there were few legitimate uses of it.<sup>80</sup>

As of April 27, 2019, the 500-euro note is no longer being issued.<sup>81</sup> However, ceasing to issue it will not eliminate the problem. The UK’s 2015 national risk assessment notes that despite withdrawing the 500-euro note, “it is apparent that the €500 note is still being purchased from customers by the UK currency sector” and that it still frequently appears in suspicious activity reports.<sup>82</sup> Further, criminals may simply move to other high-denomination bills:

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75 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 4, 52.

76 Ibid, p 56.

77 Ibid, p 56. See also Exhibit 64, *Europol Cash Report*, p 20: “EUR 1 million in 500 notes equates to just 2000 notes weighing 2.2 kg, taking up a space of just under 3 litres (which, for instance, would easily fit inside a small laptop bag). Meanwhile, the same amount of money (EUR 1 million) in EUR 50 notes equates to 20,000 pieces weighing over 22 kg and taking up the space of a small suitcase.”

78 Evidence of S. Lord, Transcript, May 29, 2020, pp 7–8.

79 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 54, 55; Exhibit 33, Her Majesty’s Treasury and Home Office, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (October 2015), p 76, para 8.7.

80 Evidence of S. Lord, Transcript, May 29, 2020, p 7; Exhibit 33, Her Majesty’s Treasury and Home Office, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (October 2015), p 76, para 8.8.

81 European Central Bank, “Banknotes,” online: <https://www.ecb.europa.eu/euro/banknotes/html/index.en.html>.

82 Exhibit 33, Her Majesty’s Treasury and Home Office, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (October 2015), p 76, para 8.9.

The effect of [withdrawing the 500-euro bill] was [that] people moved almost immediately into purchasing the 200-euro notes instead, because it was the next highest note value and the best way of packing a lot of value into a small ... space.<sup>83</sup>

### **Purposes of Cash Smuggling**

The FATF report explains that the method used to transfer cash depends on a decision-making process by the criminal, which ultimately depends on the *purpose* of the cash movement:

This process begins with the criminal deciding what the purpose of the cash movement is (for example, to break the audit trail, to pay a supplier, to bank it in another jurisdiction etc.). This will dictate the ultimate destination, which will in turn inform the method used, and ultimately the route chosen. At all stages, influences such as risk, familiarity, simplicity and the demands of partners will affect the decisions made.<sup>84</sup>

Simon Lord testified that transporting small amounts of cash can be accomplished by having someone hide the cash on their person, whereas when moving cash “on an industrial scale” – for example, in quantities possessed by Colombian drug trafficking cartels – would require transportation by freight, given the size, weight, and bulkiness of such quantities of cash.<sup>85</sup>

There are a number of reasons why criminals may seek to move cash. As noted above, a key one is to break the audit trail. Others include:

- **Demand:** cash may be needed in another jurisdiction to pay for further consignment of illicit goods or purchase an asset.
- **Avoiding regulatory oversight:** it may be easier to bank funds or otherwise use them in another jurisdiction due to less stringent anti-money laundering controls.
- **Familiarity:** criminals may move cash across borders where they were successful in doing so before.<sup>86</sup>

Depending on the purpose of moving the cash, criminals may engage in transactions that have no obvious business purpose. For example, criminals may withdraw cash from a bank account in one country and pay it into a bank in another.<sup>87</sup> Simon Lord explained that a colleague from the Tunisian financial intelligence unit has observed such activity:

<sup>83</sup> Evidence of S. Lord, Transcript, May 29, 2020, p 7.

<sup>84</sup> Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, p 3.

<sup>85</sup> Evidence of S. Lord, Transcript, May 29, 2020, pp 6–7.

<sup>86</sup> Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 37–44.

<sup>87</sup> *Ibid*, pp 35–36.

[Criminals] had gotten money in the financial system in Tunisia and they had managed to withdraw the money in large amounts of cash. And obviously that's something that you can do in Tunisia, but you may not be able to do in somewhere like Canada or the UK. And the guy had then taken the cash and just moved it across a couple of midland boundaries to another country in Africa and paid it back into the bank in that location. And it was simply to break the audit trail ... it was moving the cash across an international boundary, because he knew that even though they were only ... maybe 500 kilometres apart, the authorities in country B wouldn't be talking to the authorities in country A, and equally, didn't consider the cash to be suspicious. And so, there was no way you would be able to know that that person in location A also had a bank account in location B and he just moved the cash from one place to another.<sup>88</sup>

### ***Methods and Routes of Cash Smuggling***

There are a number of ways in which cash can be smuggled across borders. Again, the technique chosen will depend on the purpose of moving the cash. Some methods include:

- **Cash couriers:** cash may be moved by a person who has been recruited by a criminal organization to transport criminally derived cash across an international border on their person – for example, concealed in clothing, in a money belt, in their luggage, or even internally.<sup>89</sup>
- **Concealed within a method of transport:** cash may be concealed in cars, trucks, or maritime craft, with or without the knowledge of the carrier.<sup>90</sup>
- **In containerized or other forms of cargo:** this method is popular for very large amounts of cash, given that individuals can only carry so much with them.<sup>91</sup>
- **Concealed in mail or post parcels:** significant amounts of cash can be concealed in this way if using large denomination bills.<sup>92</sup>
- **Hidden in plain sight:** this might be done by taking advantage of limited requirements for declaring cash.<sup>93</sup>

Closely related to methods of smuggling is the route chosen, which again will depend on the purpose of moving the cash in the first place. For example, a criminal seeking to move 100,000 euros from the Netherlands to Spain may make different decisions than a criminal seeking to move 100,000 British pounds from the United

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88 Evidence of S. Lord, Transcript, May 29, 2020, p 10.

89 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, p 28; Exhibit 64, *Europol Cash Report*, p 19.

90 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, p 28; Exhibit 64, *Europol Cash Report*, p 19.

91 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, p 28.

92 Ibid, p 28.

93 Ibid, p 28.

Kingdom to Spain. The first criminal may choose to move cash from the Netherlands to Spain by car because (a) 100,000 euros would be very heavy, (b) they would likely be detected by authorities if moved by air, and (c) the Schengen agreement means that there are no restrictions on movement in the European Union.<sup>94</sup> In contrast, moving cash between the United Kingdom and Spain raises other considerations, including that (a) the United Kingdom has a different currency than Spain, meaning currency exchange would be necessary; and (b) concealment will be more important to avoid scrutiny by border agents, which may lead to increased use of high-denomination notes to reduce bulk and weight. Further, if the risk of detection is deemed too high, the criminal may choose to transport the funds by car through the Channel Tunnel to France before moving to Spain – while this would normally not be a sound business choice, it may achieve the criminal’s purpose in moving the cash.<sup>95</sup>

## Difficulties in Detecting Cash Smuggling

A number of difficulties arise in detecting cash smuggling across borders. The FATF report identifies a number of challenges that countries face domestically, including:

- a lack of training for customs officers specifically relating to cash-based money laundering;
- inefficient coordination between customs and other agencies (mainly law enforcement);
- insufficient information being communicated to the financial intelligence unit;
- limited resources;
- lack of access to tools such as X-ray facilities, body scanners, and cash detection dogs; and
- lack of knowledge by financial institutions’ staff about how cash declaration forms can be misused.<sup>96</sup>

Given the necessarily international dimension of cash smuggling, it is also important to have effective information and intelligence sharing between countries. The FATF report notes a number of difficulties in this regard.<sup>97</sup> Related to intelligence sharing is the exchange of evidence: the report notes issues relating to ineffective use of mutual legal assistance.<sup>98</sup>

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94 Ibid, p 49.

95 Ibid, p 49.

96 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 94–96. See also Exhibit 64, *Europol Cash Report*, pp 7, 21.

97 Exhibit 4, Appendix LL, *FATF Bulk Cash Report*, pp 96–97.

98 Ibid, pp 97–98.

The FATF report also notes a number of legislative barriers that countries face. Although some countries may have a comprehensive legal framework in place to address cash smuggling by natural persons, they may lack the necessary legal tools to properly address cash in cargo and mail. For example, customs authorities may not have the legal authority to detain shipments for further information, to require the disclosure of further information, or to investigate appropriately.<sup>99</sup>

Simon Lord testified that cash, when being freighted, has its own commodity code that does not attract any duty or value-added tax (VAT). As a result, customs paperwork often does not refer to the *amount* in the shipment, and cash is sometimes deliberately misdeclared for security reasons. As a result,

that makes actually understanding how much cash there is in transit from place A to place B extremely difficult, because what you might find, even if the cash is declared correctly, the ... customs forms might just say “cash, two tons,” and then give the value of the consignment as the value of the paper that it’s printed on and the ink that’s on it rather than the fact that it’s 60 million francs.

And so, it’s actually quite difficult to work out how much cash is actually being moved around the world, and you have to dig into it quite a lot. And one of the things that we discovered was ... that occasionally you might need to use ... coercive powers on a financial institution to get them to tell you who the actual beneficial owner of the cash is, but you didn’t have access to those powers because the cash had been declared entirely correctly according to customs procedures, and you have no other grounds for suspicion which might allow you to go for a court order.<sup>100</sup>

The difficulties in investigating crime involving large quantities of cash are unlikely to disappear in the near future, given that cash continues to be widely used in criminal activity. It is essential that law enforcement and policymakers continue to develop expertise in cash-based activity and have the necessary tools required to detect such activity. In Chapter 8, I recommend the creation of a new provincial AML Commissioner, a person and office that will develop significant expertise with money laundering typologies and vulnerabilities, as well as measures to combat money laundering. The AML Commissioner will be well-placed to engage in ongoing monitoring and research of bulk cash smuggling and to issue public reports that set out recommendations for improvement. I would also encourage the new provincial money laundering intelligence and investigation unit that I recommend in Chapter 41 to be alive the ways in which the movement of cash can be a component of a money laundering operation.

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<sup>99</sup> Ibid, pp 98–100.

<sup>100</sup> Evidence of S. Lord, Transcript, May 29, 2020, pp 8–9.

## Conclusion

Bulk cash smuggling, a practice that has existed for years and continues to occur, plays a key role in the underground economy. By its nature, bulk cash smuggling will always involve at least two countries, and thus has an inherently international dimension. Consequently, the activity calls for responses primarily at the federal level. It is my hope and expectation that the federal government will review the currency declaration regime under the *PCMLTFA* – particularly the continued appropriateness of the penalties therein – and pay close attention to reports by the FATF and Europol in order to strengthen the Canadian regime.

## Chapter 37

# Informal Value Transfer Systems

I have referred to informal value transfer systems (sometimes called “underground banks”) at various points in this Report, including Chapters 2, 3, and 21. In basic terms, these systems allow people to move *value* from one location to another without transferring *funds* through the regulated financial system. This occurs through the use of “cash pools” in different locations that, in simple terms, enable someone to make a deposit in one location and access cash in another, with the cash pools ultimately being settled.

While, as I discuss below, informal value transfer systems can have legitimate uses, they also play a significant role in the underground money laundering economy. They exist around the world, and there is remarkable similarity between the various versions worldwide.<sup>1</sup> Informal value transfer systems internationally include *hawalas* (Middle East), *hundi* (India), *undiyal* (Sri Lanka), *fei qian* (China), and *saraf* (Iran).<sup>2</sup> In this province, one criminal operation employing the “Vancouver model,” which I discuss in more detail in Chapter 3, made extensive use of informal value transfer to launder substantial sums of illicit cash over a number of years.

In what follows, I explain how these systems work and the money laundering vulnerabilities associated with them. Although this chapter focuses largely on illicit activity involving informal value transfer systems, I emphasize at the outset that such systems are often used for legitimate purposes as well, including by individuals who have difficulty accessing traditional banking services.

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1 Evidence of S. Lord, Transcript, May 28, 2020, p 82.

2 Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), para 2; Evidence of S. Lord, Transcript, May 28, 2020, p 75.

## What Are Informal Value Transfer Systems?

Informal value transfer systems are essentially underground “banking” channels that allow users to move *value* between locations without actually transferring *funds*. While each system is slightly different, the operators typically have “pools” of cash available to them in different locations. When a client needs to transfer funds from one location to another, the money will be paid into the cash pool in the first location and paid out of the cash pool in the jurisdiction where the recipient needs the money. (Across borders, this may mean the use of different currencies, but for equivalent value.) The money paid into the first pool will be held in that location until another client needs to transfer funds into that jurisdiction. Over time, the operator may need to reconcile the cash pools to keep them in balance. However, there is no transfer of funds on an individual basis. In this way, individuals are not actually sending funds across borders – rather, the settling process enables funds to be deposited in one location and accessed in another.

Simon Lord described the operation of these systems as follows:

Essentially, it's money transmission at its most basic. Quite a lot of the time these types of systems are tied to specific geographic regions, ethnic communities and what have you, and essentially what they do is they arrange for transfer and receipt of funds or equivalent value without the physical need to transfer the funds themselves. So you're transferring value but not necessarily the funds. So there won't be a straight line remittance from point A to point B through the banking system ... [S]omeone will make a deposit of funds in one location and will receive an equivalent value in another location, less fees and commission, but without there actually being a physical connection between the two. And they generally involve a process which I generally refer to as “cash pooling.” So, the people who are involved in these types of networks have available to them pools of funds in different locations, not always cash. Sometimes it's money in bank accounts, sometimes it's trade. But pools of funds in different locations and you receive the payment into one of those pools and make a payment out of another one. And then over time there will be a settlement arrangement between the pools to keep them in balance. Because obviously if all the money went one way, you would end up with lots of money in one place and not in another, and you would have to have some sort of settlement mechanism in place. So settlement can take place through trade, through cash, through net settlements over a long period of time, quite often through the banking system. They're often informal in so far as this type of stuff often happens outside of the formal financial system, but by no means all the time. They often interact with financial systems as well.<sup>3</sup>

3 Evidence of S. Lord, Transcript, May 28, 2020, pp 57–58.

Informal value transfer systems can be used to send money around the world. In a 2013 report, the Financial Action Task Force focused on what it termed “*hawalas* and other similar service providers.”<sup>4</sup> The task force considers such services to be a subset of money or value transfer services and defines them as “money transmitters, particularly with ties to specific geographic regions or ethnic communities, which arrange for transfer and receipt of funds or equivalent value and settle through trade, cash, and net settlement over a long period of time.”<sup>5</sup> However, the report differentiates informal value transfer systems from money transmitters as follows:

While [*hawalas* and other similar service providers] often use banking channels to settle between receiving and pay-out agents, what makes them distinct from other money transmitters is their use of non-bank settlement methods, including settlement via trade and cash, as well as prolonged settlement time. There is also a general agreement as to what they are not: global money transfer networks (including agents) operated by large multinational money transmitters and money transfers carried out through new payment methods including money remittance services. This description is based on *services* provided by them and *not their legal status*. [Emphasis in original.]<sup>6</sup>

The report divides *hawalas* and similar service providers into three categories: pure traditional (legitimate) ones, hybrid traditional (sometimes unwitting) ones, and criminal (complicit) ones.<sup>7</sup> Traditional, legitimate service providers – the first category – have existed for centuries in South Asia and the Middle East in largely unregulated environments.<sup>8</sup> They are used extensively for low-value remittances on behalf of individuals and tend to be popular among migrants because of familial, regional, or tribal affiliation, as well as inadequate access to regulated financial services.<sup>9</sup> If they are sufficiently regulated and supervised, these providers will present low or lower money laundering and terrorist financing risks because of the low value of average transactions.<sup>10</sup>

The second category – hybrid providers – are ones that may be used, intentionally or not, for illegitimate purposes such as the transmission of illicit money across borders. They are not primarily set up to move illicit money, but may become involved in illegal activities such as moving money generated from tax evasion or other crime, evading currency controls, or avoiding sanctions. They use similar methods to traditional providers and are not part of a criminal network.<sup>11</sup>

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4 Exhibit 4, Overview Report: Financial Action Task Force, Appendix BB, FATF, *The Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing* (October 2013) [FATF Hawala Report].

5 Ibid, pp 9, 12.

6 Ibid, p 9.

7 Ibid, p 14.

8 Ibid, p 14; Evidence of S. Schneider, Transcript, May 26, 2020, p 23.

9 Exhibit 4, Appendix BB, FATF Hawala Report, p 14.

10 Ibid.

11 Ibid, pp 14–15.

Finally, criminal providers are knowingly involved in criminal activity. The Financial Action Task Force report indicates that in some countries, informal value transfer service providers are increasingly being set up or expanded to service criminals. They are often controlled by criminals or criminal groups – particularly professional money launderers – and present high money laundering and terrorist financing risks.<sup>12</sup> Their networks often enable other crimes beyond money laundering, such as tax fraud, currency offences, and corruption.<sup>13</sup>

A 2016 report by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) notes that although the Financial Action Task Force divides informal value transfer systems into three categories, “it is likely that even legitimate [systems] may, at times, facilitate transactions involving illicit funds. Similarly, criminal [systems] may facilitate transactions involving completely [lawful] funds.”<sup>14</sup>

It is important to emphasize that there are many legitimate uses of informal value transfer services. Indeed, Professor Jason Sharman testified that “as far as we know, the overwhelming majority of those transfers are used for entirely legitimate and lawful purposes.”<sup>15</sup> Informal value transfer services can be particularly useful in countries with underdeveloped financial systems. They have the ability to deliver money to distant countries where regulated channels do not exist; in some cases, they may be the only channel through which funds can be transmitted in conflict regions.<sup>16</sup> These systems are also frequently used by illegal foreign migrants residing in developed countries, whose illegal status precludes them from accessing banks and regulated financial services providers.<sup>17</sup> Further, in some countries, individuals may have a lack of confidence in banks; that is often the case in countries where bank failures have occurred and customers have lost deposits. Some users may also have limited understanding or familiarity with traditional financial services due to a lack of financial literacy or language barriers.<sup>18</sup> Some informal value transfer services also have some advantages over banks, offering cheaper or faster services or better exchange rates.<sup>19</sup>

## How Does an Informal Value Transfer System Work?

The Financial Action Task Force’s 2013 report outlines four different methods of settlements used by informal value transfer systems:

- simple reverse transactions;
- triangular settlement;

<sup>12</sup> Ibid, p 15.

<sup>13</sup> Ibid; Evidence of S. Schneider, Transcript, May 26, 2020, p 26.

<sup>14</sup> Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), para 3.

<sup>15</sup> Evidence of J. Sharman, Transcript, May 6, 2021, p 23.

<sup>16</sup> Exhibit 4, Appendix BB, FATF Hawala Report, pp 17–18.

<sup>17</sup> Ibid, p 18; Evidence of J. Sharman, Transcript, May 6, 2021, p 26.

<sup>18</sup> Exhibit 4, Appendix BB, FATF Hawala Report, p 18.

<sup>19</sup> Ibid, p 17.

- settlement through value; and
- use of cash couriers.<sup>20</sup>

**Simple reverse transactions** are a classic form of transfer. For example, a customer may want to send money from the United States to India. The customer provides cash to the US service provider, who in turn asks his counterpart in India to make a payment to the beneficiary in India. The Indian service provider uses his local cash pool to make the payment – no transfer of funds actually occurs between the US and Indian providers. To settle the transaction, the US provider will make a future payment to a beneficiary in the US on behalf of a customer of the Indian service provider. Over a period of time, the overall net amount of transactions may balance, but if not, a settlement will take place, usually via wire transfer.<sup>21</sup>

**Triangular settlement** is a variation of the simple reverse transaction approach. It involves several service providers. In the above example, the US provider asks the Indian provider to provide cash to someone. At the same time, the Indian provider has a customer seeking to send money to Somalia. If the Indian provider does not have a counterpart in Somalia, he may seek assistance from the US service provider to identify a provider in Somalia that owes a debt to the US one. Once the Somalian service provider pays the beneficiary on behalf of the Indian one, all accounts are settled.<sup>22</sup>

**Settlement through value** is a common practice in Afghanistan, Iran, Pakistan, and Somalia. Operators use a surplus of cash or banked money to fund trade payments at the request of a business that in turn pays the individual recipients in the remittance destination region. Finally, settlement can occur through the **use of cash couriers** who physically transport cash, including across borders.<sup>23</sup>

Money laundering schemes involving informal value transfer systems can become very complex, involving multiple networks and countries and incorporating trade-based money laundering and other forms of criminality. Mr. Lord provided an example of a complex money laundering operation using informal value transfer, which I discuss in detail below.

Informal value transfer systems often involve multiple actors in several countries who may not know each other personally, and the amounts of money involved can be quite large. In order to ensure that the money is given to the right person, operators of informal value transfer systems often use a technique known as “token-based” exchange. As I explain further below, criminal informal value transfer systems typically involve a controller, collector, coordinator, and transmitter. The controller is in charge of the entire operation, and the collector actually meets with the criminal to receive the cash. When a

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<sup>20</sup> Exhibit 4, Appendix BB, FATF Hawala Report, pp 23–24.

<sup>21</sup> Ibid, p 23.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

controller asks a collector to meet a criminal to receive cash, the collector quotes the serial number of a small-denomination bill in his possession to the controller. The controller then transmits that number to the criminal by way of text message, WhatsApp, or another messaging system. When the criminal ultimately provides the cash to the collector, the collector produces the bill with its unique serial number, and the criminal is assured that the collector is the person meant to receive the cash – nobody else could have that bank note with its unique serial number. Further, when the collector hands over the bill, that bill acts as a kind of receipt: the criminal can show it to his boss in the event of a loss. Mr. Lord testified that token-based exchange is used all over the world, including in Canada.<sup>24</sup>

## Money Laundering Risks

Informal value transfer systems entail a number of money laundering risks. In general, they can pose a money laundering vulnerability “simply because of the fact that they’re off the books and that there’s no official record of them [and] they’re not part of the anti–money laundering surveillance system that covers formal banking.”<sup>25</sup> Indeed, they may be attractive to money launderers precisely because they enable criminals to operate under the radar.<sup>26</sup>

In what follows, I review the “controller, collector, coordinator, transmitter” money laundering typology as well as the “Vancouver model.” I then consider difficulties with anti–money laundering regulation of informal value transfer systems.

## Controller, Collector, Coordinator, Transmitter Typology

Criminal informal value transfer systems often employ the controller, collector, coordinator, transmitter typology. The **controller** (also known as a money broker) is the individual who arranges for the collection of street money (such as drug proceeds) and arranges for the delivery of an equivalent value to its ultimate destination (for example, businesses controlled by a drug cartel). The Financial Action Task Force report calls the controller the “key to the success of the system,” noting that the controller acts as a third-party money launderer and is normally responsible for the money from the time it is collected until the value is successfully delivered (and may bear the cost of funds that are lost or not effectively transferred). The **collector** is instructed by the controller to collect money from criminals and to dispose of it following the controller’s instructions. He is the controller’s trusted representative and faces the highest risk of arrest because

24 Evidence of S. Lord, Transcript, May 28, 2020, p 77–79. A receipt is important because the money laundering network assumes responsibility for the safe delivery of the funds to the remote location. As a result, the network will be responsible for paying out the funds even if, for example, a member of the network is arrested and the cash is seized. Further, this system avoids a situation where the networks would need to literally record the name of the criminal providing the funds, the amount of the funds, and the recipient – recording such info “would be suicide” for a criminal: *ibid*, p 78.

25 Evidence of J. Sharman, Transcript, May 6, 2021, p 24.

26 Evidence of S. Schneider, Transcript, May 26, 2020, p 48.

he actually meets the criminal customer to collect the cash.<sup>27</sup> The criminal customer using an informal value transfer system is typically charged a percentage of the amount sought to be transferred; this is a commission paid to the criminal network.<sup>28</sup> Some schemes involve a **coordinator**, who is an intermediary that manages parts of the money laundering process for one or more controllers. Finally, the **transmitter** receives and dispatches the money to the control of the controller.<sup>29</sup>

The diagram below (Figure 37.1; also included as Exhibit 11) was prepared by Mr. Lord and illustrates a fictitious example of a complex informal value transfer system and how it can be used to launder illicit funds. The diagram demonstrates that criminal informal value transfer systems can quickly become very complex, spanning multiple countries and using several money laundering techniques. Indeed, such systems can be used not only for money laundering but also for facilitating other crimes, including illegal currency trade, import and export fraud, sanctions evasion, tax evasion, and financing of terrorism.<sup>30</sup>

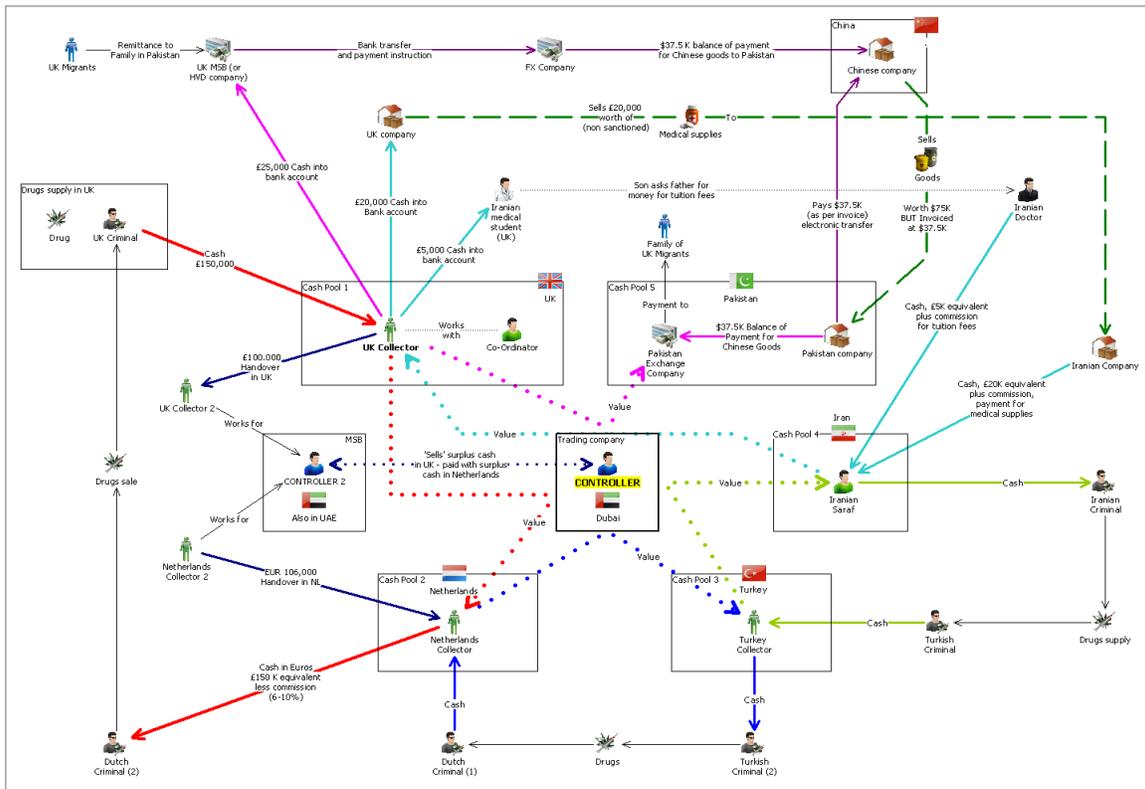


Figure 37.1: IVTS Network Map

Source: Exhibit 11, IVTS Network Map

27 Evidence of S. Lord, Transcript, May 28, 2020, pp 78–79.

28 Ibid, p 72.

29 Exhibit 4, Appendix BB, FATF Hawala Report, p 29.

30 Ibid, pp 9, 18, 33–44.

The diagram is nicknamed the “London Underground map” given the various colours and arrows.<sup>31</sup> What follows is a summary of Mr. Lord’s explanation of the diagram. The controller at the centre of the picture (highlighted in yellow) is operating out of Dubai.<sup>32</sup> He has access to a number of cash pools: in this example, cash pools are located in the UK, the Netherlands, Turkey, Iran, and Pakistan. A collector is indicated in relation to each of these pools.

On the left side of the diagram, a UK criminal (in this example, a drug trafficker) is seeking to have £150,000 appear in the Netherlands. “Dutch criminal (2)” at the bottom left supplied the drugs, and the UK criminal is seeking to pay him.<sup>33</sup> The controller arranges for his UK collector to meet with the criminal and collect the cash.<sup>34</sup> The cost to the UK criminal to have his transaction pass through this network is around 6 to 8 percent of the amount he is seeking to pay Dutch criminal (2).<sup>35</sup>

The UK collector takes the cash from the UK criminal to a safe location, counts it, and reports to the controller on the amount received.<sup>36</sup> The controller then contacts the Dutch collector, who in turn has received cash from “Dutch criminal (1)” that the latter wants to appear in Turkey. The controller tells the Dutch collector to provide £150,000 to Dutch criminal (2).<sup>37</sup>

In most situations, the controller will pay out the criminal (in this example, Dutch criminal (2)) from the pool of cash he maintains in the Netherlands (here, Cash Pool 2). However, there may be situations in which that pool does not have enough cash for the payout. In such cases, the controller may work with other controllers conducting similar operations in order to facilitate the transfer.<sup>38</sup>

In this example, the Dutch collector is missing EUR 106,000. He informs the controller, who then contacts “Controller 2,” who also happens to be located in the United Arab Emirates. The two controllers are technically in competition, but they will work together where it benefits them both. Here, Controller 2 agrees to provide EUR 106,000 (equivalent to £100,000) to the Dutch collector. In exchange, the controller agrees to provide £100,000 to Controller 2’s network in the UK (recall that the UK cash pool has £150,000 in cash from the UK criminal). The controller instructs his UK collector to provide £100,000 to a collector working for Controller 2, and a reciprocal handover of EUR 106,000 occurs in the Netherlands.<sup>39</sup>

31 Evidence of S. Lord, Transcript, May 28, 2020, p 67.

32 Ibid, pp 67–68.

33 Ibid, p 69.

34 Ibid, pp 68–69. The scheme will often include a “coordinator” as well, who controls various collectors in an area.

35 Ibid, p 72.

36 Ibid, p 70.

37 Ibid. The Turkish collector has likewise received cash from “Turkish criminal (2)” that the latter wants to appear in Iran, and the cycle continues.

38 Ibid, pp 70–71.

39 Ibid, p 71.

At this point, the Dutch collector has sufficient funds to settle the transaction between the UK criminal and Dutch criminal (2). The collector pays Dutch criminal (2), and the transaction is settled (indicated by the red arrows on the diagram).<sup>40</sup>

Importantly, the UK collector still has £50,000 in the UK cash pool – the UK criminal had provided £150,000, and the UK collector transferred £100,000 to the collector working for Controller 2. The UK collector does not want the £50,000 to sit idle; he instead engages in trade-based money laundering.<sup>41</sup>

On the right side of the diagram, Cash Pool 5 is located in Pakistan. A Pakistani company is importing goods worth \$75,000 from China. The Pakistani company wants to import these goods without paying the value-added tax (VAT), customs duties, and other charges. The Pakistani importer therefore arranges with the Chinese company to invoice for only half of the value of the goods – so, the paperwork indicates the value is \$37,500 rather than \$75,000.<sup>42</sup> At this point, the Pakistani company has received \$75,000 worth of goods but has only paid \$37,500. To compensate the Chinese company for the under-invoicing, the Pakistani company makes a payment of \$37,500 to an exchange company in Pakistan that is complicit with the controller.<sup>43</sup>

At the same time, the controller contacts the UK collector to put £25,000 (of the £50,000 that remains from the UK criminal) into a bank account of a money services business located in the UK.<sup>44</sup> Meanwhile, some migrants want to send funds to their family in Pakistan for legitimate reasons. They send funds to the UK money services business, which transfers the funds to a foreign exchange (FX) trading company. That company is instructed to pay the \$37,500 that the Chinese company is owed.<sup>45</sup> So, the Chinese company has been paid in full, and the Pakistani company has successfully evaded tax and fees.<sup>46</sup>

The result of all this is that a UK investigator, who sets off trying to follow the original £150,000, may not appreciate everything that has occurred:

[T]he important thing to realize here is if you were following the old adage of “follow the money,” what you would see is the UK criminal’s money going to the UK collector, going into [a money services business] company, and going to China, and you’d be saying to yourself as a financial investigator, well, why does my guy want his money in China? And the fact is he doesn’t, and his money hasn’t gone to China. His money has actually popped out in the Netherlands, but the actual money that he put into the collector has been used for a different purpose, to settle a trade transaction in between two completely independent people.<sup>47</sup>

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40 Ibid, p 72.

41 Ibid.

42 Ibid, pp 72–73.

43 Ibid, p 73.

44 Ibid. This is illustrated in the top left corner of the diagram.

45 Ibid, pp 73–74.

46 Ibid, p 74.

47 Ibid, p 74.

This is not the end of the matter, however. The UK collector still has £25,000 remaining from the original £150,000, and he uses those funds to facilitate two legitimate transactions.<sup>48</sup> First, he makes a £20,000 payment to a UK company that has exported medical supplies to a company in Iran. While the export of medical supplies is perfectly legal, it is virtually impossible for the company receiving those supplies to make a direct bank transfer to the UK company because of the international sanctions in place against Iran, so the Iranian company has paid the UK company through an Iranian *saraf* (essentially a money services business). The *saraf* settles with the controller, and the controller completes the transaction by making a cash payment to the UK company.<sup>49</sup>

Second, the UK collector allows an Iranian doctor to send £5,000 to his son, who is studying medicine in the UK. Like the Iranian company importing medical supplies, a direct bank transfer is impossible. Accordingly, the father provides an equivalent amount to the Iranian *saraf*, who transfers those funds to the controller, who instructs his UK collector to provide £5,000 to the son. While the use made of those funds is completely legitimate, it is important to note that the cash given to the son is the product of drug trafficking activity carried out by the UK criminal in the United Kingdom (something referred to as “cuckoo smurfing”).<sup>50</sup>

## Informal Value Transfer in British Columbia

The evidence before me revealed that informal value transfer systems have undoubtedly been used to launder significant amounts of money in British Columbia. Once such example was uncovered through the E-Pirate investigation, discussed further in Chapter 3, which revealed that a criminal organization engaged in a laundering operation utilizing a method that has been referred to as the “Vancouver model” made extensive use of informal value transfer to settle accounts between China, British Columbia, and other jurisdictions.

The Vancouver model is a method of money laundering that has figured prominently – as the name suggests – in British Columbia. The term appears to have been first used by an Australian professor, John Langdale, in a presentation about criminal alliances from China that posed a threat to Australia.<sup>51</sup> In this model, organized crime groups operating in British Columbia deposit the cash of their illegal activity with the operator of an informal value transfer system in the Lower Mainland and receive an equivalent value (less the commission earned by the operator) in countries such as Mexico and Colombia. The cash received by the operator is then repurposed and provided to wealthy Chinese nationals who are unable to move their wealth to British Columbia because of the currency export restrictions imposed by the Chinese government. Those individuals make payments to the operator of the

48 Ibid. This is illustrated on the far right of the diagram.

49 Ibid, pp 74–75.

50 Ibid, pp 75–76.

51 Evidence of S. Schneider, Transcript, May 26, 2020, pp 28–29.

informal value transfer system in China and receive the equivalent value in cash when they arrive in British Columbia.<sup>52</sup>

While a significant portion of that cash was used to make large cash buy-ins at Lower Mainland casinos (see Chapter 13), it is important to understand that the cash can be used for any legitimate or illegitimate purpose, including the purchase of real estate and luxury goods. I also emphasize that the individuals seeking to move their wealth from China to British Columbia are not necessarily involved in criminal activity; they may well have acquired that wealth through legitimate means. The problem is that most, if not all, of the actual cash provided to those individuals in British Columbia is derived from profit-oriented criminal activity and is being paid out by the operator of the informal value transfer system in furtherance of a money laundering scheme.

Elsewhere in this Report, I have concluded that the Vancouver model was used to launder significant sums of money through the British Columbia economy (see Chapter 13). That the model has been used to launder significant sums shows that informal value transfer systems have great potential to be misused – and indeed have been misused – by those intent on money laundering and other criminality. These systems are therefore a significant money laundering vulnerability in this province.

Indeed, the Criminal Intelligence Service British Columbia / Yukon Territory concludes in a 2018 report that there are professional money launderers in British Columbia who use informal value transfer systems to assist their organized crime clientele.<sup>53</sup> According to the report, organized crime relies on professional money launderers and their money services businesses and informal value transfer systems to handle illicit funds, convert currency, and move money internationally.<sup>54</sup> The report opines that criminal informal value transfer systems are of great concern in British Columbia because they provide organized crime with the ability to move illicit funds to other organized crime groups, including in other countries.<sup>55</sup>

FINTRAC has similarly concluded that professional money laundering in Canada takes place through money services businesses and informal value transfer systems, noting that professional money launderers may own or have connections to one or several money services businesses and informal value transfer systems.<sup>56</sup> A FINTRAC

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52 Ibid, pp 29–31; Evidence of S. Schneider, Transcript, May 25, 2020, pp 27, 47–48, 59–61, 65. While the Vancouver model typically involves Chinese nationals seeking to move their wealth out of China, the same model could be used by any foreign national seeking to avoid the currency export restrictions imposed by the government in their home country and move significant sums of legitimate or illegitimate wealth to British Columbia.

53 Exhibit 438, Criminal Intelligence Service British Columbia / Yukon Territory, *Professional Money Launderers Who Own/Control Money Services Businesses* (November 2018), p 1.

54 Ibid, pp 1–2.

55 Ibid, p 4.

56 Exhibit 442, FINTRAC, *Financial Intelligence Report: Professional Money Laundering in Canada* (March 2019), p 6.

report notes that it has identified two professional money laundering networks that use both formal and informal value transfer systems and were, as of March 2019, under investigation by law enforcement.<sup>57</sup>

## Difficulties with Regulation

Informal value transfer systems are not regulated in the same way as other sectors I have discussed in this Report. FINTRAC considers them to be a form of money services business and therefore expects them to comply with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) regime in the same way as a money services business would (see Chapter 21).<sup>58</sup> The requirements for money services businesses under the *PCMLTFA* notably include a requirement to register with FINTRAC.<sup>59</sup> However, I expect that the vast majority of these systems do not comply with the *PCMLTFA* regime, both because those that are involved in criminality would have no incentive to do so, and because those that seek to operate legally may be unaware of their obligations due to language or cultural barriers (this occurs with money services businesses, as I discuss in Chapter 21).

Indeed, a key challenge flagged by both the Financial Action Task Force and FINTRAC is the difficulty in identifying unregistered informal value transfer systems. A FINTRAC report notes that regulatory agencies, including FINTRAC, have difficulty identifying such systems because they rely on voluntary registration systems.<sup>60</sup> The Financial Action Task Force similarly observes that informal value transfer systems are difficult to detect because they are often trust-based, secretive, and unregistered; moreover, it is difficult to assess compliance of such services even when they operate legally.<sup>61</sup> It concludes that regulating and supervising informal value transfer service operators is one of the key challenges facing authorities.<sup>62</sup>

Some countries have attempted to regulate informal value transfer services, including by requiring that they be licensed or registered and report suspicious and other transactions. A 2010 Financial Action Task Force report notes that Denmark, Sweden, the United Kingdom, the United States, and Germany had done so.<sup>63</sup> As of 2013, a slight majority of countries had barred informal value transfer systems from operating legally. Those that allowed their operation (and required licensing/registration) believed

57 Ibid.

58 Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), para 3; Exhibit 442, FINTRAC, *Financial Intelligence Report: Professional Money Laundering in Canada* (March 2019), p 6; FINTRAC, *Operational Alert: Laundering the Proceeds of Crime Through a Casino-Related Underground Banking Scheme* (December 2019), p 1, online: <https://www.fintrac-canafe.gc.ca/intel/operation/casino-eng.pdf>.

59 *PCMLTFA*, s 11.1.

60 Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), para 4.

61 Exhibit 4, Overview Report: Financial Action Task Force, Appendix EE, *FATF Report: Money Laundering through Money Remittance and Currency Exchange Providers* (June 2010), para 82.

62 Exhibit 4, Appendix BB, FATF Hawala Report, p 26.

63 Exhibit 4, Overview Report: Financial Action Task Force, Exhibit EE, *FATF Report: Money Laundering Through Money Remittance and Currency Exchange Providers* (June 2010), para 82.

that legalization had helped expand remittances through legal channels; however, relatively few had actually registered or become registered.<sup>64</sup> Further, many countries had not yet devised effective mechanisms to identify, monitor, and take action against illegal operators.<sup>65</sup>

The difficulties with regulation increase the money laundering risk associated with informal value transfer systems. Operators that conduct their activities with no regulation are particularly vulnerable because they permit funds to be moved with little or no customer due diligence requirements – this allows criminals to freely send or receive funds with limited risk of being identified.<sup>66</sup> Relatedly, criminal informal value transfer service operators are difficult to prosecute: as the operators are typically far removed from the criminal activities that generate the illicit proceeds, it is difficult for law enforcement to demonstrate that they are handling proceeds of crime.<sup>67</sup>

In contrast to other members of the Financial Action Task Force, Canada and British Columbia have taken relatively few steps to regulate informal value transfer systems. As I noted above, FINTRAC takes the view that informal value transfer systems constitute money services businesses and are therefore subject to the requirements of the *PCMLTFA*,<sup>68</sup> including a requirement to register with FINTRAC. In a 2016 report, FINTRAC indicates that it has engaged with the eight largest financial institutions in Canada with the goal of enhancing suspicious transaction reporting on informal value transfer systems that are not complying with the *PCMLTFA*.<sup>69</sup>

As with the identification of unregistered money services businesses (see Chapter 21), outreach with other reporting entities may assist in identifying unregistered and non-compliant informal value transfer networks, particularly in instances where the problem is an operator's lack of knowledge or understanding of their obligations. However, such outreach is likely less useful when it comes to criminally run informal value transfer networks, the identification of which is properly a law enforcement issue. Some tools, such as surveillance and certain sources of intelligence, are available only to law enforcement, making it a key actor for the detection of such networks. Indeed, as I discuss in Chapter 39, it did not take long for law enforcement to make a link between Silver International and a criminal informal value transfer network. It is crucial that law enforcement be aware of the risks attaching to such networks and work toward identifying them using tools that only it possesses.

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64 Exhibit 4, Appendix BB, FATF Hawala Report, p 11.

65 Ibid, p 55.

66 Ibid, p 26.

67 Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), para 4.

68 Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), para 3; Exhibit 442, FINTRAC, *Financial Intelligence Report: Professional Money Laundering in Canada* (March 2019), p 6; FINTRAC, *Operational Alert: Laundering the Proceeds of Crime Through a Casino-Related Underground Banking Scheme* (December 2019), p 1, online: <https://www.fintrac-canafe.gc.ca/intel/operation/casino-eng.pdf>.

69 Exhibit 445, FINTRAC, *Financial Intelligence Report: Criminal Informal Value Transfer Systems (IVTS)* (February 2016), para 15.

I have recommended elsewhere (Chapter 41) that the Province establish a new law enforcement unit within the Combined Forces Special Enforcement Unit focused on money laundering investigation and intelligence. It will be key that the new unit develop intelligence relating to underground informal value transfer networks, including those operating in the Lower Mainland whose aim is to navigate around foreign currency export restrictions. I emphasize that, despite the measures now in place in casinos that have greatly reduced the acceptance of cash (see Chapters 11, 12, and 14), other industries – such as real estate and luxury goods – may very well have become more vulnerable to money laundering through informal value transfer. The new unit will need to be aware of the potential displacement of this typology and actively seek to identify the criminal informal value transfer networks operating in the province.

Finally, it is important that government agencies and regulators are adequately informed of informal value transfer systems and related typologies of money laundering. In this regard, the AML Commissioner (recommended in Chapter 8) will be well placed to conduct ongoing study in this area and ensure that affected government agencies and regulators are aware of the risks and typologies associated with informal value transfer.

## **Conclusion**

Informal value transfer systems are an important part of the underground economy. While they have legitimate uses for many customers, there are clear money laundering risks associated with those operators who are complicit with criminals. Money laundering using such systems has occurred in this province and will likely continue to occur. It is important that government, regulators, and law enforcement continue to develop their knowledge and awareness of this activity. Reporting entities have an important role to play in reporting activity that they suspect is linked to criminal informal value transfer systems. However, law enforcement – particularly the new investigation and intelligence unit I have recommended – must play a key role in disrupting this underground activity, which has had significant impacts on British Columbia's economy.

## Chapter 38

# Trade-Based Money Laundering

Trade-based money laundering is generally understood as the process of disguising illicit funds and moving value between jurisdictions through the use of international trade transactions, in an attempt to legitimize their illicit origins. At their most complex, these schemes can be a tangled web of transactions involving multiple criminal actors in various jurisdictions. When combined with other money laundering tools – such as shell companies, offshore accounts, nominees, legal trusts, and the use of cryptocurrency – it can be extremely difficult for investigators to analyze and unravel these complex schemes.

While there is general agreement that trade-based money laundering is a significant threat, and arguably one of the largest and most pervasive methodologies in the world, it is not well understood and there is good reason to think that a significant percentage of such activity goes undetected. Fortunately, however, there are a number of promising tools that can assist investigators in identifying suspicious transactions and deterring this type of conduct.

In this chapter, I provide an overview of trade-based money laundering and discuss some of the international trade transactions commonly used to launder illicit funds. I also examine the risks associated with trade-based money laundering in British Columbia and conclude with concrete proposals for reform.

### **The International Trade System**

In order to understand how trade-based money laundering operates, it is important to have a basic understanding of the international trade system.

International trade is the buying and selling of goods and services between parties in different states, which allows countries to expand their markets and results in increased competition and competitive pricing. In the Canadian context, an **export** is a product sold to the global market, and an **import** is a product bought from the global market.

International trade is a matter of federal jurisdiction under section 91(2) of the *Constitution Act, 1867*. The federal government has the exclusive delegated jurisdiction to enter into international treaties and participates in a number of international agreements and memoranda of understanding with other governments.<sup>1</sup>

Trade accounts for a significant portion of Canada's gross domestic product and has, with few exceptions, continued to rise in recent years.<sup>2</sup> Exports have grown in British Columbia relatively consistently since 2010, with 2020 standing as an anomaly, likely due to the COVID-19 pandemic. BC exports the most (by value) to the United States, followed by China, Japan, and South Korea. Natural resource and energy products represent, by a large margin, the most significant export sector in British Columbia.<sup>3</sup>

## Trade Finance

In many cases, those involved in international trade require financing to support their activities – something known as trade finance. Exporters, for example, may require working capital to process or manufacture products for export before receiving payment. Conversely, importers may require a line of credit to buy goods from overseas.

John Cassara, a former US law enforcement official and an internationally renowned expert on trade-based money laundering, explained trade finance in the following terms:

[T]rade finance covers trade transactions in which a bank provides some form of financing to a party in the transaction. In the transactions, a party will present documents to the bank, and often a letter of credit, for example, is requested. And these are referred to as "documentary transactions." In these transactions, banks generally process documentation involved in the trade transactions, such as bill of lading, invoice, packing lists. This type of stuff. And the trade finance officer in the bank reviews the information underlying the transaction for soundness and compliance with anti-money laundering policies and procedures.<sup>4</sup>

1 See, for example, Exhibit 338, Overview Report: Canada's Customs Mutual Assistance Agreements, which contains examples of customs mutual assistance agreements and other international agreements and memoranda of understanding between Canada and its partners.

2 Detailed statistics breakdown at: [https://www150.statcan.gc.ca/n1/en/subjects/international\\_trade](https://www150.statcan.gc.ca/n1/en/subjects/international_trade). BC-specific reports related to trade at: <https://www2.gov.bc.ca/gov/content/data/statistics/business-industry-trade/trade>.

3 See [https://www2.gov.bc.ca/assets/gov/data/statistics/business-industry-trade/trade/exp\\_annual\\_bc\\_exports.pdf](https://www2.gov.bc.ca/assets/gov/data/statistics/business-industry-trade/trade/exp_annual_bc_exports.pdf).

4 Evidence of J. Cassara, Transcript, December 9, 2020, pp 74–75.

Some of the more common trade finance products include:

- **bills of exchange**, which bind a purchaser to pay a fixed sum to an exporter on demand or at a predetermined date, much like a promissory note;
- **countertrade**, where an exporter takes on a reciprocal obligation in lieu of a cash payment or settlement; and
- **documentary credit**, where a bank extends credit to its client (usually an importer) and assumes responsibility for payment of the imported goods.

International trades that do not rely on financing from a financial institution are known as **open account trade transactions**. By one estimate, open account trade constitutes 80 percent of international trade processed through financial institutions.<sup>5</sup>

While most open account trade transactions are processed through conventional electronic funds transfers, I heard evidence that mobile payments such as WeChat (a Chinese social media app used to transfer money) and cryptocurrencies are increasingly favoured by those involved in trade-based money laundering and other underground financial systems.<sup>6</sup>

## Trade-Based Money Laundering

Trade-based money laundering is the process of disguising illicit funds and moving value through the use of trade transactions in an attempt to legitimize their illicit origins.<sup>7</sup> It typically occurs through the misrepresentation of price, quantity, or quality of imports or exports in order to transfer value between complicit sellers and complicit buyers in different jurisdictions (something known as **trade mispricing**).<sup>8</sup>

Trade-based money laundering involves varied and, in some cases, elaborate schemes to transfer value between countries. However, the basic techniques include

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5 Ibid, p 76.

6 Ibid, p 81.

7 Exhibit 345: Canada, TBML Presentation (April 1, 2020), p 2; Exhibit 1020, Overview Report: Information Relating to the FATF & Egmont Group Trade-Based Money Laundering Report, Appendix A, pp 11–12; Exhibit 1017, Overview Report: NCIE ML / Fraud, Appendix A, p 14; Evidence of J. Cassara, Transcript, December 9, 2020, pp 41–42; Evidence of B. Gateley, Transcript, December 10, 2020, p 15; Evidence of J. Gibbons, Transcript, December 10, 2020, pp 19–20 (Mr. Gibbons testified that the use of “illicit financial flows,” as opposed to “proceeds of crime,” is intended to capture more conduct, including capital flight, proceeds of corruption, and sanctions evasion).

8 Exhibit 339, Overview Report: Trade-Based Money Laundering Reports and Records, p 61; Exhibit 347, CBSA, TBML (June 5, 2019), pp 11–13. See also Evidence of J. Gibbons, Transcript, December 10, 2020, p 27. Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 122. (To move money out of a country, a party must undervalue its exports or overvalue its imports. Conversely, to move money into a country, a party must overvalue its exports and undervalue its imports.)

over- and under-invoicing, multiple invoicing, over- and under-shipments, and falsely described goods and commodities. I discuss each of these techniques below.<sup>9</sup>

## Over- and Under-invoicing

Over- and under-invoicing occurs where the exporter issues an invoice for an amount greater or less than the true value of the goods in order to transfer value between countries. In an **under-invoicing** scenario, an exporter seeking to move value to another country might sell widgets worth two dollars per widget to a foreign importer for a price of one dollar per widget. When the foreign importer sells those widgets in its home country, it will receive one dollar more per widget than was paid for those products.<sup>10</sup>

In an **over-invoicing** scenario, an exporter seeking to transfer money into the country could sell widgets worth two dollars each to the foreign importer and invoice the importer for a higher price (for example, three dollars per widget). When the invoice is paid, the exporter will have received one dollar per widget more than the widgets were worth. If a thousand widgets were sold at this elevated price, one thousand dollars would be surreptitiously transferred to the exporter.

John Zdanowicz, a professor emeritus at Florida International University and a pioneer in the research of illicit financial flows through international trade, provided the following example of under-invoicing:

Let me give you an example. If I am a drug dealer here in Miami and I have \$1 million in cash that I want to move to a foreign country, let's say Colombia, I can go into downtown Miami in an afternoon and buy 200 gold watches for \$5,000 each. So I've converted my million dollars in cash into a million dollars of a commodity, gold watches. I then export them to my colluding partner in the foreign country, but I invoice him \$5 per watch. Therefore, I export the gold watches. He actually pays me \$1,000 for those, which is just a transaction cost. Once the watches are in Colombia, they are sold in the open market for \$5,000 each. Actually a few years back in Miami there were drug dealers buying Corvettes for \$40,000 cash [and] exporting them to Latin American countries, and they were invoiced at \$500 an automobile. And when they got into the Latin American countries, they were sold for \$50,000. So not only do they launder \$40,000, they made a \$10,000 profit doing it.<sup>11</sup>

<sup>9</sup> Evidence of J. Cassara, Transcript, December 9, 2020, p 51; Exhibit 341, Final Statement by John A. Cassara [Cassara Report], pp 14–15. Over- / Under-invoicing explained: Evidence of J. Gibbons, Transcript, December 10, 2020, pp 24–25. Multiple invoicing explained: Evidence of J. Gibbons, Transcript, December 10, 2020, pp 26–27. Phantom shipping explained: Evidence of J. Gibbons, Transcript, December 10, 2020, pp 26, 82. Misdescription explained: Evidence of J. Gibbons, Transcript, December 10, 2020, p 25. Although there is some debate over whether trade-based money laundering is distinct from trade fraud, the aim of trade-based money laundering is the concealment or legitimization of value through trade, whereas the aim of other trade-related predicate offences is the evasion of duties, tariff quotas, or other controls on goods.

<sup>10</sup> It will also receive one dollar more per widget than what was reflected on the invoice and shipping documents, which helps to obscure the transfer of illicit funds.

<sup>11</sup> Transcript, December 11, 2020, pp 122–123.

He also provided a number of extraordinary examples of trade mispricing, including plastic buckets imported to the United States from the Czech Republic with a declared price of \$972 per bucket, toilet tissue from China imported at a price of over \$4,000 per kilogram, and bulldozers shipped from the United States to Colombia at a price of \$1.74 per bulldozer.<sup>12</sup>

## Multiple Invoicing

Multiple invoicing occurs where the exporter issues multiple invoices for the same shipment of goods. The second invoice is completely fictitious. However, it creates a pretext for the transfer of money from a foreign importer to the domestic exporter.<sup>13</sup>

## Over- and Under-shipping

Over- and under-shipping is similar to over- and under-invoicing, except that the exporter sells widgets to the foreign importer for the correct price (two dollars per widget) but includes more widgets than indicated on the shipping documents to transfer value to the foreign importer, or fewer widgets than indicated to transfer value into its home country.<sup>14</sup>

The common feature of these methods is that value (though not actual dollars) is secretly moved from one country to another, in a manner that obscures the real transaction. Such a process may also provide an explanation for certain funds (that they resulted from a particular transaction) and hide the real amount of value involved.

## Falsely Described Goods and Commodities

In some cases, the importers and exporters involved in trade-based money laundering will falsely describe the goods and commodities being shipped in order to transfer value into or out of the country. The shipment of more valuable goods will result in a transfer of value to the foreign importer while the shipment of less valuable goods will result in a transfer of value to the domestic exporter when the invoice is paid.

## New and Emerging Methodologies

While the export of goods through marine-containerized shipping remains the key driver of trade-based money laundering activity, it is important to note that there are a number of emerging methodologies. **Service-based money laundering** seeks

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<sup>12</sup> Exhibit 341, Cassara Report, p 17. Although these prices could be the result of input or classification errors in the database used in Professor Zdanowicz's study, they could also represent attempts to transfer value into or out of the United States.

<sup>13</sup> Evidence of J. Gibbons, Transcript, December 10, 2020, pp 26–27.

<sup>14</sup> As I understand it, **over- and under-shipping** refers to a situation where the price of the goods as set out on the trade documents is correct but the exporter ships a different number of goods than indicated. **Over- and under-invoicing** refers to a situation where the correct number of goods is shipped but the exporter manipulates the price of those goods to surreptitiously transfer value between countries.

to obscure the transfer of illicit funds through the trade of services as opposed to commodities. It presents difficulties for law enforcement because of the challenge in establishing market prices for specialized professional services.<sup>15</sup> It is particularly difficult to detect, given the absence of a database of services comparable to that for imports and exports.<sup>16</sup>

**Phantom shipments**, where money is transferred between importers and exporters through the financial system in order to settle a purely fictitious invoice without any physical movement of goods, have also emerged as a new typology.<sup>17</sup> Because the bank is not extending any kind of financing to the Canadian exporter or the foreign importer, it has a limited stake in the transaction and will not perform any real due diligence unless it sees other red flags associated with the transaction. Moreover, there are no customs declarations or shipping documents to fill out, with the result that the Canada Border Services Agency (CBSA) may not know about the trade unless the information comes to its attention through other sources.

I return to some of the unique challenges faced by CBSA and law enforcement agencies investigating trade-based money laundering later in this chapter.

## Nature and Magnitude of the Threat

While the nature and prevalence of trade-based money laundering has never been systematically examined, there can be little doubt it poses a significant risk to Canada and Canadian institutions.

Bryanna Gateley, an intelligence analyst supervisor with the RCMP's Federal Serious and Organized Crime Border Integrity Unit and a former intelligence analyst with FINTRAC, testified that trade-based money laundering causes four types of harm to Canada:

- First, it has national security implications insofar as it gives criminals – including terrorists, extremists, and transnational organized crime groups – a relatively risk-free mechanism to repatriate illicit funds and continue their unlawful activities.
- Second, it leads to the perception that Canada is a jurisdiction of concern from a money laundering perspective (thereby leading to reputational harm).
- Third, it has the potential to cause harm to the economic security of the country, including the integrity of financial institutions and legitimate markets for goods and commodities. It also has the potential to undermine the foundation of macroeconomic policy decisions made by the federal government, insofar as it distorts the trade data that forms the basis of those decisions.

<sup>15</sup> Evidence of J. Cassara, Transcript, December 9, 2020, pp 79–80.

<sup>16</sup> Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 195; see also Evidence of B. Gateley, Transcript, December 10, 2020, p 30.

<sup>17</sup> Evidence of J. Gibbons, Transcript, December 10, 2020, pp 82–88; and Evidence of B. Gateley, Transcript, December 10, 2020, p 26.

- Fourth, the misdescription of goods and commodities on customs forms could result in less tax revenue being collected by the federal government (although the magnitude of that loss is unknown and there are some trade-based money laundering schemes that could theoretically result in more revenue being collected).<sup>18</sup>

While the magnitude of these harms or potential harms cannot be ascertained without further study, I agree with Ms. Gateley that trade-based money laundering poses a serious risk to Canadian and BC institutions and requires a meaningful response.<sup>19</sup>

A June 8, 2020, assessment by CBSA suggests that, *at a minimum*, hundreds of millions of dollars are being laundered through the trade in goods “to and through Canada each year.” Moreover, it appears that a significant percentage of trade-based money laundering activity is carried out by professional money laundering organizations and networks.

A 2018 operational alert issued by FINTRAC warns that professional money launderers are using traditional trade-based money laundering techniques such as multiple invoicing to transfer illicit funds to complicit parties in other jurisdictions.<sup>20</sup> It also raises the spectre of Canadian businesses participating in underground currency exchanges such as the **black market peso exchange** (which is one of the best-known examples of trade-based money laundering).

In basic terms, the black market peso exchange and other similar exchanges allow transnational organized crime groups such as Mexican and Colombian cartels to move US drug-trafficking proceeds back to their home countries. From the perspective of the transnational organized crime group, the US drug money is “sold” to the black market peso dealer at a discount, with the cartel receiving “clean” money in its home country. However, the peso dealer must undertake a complex series of transactions in order to produce “clean” money for the transnational organized crime group in Mexico or Colombia. In a simple version of the scheme, the black market peso dealer may contact business owners in Mexico who want to buy goods or services from US vendors but need US dollars to purchase those goods. The peso dealer will arrange for the US drug money to be transferred to the US vendor to pay for the goods ordered by the business owner in Mexico. In return, it receives “clean” funds from the Mexican business owner, which are provided to the transnational organized crime group.<sup>21</sup>

Joel Gibbons, a senior analyst at CBSA and a senior program advisor to the Trade Fraud and TBML Centre of Expertise, testified that these schemes range from the simple

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18 Evidence of B. Gateley, Transcript, December 10, 2020, pp 42–45.

19 A Government of Canada PowerPoint presentation dated April 28, 2018, suggests that the lack of reliable information with respect to the magnitude of the problem is the result of a “circular policy trap” whereby “resources are required to prove resources are needed”; see Exhibit 339, Overview Report: Trade-Based Money Laundering Publications and Records, Appendix CC, p 1063.

20 A copy of the FINTRAC alert that includes these risk factors is included as Appendix 38A.

21 Online: <https://www.fintrac-canafe.gc.ca/intel/operation/oai-ml-eng>. See also Evidence of J. Gibbons, Transcript, December 10, 2020, pp 63–69, and December 11, 2020, pp 35–36. Of course, there are many other versions of the scheme, some of which have a high level of complexity.

to the exceedingly complex and, more often than not, involve the shipment of goods through multiple jurisdictions in an attempt to obfuscate the audit trail. He stated:

More often than not, goods are routed through multiple different countries all around the world, even in often-times nonsensical trading routes, before they ultimately arrive back at the jurisdiction where the criminal proceeds are destined. And so Canada, for example, can be used as just one node in a very complex international black market peso exchange scheme where the US could be involved – Canada, and imagine any number of countries around the world. And shipments are broken up at specific locations around the world to further obfuscate the trail of those goods. And so a customs service like mine may only be able to see just one leg in the international routing of goods that are involved in black market peso exchange schemes, and criminal actors are well aware of that, and they exploit it to their advantage. So, by breaking up one of these schemes into multiple jurisdictions where Canada or the United States don't really have any knowledge of how those goods are being declared in those foreign jurisdictions, the trail goes cold, and it's one of the many reasons that black market peso exchange schemes are such a concern and used to the extent that we believe they are by criminal actors.<sup>22</sup>

British Columbia may be particularly vulnerable to trade-based money laundering because of its international shipping ports; its large volume of international trade; and its stable, accessible financial system. For example, intelligence reports produced by the Criminal Intelligence Service British Columbia / Yukon Territory indicate that:

- There are organized crime groups in British Columbia that have the capability, knowledge, and transnational relationships to orchestrate trade-based money laundering schemes.
- These organized crime groups have the knowledge, skills, and relationships to manipulate trade chains and conduct complex foreign exchange transactions to commingle proceeds of crime with legitimate funds.
- Two BC-based organized crime groups were known to be involved in trade-based money laundering as of 2018 (though that is believed to be an under-representation, with the true scope of trade-based money laundering in British Columbia being a significant “intelligence gap”).<sup>23</sup>

<sup>22</sup> Evidence of J. Gibbons, Transcript, December 10, 2020, pp 68–69. The FINTRAC alert notes that the two variants of the scheme that FINTRAC observes most often involve (a) brokers sending suspected illicit funds held in Latin America or the United States to Canadian trading companies, wholesalers, dealers, and brokers via electronic funds transfer and, to a limited extent, cash couriers with these entities subsequently sending the funds to entities in places such as China, Hong Kong, and the United States to pay for the goods; and (b) brokers sending suspected illicit funds held in Latin America to US-based entities, as well as Chinese- or Hong Kong-based trading companies, through electronic funds transfer via a Canadian financial institution acting as a correspondent bank.

<sup>23</sup> See Exhibits 352, 353, 354, 355, 356.

Staff Sergeant Sushile Sharma, a senior RCMP investigator with significant experience investigating trade-based money laundering schemes, gave an example of an investigation that involved the export of used vehicles and furniture from individuals in Vancouver to areas of Africa, including Tanzania and Nigeria. These goods were sold at a considerable profit, with the proceeds being used to purchase heroin at cheaper prices than in North America.<sup>24</sup> Female drug mules then transported the heroin back to North America on commercial flights, where it was sold at a profit. In some cases, the proceeds of those sales were used to purchase additional vehicles and furniture to continue the loop.<sup>25</sup>

After receiving information from an international partner, the RCMP determined that the individuals involved in that scheme were also involved in a “very, very, very sophisticated and far-reaching mass-marketing fraud ring operation extending ... from Los Angeles to the Midwest as well as the eastern seaboard of America.”<sup>26</sup> The proceeds of that fraud were making their way into the hands of their target and used to accumulate more goods, vehicles, and furniture to sustain the cycle.

Overall, I am satisfied that trade-based money laundering is a significant (and perhaps the most significant) money laundering threat facing this province. I am also satisfied that this problem is deserving of serious attention by law enforcement agencies, particularly at the federal level. I return to the law enforcement response to trade-based money laundering later in this chapter.

## **Goods Typically Used in Trade-Based Money Laundering Schemes**

Trade-based money laundering schemes can involve a wide range of commodities ranging from high-value, low-volume goods (such as precious metals) to low-value, high-volume sectors (such as textiles). Generally speaking, preferable goods have the following qualities:

- they are easy to sell;
- they have wide pricing margins;
- they have extended trade cycles, meaning that they are shipped through multiple jurisdictions; and
- they are difficult for customs authorities to examine.

Mr. Gibbons testified that electronics and mobile phones are an attractive commodity for trade-based money laundering in Canada: these commodities are portable, easy to ship,

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24 Evidence of S. Sharma, Transcript, December 10, 2020, p 109–11. Kilo-level heroin purchased off the east coast of Africa can run anywhere from \$15,000 to \$18,000 per kilo, whereas the kilo-level price of heroin in North America would be anywhere from \$55,000 to \$70,000 and sometimes even \$80,000 per kilo.

25 Evidence of S. Sharma, Transcript, December 10, 2020, p 118.

26 Evidence of S. Sharma, Transcript, December 10, 2020, p 119.

easy to sell, and have a high value. Moreover, their descriptions can be easily manipulated and their values adjusted.<sup>27</sup> Other commodities vulnerable to trade-based money laundering include fresh and frozen food products, clothing, textiles, lumber and paper-based products, scrap metal, scrap plastic, precious metals and stones, and used vehicles.<sup>28</sup>

Mr. Cassara raised particular concerns about the international gold trade. He testified that, in his experience, some of the largest money laundering cases have involved misuse of the international gold trade. Gold, he said, is attractive to money launderers because it is both a commodity and a de facto bearer instrument that offers stability as well as anonymity to money launderers:

Gold is a readily acceptable medium of exchange. It's accepted anywhere in the world. In times of uncertainty, gold offers stability. Gold offers easy anonymity to money launderers. Depending on the need ... the form of gold can be easily changed or altered. It can be melted, smelted down. There's a worldwide market in cultural demand. Gold transactions can easily be layered or hidden. It's perfect for placement, layering, and integration. Old and varied forms can be easily smuggled. And by weight, it represents much more value than cash.<sup>29</sup>

Mr. Cassara went on to state that the countermeasures for the misuse of gold as a money laundering tool are known but have not been implemented in many jurisdictions:

While there have been major investigations around the world involving the misuse of gold, precious metals, diamonds, and gems, it is not clear if cases have been made in Canada. Certainly, Canada is vulnerable. Canada has all the factors that would enable gold and precious gems to be used as a money laundering mechanism. Countermeasures are known. Gold in all its many forms should be an automatic red flag for customs, law enforcement, intelligence agencies, and bank compliance officers – particularly when the sourcing, destination, or routing is problematic. Trade data for gold in almost all its forms should be collected and analyzed. Anomalies should be identified and the results disseminated. Money laundering via the misuse of the international gold trade should be prioritized simply because gold represents one of the prime risks for laundering large amounts of money or transferring large amounts of value. Also, we know that gold manufacturers and dealers should set up [anti-money laundering / combatting the financing of terrorism] compliance programs. The challenge is that these common sense countermeasures are not sufficiently implemented.<sup>30</sup>

27 Evidence of J. Gibbons, Transcript, December 10, 2020, pp 94–98; Evidence of J. Gibbons, Transcript, December 11, 2020, pp 81–84; Exhibit 359, CBSA, *Electronics and Canadian Goods Returned / The Abuse of Tariff Codes 9813 and 9814 in TBML* (October 1, 2020).

28 Evidence of B. Gateley, Transcript, December 10, 2020, pp 35–37, 101–3; December 11, 2020, pp 51–52.

29 Transcript, December 9, 2020, p 110.

30 Exhibit 341, Cassara Report, p 34.

I agree with Mr. Cassara that gold is particularly vulnerable to trade-based money laundering. I also agree that there are a number of common sense countermeasures that could be put in place to deter the use of gold in trade-based money laundering schemes, and I would urge further study of this issue at the federal and provincial levels.

Another commodity frequently used in trade-based money laundering schemes is used vehicles.<sup>31</sup> Such vehicles may not hold their value long in the North American market, but they continue to hold their value in other parts of the world because of their scarcity.

Staff Sergeant Sharma testified that the US Drug Enforcement Administration has recently exposed a massive money laundering scheme involving the purchase of used cars by traders in West Africa (see Figure 38.1). His evidence with respect to that scheme illustrates the extreme complexity of many trade-based money laundering schemes as well as the manner in which other money laundering tools, such as informal value transfer systems, are used in conjunction with these schemes:

So this graphic [on display] really is part of the United States Drug Enforcement, DEA's exposure of a massive money laundering scheme operated by Hezbollah for major drug cartels in South America. The scheme involved Lebanese banks wiring money to the United States for the purchase of used cars. These were transported to West Africa, which is known as a springboard location for the delivery of European-bound drug shipments and sold for cash. The cash from the used cars was mixed with drug proceeds and laundered using ... Hezbollah-controlled hawalas.

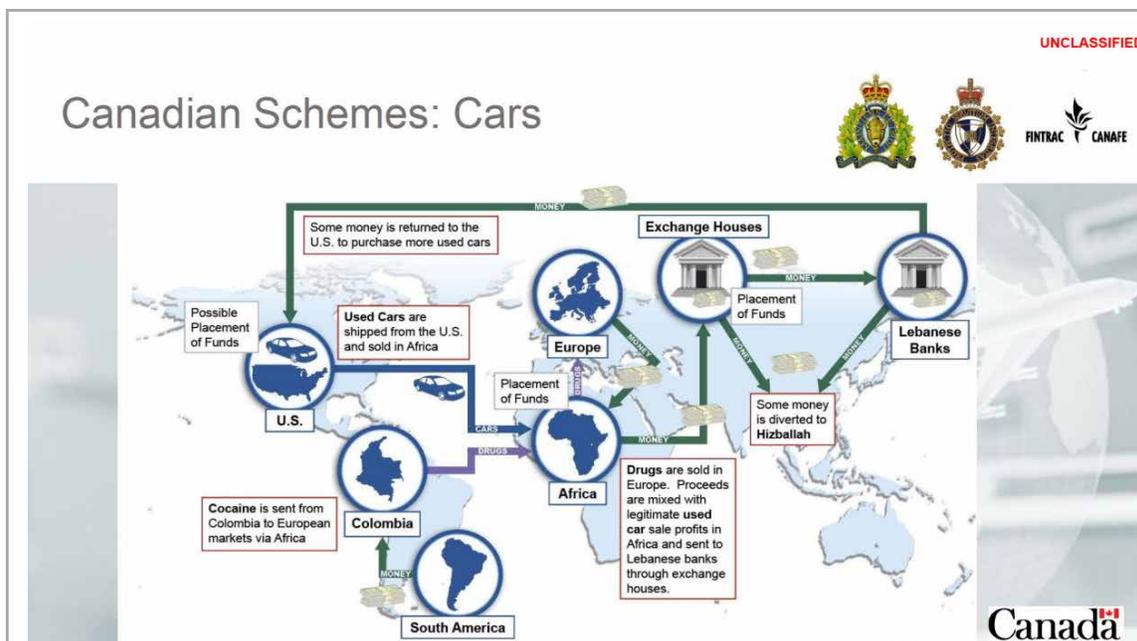
...

From here the money was deposited into accounts at Lebanese Canadian banks, the branches in Lebanon, which [have] strong links with the Hezbollah. A portion of the funds that were deposited into these bank accounts were then wired back to the US to continue the trade of used cars to West Africa, and this all sustained the convoluted money laundering loop. So as you can see, there's a number of things happening here from this graphic, this slide. We're talking about drug trade. We're talking about the movement of vehicles from North America to Africa. We're then talking about the purchase of drugs on the continent of Africa and then the movement of those drugs into Europe.<sup>32</sup>

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31 Exhibit 345, Canada, TBML Presentation (April 1, 2020), pp 19–21; Evidence of J. Gibbons, B. Gateley, S. Sharma, Transcript, December 10, 2020, pp 104–20; Exhibit 842, Luxury Vehicle – Case Scenario (redacted); Exhibit 843, Luxury Vehicle Sub Group (undated); Evidence of M. Paddon and B. Robinson, Transcript, April 14, 2021, pp 87–97. See also Exhibit 833, Peter M. German and Peter German & Associates Inc. *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019, pp 194–201.

32 Evidence of S. Sharma, Transcript, December 10, 2020, pp 105–6.



**Figure 38.1: “Canadian Schemes: Cars”**

*Source:* Exhibit 345, Government of Canada, Trade Based-Money Laundering Overview (April 1, 2020), p 19.

While the evidence before me is not such that I can make express findings with respect to this scheme, the evidence given by Staff Sergeant Sharma and others underscores the magnitude of the problem and the need to address this type of money laundering.

## Types of Businesses Used in Trade-Based Money Laundering Schemes

Trade-based money laundering schemes can be carried out by a wide range of business types, including shell companies, freight forwarders, and customs brokers. Risk factors indicating that a particular business could be involved in trade-based money laundering include:

- rapid growth of a newly formed company into existing markets;
- evidence of consistent and significant cash payments, including those directed toward unrelated third parties;
- receipt of unexplained third-party payments;
- unnecessarily complicated and complex supply chains;
- unexpected pivots into an entirely unrelated sector (e.g., an information technology company becoming involved in the acquisition and distribution of bulk pharmaceuticals); and
- simultaneous involvement in more than one unrelated sector.

A 2018 FINTRAC alert contains a list of factors that may indicate a particular entity is part of a professional money laundering network. It states:

**Indicators of trade-based money laundering by professional money laundering networks**

- An entity is a Canadian small or medium-size import / export company, wholesaler, dealer or broker operating in a sector dealing in high-volume, high-demand commodities with variable price ranges, including agri-food, textiles, electronics, toys, lumber and paper, and automotive or heavy equipment.
- The entity has business activities or a business model that is outside the norm for its sector, or conducts no business activities in Canada. It may also be difficult to confirm the exact nature of the business.
- The entity transacts with a large number of entities that have activities in the above-noted sectors or have names that suggest activities in a wide range of unrelated sectors, and also does some or all of the following:
  - receives a sudden inflow of large-value electronic funds transfers;
  - orders electronic funds transfers to the benefit of China- or Hong Kong-based trading companies or individuals, and receives electronic funds transfers from the U.S. and Latin American countries;
  - orders electronic funds transfers to the benefit of entities or individuals in the U.S., Mexico or Latin American countries, and receives such transfers from the U.S.;
  - orders or receives electronic funds transfers to /from entities holding a bank account in Latvia or Cyprus, and are registered to addresses in the U.K., Cyprus, the British Virgin Islands, Panama, the Seychelles, Belize, the Marshall Islands or other offshore financial centers; and
  - orders or receives payments for goods in round figures or in increments of approximately US\$50,000.
- A trading company based in the United Arab Emirates orders electronic funds transfers to the benefit of individuals or entities in Canada.
- An entity's U.S. dollar business accounts held in Canada exhibit flow-through activity – that is, money is taken or transferred out of the account as quickly as it flows in.

- An entity imports currency (predominantly U.S. dollars) from Latin American countries.
- An entity makes large business purchases by credit card, funded by overpayments.
- An individual issues cheques, purchases drafts or orders electronic funds transfers through the account of a legal professional for trade-related payments.<sup>33</sup>

A 2020 CBSA report indicates that freight forwarders are particularly well-placed to control and direct trade-based money laundering schemes while disguising their role from law enforcement.<sup>34</sup> Freight forwarders occupy a pivotal place in most international supply chains. They are neither the seller nor the buyer of goods. Rather, they expedite the shipment of goods by helping buyers and sellers navigate complex shipping routes and customs processes. In one ongoing investigation, Canadian and foreign freight forwarders were believed to be manipulating the exporter and consignee information on both the Canadian export and overseas import declarations, in order to conceal the true identities of the originator and recipients of the goods on either side of the transaction.<sup>35</sup>

Many money laundering schemes also make use of third parties (i.e., parties with no apparent connection to the international trade transaction) to make payment on the invoices issued by the exporter, in order to reduce scrutiny on the transaction.<sup>36</sup>

## Key Challenges Faced by Investigators

Trade-based money laundering schemes pose a number of unique challenges for customs authorities and law enforcement officials. The sheer volume of international trade and the impossibility of checking every transaction and shipment mean it is easy for trade-based money laundering to “hide in plain sight.”<sup>37</sup>

Some estimates suggest that, globally, less than 2 percent of shipping containers are physically examined and that criminals “routinely” take advantage of customs processes by intentionally misstating the value, quantity, quality, weight, and descriptions of commercial goods in order to evade duty and regulatory requirements.<sup>38</sup>

33 A copy of the FINTRAC alert that includes these risk factors is included as Appendix 38A.

34 Exhibit 339, Overview Report: Trade-Based Money Laundering Publications and Records, Appendix Z, CBSA, Trade-Based Money Laundering Overview (June 8, 2020), p 1035.

35 Ibid, p 1035; *ibid*, Appendix T, CBSA, Knowledge Pool on Trade-Based Money Laundering (April 2020), pp 960–61.

36 Ibid, Appendix Z, CBSA, Trade-Based Money Laundering Overview (June 8, 2020), p 1034.

37 Evidence of J. Gibbons, Transcript, December 10, 2020, p 134. See also Evidence of J. Cassara, Transcript, December 9, 2020, pp 75–76; Exhibit 339, Overview Report: Trade-Based Money Laundering Reports and Records, p 60. A general discussion of the challenges faced by investigators in the investigation of money laundering is set out in Chapter 40.

38 Exhibit 357, CBSA – COVID-19 Implications for Trade Fraud, p 2.

Even if an examination takes place, it can be extremely challenging for border agents to value the commodities being shipped. For example, it is very difficult for a front-line customs agent to tell whether a particular shipment of gold is 18 or 24 carats (which has a substantial impact on value). Moreover, there is often no way for border agents to cross-reference the price that is actually paid for the product against the amount claimed on the shipping documents.

Mr. Gibbons provided an example of a trade-based money laundering scheme where the export declaration indicated that the value of the goods was \$80,000, but \$100,000 was transferred from the foreign importer to the Canadian exporter in order to transfer value into Canada. He testified that the commodity chosen was very difficult to value and examine. However, even if customs agents had examined the shipment, it would have been very difficult to uncover the fraud for various reasons, including the fact that CBSA does not have a systematic way to determine how much money was actually wired.<sup>39</sup>

While trade data may be collected by customs agencies, that information is often paper-based or buried within multiple databases such that it cannot be readily accessed by investigators. In some cases, the software used to aggregate data may not be compatible between agencies, a problem that leads to “information silos” and undermines the effective investigation of trade-based money laundering. Ms. Gateley summarized these challenges as follows:

Additional challenges are that, as you would expect, the trade system is very opaque. It's often paper based. There [are] very long supply chains where you see various documents, including manifests, bills of lading, invoices moving around with the shipment and being processed by various entities, including ports, customs authorities, banks. Though trade data might be collected, the information needed can be buried within multiple databases that [are] really not readily available to analyze or it's not in a format that can be analyzed, especially if it's paper based. Or the trade data arrives just before or even after the product has been delivered, so ... as my colleague Staff Sergeant Sushile [Sharma] has mentioned, it's kind of a day late and a dollar short. It's difficult to ascertain what actually happened after the fact and [to] verify what happened ... [A]dditional challenges are software to analyze aggregate data [that] might not be compatible between agencies, so it's a puzzle piece that we have that needs to be shared amongst agencies so that we can build this larger puzzle of what the scheme is and who's involved. But if our basic software systems aren't compatible to be able to analyze that across various platforms [that] various agencies have, that creates a bit of an issue and an information silo. So essentially the upshot here is that we're missing a lot of these foundational pieces that are really needed to build the picture of what our [trade-based money laundering]

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<sup>39</sup> Evidence of J. Gibbons, Transcript, December 10, 2020, pp 71–74; Evidence of B. Gateley, Transcript, December 10, 2020, pp 134–36. Indeed, it may be only when goods or documents are examined in conjunction with other data that an otherwise innocuous shipment will appear suspicious.

scheme is and who the threat actor is involved, in that information sharing at the domestic and international level is typically very ad hoc, case by case based, very target specific and very manual. So this can make it very difficult to take a macro look or step back as an analyst and extrapolate broader trends, indicators or determine the scope or the true scope of the issue.<sup>40</sup>

When trade-based money laundering is combined with other money laundering tools – such as the use of shell companies, offshore accounts, nominees, legal trusts, third-party payment methods, and cryptocurrencies<sup>41</sup> – it becomes exponentially more difficult for investigators to unravel these complicated schemes and to prove that each person involved in a scheme has the requisite degree of knowledge and control needed to secure a criminal conviction. Moreover, the investigation of trade-based money laundering offences often requires Canadian authorities to work with international partners in order to gather relevant information.

With a co-operative partner it can sometimes take months, if not years, to obtain relevant information through the mutual legal assistance treaty process. However, there are also cases where corruption, ambivalence, or even blind ignorance among foreign police departments makes the investigation of trade-based money laundering even more difficult. For example, Staff Sergeant Sharma gave evidence that his investigators had to be extraordinarily careful about the information they provided to a foreign police agency in one of his investigations because of concerns about corruption within that agency.

In light of these complexities, investigative agencies often focus on the predicate offence and leave the trade-based money laundering scheme unaddressed. This is highly problematic, given the volume of illicit funds that can be laundered through trade-based money laundering schemes and the impact of that activity on government institutions.

## Measures Currently in Place

Investigating trade-based money laundering is largely a federal responsibility. Not only does it involve the manipulation of international trade transactions – an area of exclusive federal responsibility – but it is perpetrated by transnational organized crime groups and requires the co-operation of international partners to investigate.<sup>42</sup>

At present, four key players are involved in the federal response to trade-based money laundering in the province of British Columbia: FINTRAC, CBSA, the RCMP, and the Canada Revenue Agency.

<sup>40</sup> Evidence of B. Gateley, Transcript, December 10, 2020, pp 135–36.

<sup>41</sup> Evidence of J. Gibbons, Transcript, December 10, 2020, pp 28–29. By way of example, illicit funds can be commingled with funds from legitimate businesses, routed through uncooperative jurisdictions, or moved through the use of informal value transfer systems, a process that makes it difficult for investigators to follow the audit trail and prove that each person involved in the scheme has the requisite degree of knowledge and control.

<sup>42</sup> At the same time, there may be a role for the Province in the investigation of trade-based money laundering schemes to the extent that part of the scheme occurs in British Columbia or involves BC companies. There may also be a role for the BC Civil Forfeiture Office in pursuing illicit assets located in British Columbia.

## **FINTRAC**

FINTRAC plays a central role in the identification of trade-based money laundering through the receipt and analysis of suspicious transaction reports. While FINTRAC has received some reports concerning trade-based money laundering activity, there are a number of gaps in the current reporting regime that allow many trade-based money laundering schemes to go undetected.

Importers, exporters, customs brokers, freight forwarders, and other similar entities are not designated as reporting entities under the *PCMLTFA* and have no obligation to file suspicious transaction reports with FINTRAC. These businesses are on the front lines of trade-based money laundering and would undoubtedly be in a position to identify and report at least some suspicious activity.

Financial institutions have an obligation to file suspicious transaction reports concerning electronic funds transfers (sometimes referred to as wire transfers). However, these institutions do not have the opportunity to review sales documents, shipping invoices, or customs forms at the time they process these transfers. As a result, many suspicious transactions are not identified and reported, through no fault of the financial institution.

While financial institutions are better able to identify and report transactions that are processed using the trade finance tools reviewed earlier in this chapter, these transactions make up only about 20 percent of international trade transactions, and, in any event, the evidence suggests that trade-based money laundering may be hidden by a lack of access to financial information and a low degree of awareness of the problem within the capital markets divisions of many financial institutions.

Another complication is that lawyers, who often negotiate trade finance contracts, are exempt from anti-money laundering reporting requirements.

For these reasons, there is good reason to think that a significant percentage of trade-based money laundering activity in this country goes undetected by FINTRAC, and that law enforcement entities engaged in the investigation of trade-based money laundering must develop new ways of identifying and detecting such activity (see below).

## **Canada Border Services Agency**

CBSA is primarily responsible for managing the flow of goods and people into and out of Canada. It manages all of Canada's ports of entry and has staff at the three major international mail-processing centres in Canada. It is important to understand that CBSA is not responsible for the investigation of money laundering and terrorist financing activity. Such investigations remain within the purview of the RCMP. However, CBSA has a role in the investigation of trade-based money laundering because of its role as a trade gatekeeper responsible for the identification of trade transactions indicative of trade fraud.

In identifying trade fraud and trade-based money laundering, CBSA is largely reliant on external sources of information. Financial disclosures from FINTRAC, which are received on a proactive basis and in response to voluntary information requests submitted by CBSA, provide the agency with one of its largest sources of information and will often be the starting point for further exploration of suspicious transactions.<sup>43</sup> Other sources of information include law enforcement bodies at the federal, provincial, and municipal levels, as well as requests from international partners, which often lead to a closer examination of Canadian companies believed to be engaged in trade fraud or trade-based money laundering activity.

CBSA also has border services officers at all of Canada's ports of entry, who are responsible for processing the importation and exportation of goods into or out of Canada. Where these officers have grounds to suspect that a particular transaction has indicators of trade fraud (e.g., where the description does not seem to match the goods they have examined, or where an exporter who is in one line of business presents customs documents for goods that are in a completely different sector), these transactions will be flagged in the system.

A separate program, described as the "trade" program, is responsible for the final accounting of goods once they have arrived in Canada, to ensure that all appropriate duties and taxes have been paid on the shipment. If investigators in that program develop grounds to suspect that any potential non-compliance is wilful, they can make referrals to CBSA's Intelligence and Enforcement Branch for further analysis.

Mr. Gibbons testified that CBSA is on the cusp of implementing a new information technology system known as the CBSA Assessment and Revenue Management (CARM) Project. The system will allow for advanced data analysis of imported goods and search for potential indicators of trade fraud and trade-based money laundering.

One example is **anomalous unit pricing**, where the individual unit price for a good being declared is inconsistent with the aggregate pricing ranges for previous importations of that same commodity. While these anomalies may be indicative of trade fraud or trade-based money laundering, it would be extremely difficult for a CBSA agent to detect pricing anomalies in shipments of similar goods without access to that software.

While the CARM system may provide some assistance in identifying suspicious transactions, the primary purpose of that software is to ensure compliance with revenue requirements such as duties and tax payments, and it has a number of important limitations for the investigation of trade-based money laundering, including the fact that it focuses on imports and does not compare Canadian prices with commodity prices in other countries. I return to this issue later in this chapter.

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43 Evidence of J. Gibbons, Transcript, December 10, 2020, p 50.

## **RCMP**

The RCMP has primary responsibility for the investigation of money laundering offences, including trade-based money laundering. While it has recently increased the number of investigators examining money laundering issues (see below), it is an “information consumer” in the sense that it largely relies on information and intelligence provided by other federal agencies in making operational decisions involving the investigation of money laundering offences. Moreover, I am unaware of any successful trade-based money laundering investigations or prosecutions in recent years.

In an expert report prepared for the Commission, John Cassara, a senior American money laundering expert, recommended the creation of a specialized unit within the RCMP to investigate trade-based money laundering.<sup>44</sup> Mr. Cassara testified that such a unit would reassure the public that trade-based money laundering is being taken seriously, and would pay for itself through the collection of increased taxes, duties, and forfeitures.<sup>45</sup> He also argued that it would allow for the development of specialized expertise in trade-based money laundering.

Staff Sergeant Sharma disagreed, and shared his view that trade-based money laundering does not need to be investigated as an “alien entity.”<sup>46</sup> In his view, there are already money laundering investigators within the RCMP and trade-based money laundering is “just a more specialized manner of layering that investigators now need to be alive to.”<sup>47</sup> He did agree, however, that more training is required, not just for law enforcement officials but also for all federal partners.

I agree with Staff Sergeant Sharma that the creation of a specialized unit to address trade-based money laundering may not be necessary, provided sufficient resources are dedicated to existing money laundering units and information pathways are created to ensure that the RCMP receives as much information as possible with respect to trade-based money laundering. I return to this topic in Chapter 39.

## **Canada Revenue Agency**

The Canada Revenue Agency has a mandate to investigate criminal violations of the legislation it administers, including organized tax schemes and international tax evasion. It also works jointly with law enforcement on money laundering files, including those involving trade-based money laundering.

## **Recent Federal Initiatives**

In the past few years, the federal government has announced two new initiatives aimed at addressing trade-based money laundering: the TBML Working Group and the Trade Fraud and TBML Centre of Expertise.

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44 Exhibit 341, Cassara Report, p 35.

45 Ibid, p 36.

46 Evidence of S. Sharma, December 10, 2020, p 150.

47 Ibid.

### ***TBML Working Group***

In the summer of 2018, the officer-in-charge of the RCMP's Federal Serious and Organized Crime Financial Integrity Unit created the Interagency TBML Working Group. The intention was to bring together directors from various agencies, including the RCMP, CBSA, the Canadian Security Intelligence Service, and the Canada Revenue Agency to explore opportunities for these agencies to work together on trade-based money laundering. Unfortunately, however, the individual who spearheaded that project is no longer with the RCMP, and it is unclear whether the working group is still in existence or whether it has produced any tangible results.

### ***Trade Fraud and TBML Centre of Expertise***

In its 2019 budget, the federal government announced a number of initiatives aimed at strengthening Canada's anti-money laundering and anti-terrorist financing regime. One of those initiatives was the creation of a multidisciplinary Trade Fraud and Trade-Based Money Laundering Centre of Expertise.<sup>48</sup> Mr. Gibbons testified that the primary thrust of the initiative is to develop more institutional knowledge about trade-based money laundering, including the scope and scale of the problem, and to better position CBSA to leverage its capabilities under the *Customs Act*, RSC 1985, c 1 (2<sup>nd</sup> Supp.) and to work beside the RCMP in combatting trade-based money laundering activity.

CBSA officers are able to refer suspected money laundering files to the Trade Fraud and TBML Centre of Expertise, and these referrals may result in criminal investigations for trade fraud or trade-based money laundering. At the time of writing, the centre has received a number of potential leads, but no referrals have been made to criminal investigators. It remains to be seen whether the centre will continue to receive support from the federal government<sup>49</sup> and whether it will lead to any tangible law enforcement results.

## **Additional Measures**

I heard evidence from a number of leading trade-based money laundering experts on steps that could be taken to address the problem. While many of these steps fall within areas of federal responsibility, I outline three of the most promising recommendations below.

48 More specifically, the federal government announced the investment of \$28.6 million over four years beginning in 2020–21, with \$10.5 million per year on an ongoing basis to fund 21 full-time-equivalent employees (FTEs): Exhibit 339, Overview Report: Trade-Based Money Laundering Reports and Records, p 556.

49 A PowerPoint presentation prepared by CBSA with respect to this initiative states that “incremental funding starting in 2022–23 is frozen” and that a report to the president of the Treasury Board is required by March 2022 to unlock funding for an additional 27 FTEs; Exhibit 339, Overview Report: Trade-Based Money Laundering Reports and Records, p 912.

## Trade Transparency Units

One of the most promising recommendations is the creation of a trade transparency unit to collect customs and trade data and share that data with similar units in other countries in order to identify anomalies that might demonstrate over- and under-invoicing. The United States has had a trade transparency unit since 2004, and approximately 17 to 20 units are currently established worldwide.<sup>50</sup> As of 2015, the unit's network had seized over \$1 billion in assets.<sup>51</sup> To help analyze that trade data, US Homeland Security investigations developed specialized software called the Data Analysis and Research for Trade Transparency System (DARTTS). DARTTS incorporates trade, customs, financial, and other data from across US agencies as well as customs services in partner countries.<sup>52</sup> Mr. Gibbons explained the operation of the system as follows:

An example I often give when talking about trade transparency units are banana [exports] from Colombia. So think of a marine container that has bananas in it that's destined for the United States, it's destined for the port of Miami. The Colombian government gathers export information on the bananas that are departing Colombia and that are outbound for the United States, and on the US side the US government gathers import data for that same transaction. And ... DARTTS ... is able to cross-compare those two data points ... the Colombian export transaction and the US import transaction ... and it will cross-compare the elements of the customs declarations – the Colombian export, the US import – to see if they match. That's a relatively simple and simplistic explanation, but that's the fundamental underpinnings of the trade transparency unit concept.

So if the bananas were declared as being valued at the equivalent of \$100,000 US in Colombia but on the US side on import they're being declared to the US authorities as \$2 million worth of bananas, you can see that you've now enabled the movement of the difference, so 1.9 equivalent US dollars, out of Colombia and into the United States. And the DARTTS system ... is designed to detect those anomalies, so it's a form of proactive lead generation really for Homeland Security investigations to try to uncover trade fraud, including possibly trade-based money laundering.<sup>53</sup>

Mr. Gibbons testified that a trade transparency unit could, in principle, be an effective tool in the fight against money laundering. However, a 1987 memorandum of

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50 Evidence of J. Cassara, Transcript, December 9, 2020, p 91; Exhibit 341, Cassara Report, Appendix 2; Evidence of J. Gibbons, Transcript, December 10, 2020, p 76.

51 Evidence of J. Cassara, Transcript, December 9, 2020, p 89.

52 There have, however, been implementation challenges. Mr. Cassara opined that those challenges stemmed primarily from insufficient financial and human resources: Evidence of J. Cassara, Transcript, December 9, 2020, pp 87–91.

53 Evidence of J. Gibbons, Transcript, December 10, 2020, pp 76–77.

understanding between Canada and the United States makes the implementation of that concept difficult in practice. Under the terms of that memorandum, Canada and the United States only collect data involving the *import* of goods into the two countries.<sup>54</sup> Export data – such as the value of goods when they leave the country – is not collected by either party, with the result that there is no useful way to compare the price of goods when they leave Canada against the price of goods when they enter the United States (and vice versa).<sup>55</sup> Accordingly, the creation of an effective trade transparency unit would likely require the renegotiation of the 1987 memorandum of understanding.

Canada could also create a trade transparency unit and enter into bilateral or multilateral agreements with other countries to identify anomalies that could demonstrate over- and under-invoicing. It is important to note, however, that the identification of anomalous transactions is only the first step in the investigation of trade-based money laundering and that significant human effort would be required to follow up on those red flags and determine whether they are, in fact, the result of mispricing or money laundering activity. There is little benefit to creating a trade transparency unit unless the federal government is willing to properly resource these follow-up efforts.

## Advanced Data Analytics

Another solution is to use advanced data analytics to identify anomalies in the Canadian trade data. Such an initiative could assist in detecting and measuring the flow of illicit funds without the need to examine every shipment of goods into and out of the country.

While the CARM Project, discussed above, is one example of software that could allow for advanced data analysis of imported goods, that software appears to be more focused on compliance issues, such as tax and duty evasion, than on trade-based money laundering. For example, it only analyzes data from Canada and does not compare imports with commodity prices in other parts of the world.

Moreover, it focuses only on *imports* and does not analyze any export data, despite the fact that the Canadian export environment is more susceptible to trade-based money laundering than the Canadian import environment because of the significant volume of illicit funds moving from Canada to countries such as Mexico and Colombia.<sup>56</sup>

By contrast, Professor Zdanowicz has developed a methodology that involves examining US trade data purchased from the US Department of Commerce, Bureau of the Census, to identify anomalies that might assist in detecting and measuring the

<sup>54</sup> Ibid p 79–80. Importantly, the memorandum of understanding applies to the import and export of goods only to and from the United States.

<sup>55</sup> Ibid, pp 75–81. Export data is collected in the aggregate but no specific information is collected with respect to the declared value of goods when they leave Canada.

<sup>56</sup> Evidence of J. Gibbons, Transcript, December 10, 2020, pp 55–59; Exhibit 993, Affidavit of Joel Rank, paras 17–18, 28, 40. In fairness, there is a separate reporting system for exports that was launched by CBSA in June 2020. However, there remains somewhat of an imbalance between border controls on exports and controls on the import side of the equation.

flow of illicit funds.<sup>57</sup> Examples of those anomalies include razor blades imported from Colombia at \$34.81 per blade when the world average price was nine cents (a markup of about 38,000 percent) and emeralds imported from Panama at \$974.58 per carat when the world average price was \$43.63 (a markup of more than 2,000 percent).<sup>58</sup> While not all these transactions will be indicative of money laundering,<sup>59</sup> the anomalies identified through his analysis are, at the very least, worthy of investigation.

Professor Zdanowicz testified that anyone in the United States can purchase the trade data for the sum of \$4,800 per year and that he routinely gets retained by organizations such as the World Bank, as well as financial institutions involved in trade finance, to perform his analysis. He also testified that the US trade data is updated monthly and that the analysis can be performed in real time.<sup>60</sup>

Professor Zdanowicz was asked to undertake a similar analysis of Canadian import and export data and generated five macro reports for the Commission that show the amount of money being moved into and out of Canada (and each of its provinces) from 2015 to 2019. In 2019, for example, \$45 billion was moved out of Canada in undervalued exports, and \$44 billion moved out of the country in overvalued imports, for a total of \$90 billion. In British Columbia, there were more than \$4.3 billion in undervalued exports and \$4.1 billion in overvalued imports, for a total of \$8.4 billion.

In terms of money moved *into* Canada, there were \$20.34 billion in overvalued exports and more than \$124 billion in undervalued imports, for a total of \$144.44 billion, of which \$16.5 billion was moved into British Columbia.

Professor Zdanowicz also produced four micro reports for British Columbia. These reports identified approximately 10,000 suspicious transactions, including:

- undervalued exports of digital cameras, resulting in the movement of a \$5.4 million value from British Columbia to Australia;
- undervalued exports of smart cards, resulting in the movement of more than \$148 million out of British Columbia;

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57 In order to understand the technique used by Professor Zdanowicz, it is extremely helpful to watch the livestream of his testimony on December 11, 2020, which can be found here: <https://www.youtube.com/watch?v=i5LjoNex9cY>. The US trade data covers 239 countries and includes 9,084 unique commodity codes for exports and 18,243 unique commodity codes for imports to the United States.

58 Professor Zdanowicz's analysis also allows for the possibility of country-specific prices (as opposed to worldwide prices) to take into account the heterogeneity in goods imported from different countries. For example, clothing imported from France may be valued differently from clothing imported from Haiti.

59 For example, the anomalies could be caused by a data entry error or there could be a good reason for the increased price (such as the import or export of prototypes); see Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 161.

60 Using updated data is critically important in conducting an effective analysis because commodity prices change over time: Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 153. While Professor Zdanowicz's methodology is based on pricing data, he suggested that there are other ways of identifying anomalous transactions, including the weight of the imported goods. For example, he was able to identify briefcases imported from Malaysia at 98 kg per briefcase: Evidence of J. Zdanowicz, Transcript, December 11, 2020, p 142.

- undervalued exports of prefabricated wood buildings, resulting in the movement of a \$4.2 million value out of British Columbia;
- overvalued imports of pistols, resulting in the movement of a \$3 million value out of British Columbia;
- overvalued imports of beer, resulting in the movement of a \$1.9 million value from British Columbia to Mexico; and
- undervalued imports of dishwashing machines from the United States, resulting in the movement of a \$64.9 million value into British Columbia.

In producing these micro reports, Professor Zdanowicz reviewed every import and export transaction into and out of British Columbia in 2019 and used the statistical analysis outlined above to identify these, and other, anomalous transactions. While the data provided to Professor Zdanowicz does not include identifying information about the importer or exporter, that information is available and could be provided to law enforcement agencies once a suspicious transaction is identified.

Professor Zdanowicz was retained by the federal government in 2004 to make a presentation about his data analysis to FINTRAC and other government agencies. Unfortunately, however, it appears that no one followed up with him with a view to implementing this kind of analysis in Canada.<sup>61</sup> I consider his technique to be an extremely valuable tool insofar as it allows for the identification of anomalous transactions in real time without the need to examine every shipment into and out of the country. Moreover, it is noteworthy that Canada already has the data that would allow for the generation of a list of suspicious companies and individuals.

All law enforcement agencies with involvement in the identification and investigation of trade-based money laundering would do well to examine how Professor Zdanowicz's software (or other software with the same capability) could assist in the investigation and prosecution of trade-based money laundering activity. Indeed, his software would be useful not only in identifying trade-based money laundering activity but also in identifying professional money laundering organizations and networks operating in the province.

I therefore recommend that the dedicated provincial money laundering intelligence and investigation unit recommended in Chapter 41 take steps to implement and make use of that software as part of its intelligence functions.

**Recommendation 88:** I recommend that the dedicated provincial money laundering intelligence and investigation unit implement and make use of the software developed by Professor John Zdanowicz, or other software with the same capability, as part of its intelligence functions.

<sup>61</sup> Evidence of J. Zdanowicz, Transcript, December 11, 2020, pp 108, 190.

Financial institutions involved in trade financing may also benefit from Professor Zdanowicz’s software in order to ensure that they do not inadvertently facilitate the transfer of illicit funds into or out of the country.

Professor Zdanowicz also identified six red flags that may assist law enforcement agencies, financial institutions, and others to identify individuals and groups involved in trade-based money laundering activity:

- conducting business in high-risk jurisdictions;
- shipping products through high-risk jurisdictions;
- conducting transactions involving high-risk products (with high-risk products defined as products likely to give rise to anomalous transactions);
- misrepresentation of the quantity and type of products on customs documents;
- invoices that are inconsistent with customs documents; and
- obvious over- and underpricing of commodities (such as bulldozers shipped from the United States to Colombia at \$1.74 per bulldozer).

Finally, I heard evidence that **distributed ledger technology** has promise in detecting and preventing trade mis-invoicing. I understand that the United States has applied such technology at cargo entry on a pilot basis,<sup>62</sup> and I would encourage all levels of government to explore the use of this technology as a tool in the fight against this form of money laundering.

## Information Sharing

A repeated theme in the evidence on trade-based money laundering was the need for better information sharing among relevant stakeholders. At present, information sharing at the national and international level is typically ad hoc, targeted, and manual, which makes it difficult to get a macro analysis of trends or indicators in order to understand the scope of the issues.<sup>63</sup> For example, the software currently used to analyze aggregate data might not be compatible among agencies even within Canada (let alone internationally).<sup>64</sup> Mr. Gibbons explained that one reason that Canada does not have an integrated system is to ensure that each agency has access to information only when there are grounds to suspect that there is money laundering or non-compliance occurring within its sphere of authority. In other words, incompatibility between systems is a safeguard built into the system to protect privacy and *Charter* rights.<sup>65</sup>

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62 Evidence of J. Cassara, Transcript, December 9, 2020, pp 100–1.

63 Evidence of B. Gateley, Transcript, December 10, 2020, p 136.

64 Ibid, pp 135–38.

65 Evidence of J. Gibbons, Transcript, December 10, 2020, p 140.

While I do not wish to diminish the importance of those rights, it may be that a more effective system would include compatible software with access limitations that could be overcome in appropriate instances. Ms. Gateley opined that the use of IT systems that are capable of sharing and analyzing big data sets and can “speak interagency” would be a structural improvement.<sup>66</sup> She also addressed the need to engage the private sector through public / private partnerships such as Project Athena (see Chapter 39) and to leverage non-traditional public sector partners such as Global Affairs Canada, Export Development Canada, and Industry Canada, which hold information that may be relevant to trade-based money laundering.

While information sharing is an important piece of any anti-money laundering regime, the collection and analysis of trade data is particularly important in addressing trade-based money laundering. All efforts should be made to ensure that government systems are at least capable of sharing relevant information when legally permissible, and that CBSA engages all relevant stakeholders in both the public and the private sectors. I would also note that improved trade data analysis and information sharing will only contribute to the identification and disruption of trade-based money laundering if sufficient resources are allocated to the agencies charged with investigating and prosecuting such activity.

In light of the fundamental importance of information sharing in addressing trade-based money laundering, I would urge British Columbia to work with the federal government to encourage improvements to trade data analysis and information sharing capabilities, as well as the resourcing of appropriate agencies to such a level that they can make meaningful use of this information.

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<sup>66</sup> Evidence of B. Gateley, Transcript, December 11, 2020, p 8.

## Appendix 38A: FINTRAC – Operational Alert



Financial Transactions and Reports Analysis Centre of Canada / Centre d'analyse des opérations et déclarations financières du Canada

Canada

**OPERATIONAL ALERT**

Reference number: 18/19-SIDEL-025  
July 18, 2018

### Professional money laundering through trade and money services businesses

Professional money launderers are sophisticated actors who engage in large-scale money laundering on behalf of transnational organized crime groups such as drug cartels, motorcycle gangs and traditional organized crime organizations. Professional money launderers sell their services to these groups and are involved in the majority of sophisticated money laundering schemes; they are not members nor are they involved in the predicate offences that generate illicit proceeds. As such, they present unique identification challenges.

While professional money launderers may be accountants, bankers or lawyers, current financial intelligence suggests that they often are owners of, or associated with, trading companies or money-services businesses. Professional money launderers use their occupation and knowledge, as well as the infrastructure associated with their line of work and their networks, to facilitate money laundering, providing a veneer of legitimacy to criminals and criminal organizations.

This operational alert provides indicators for money laundering carried out through trade and money services businesses. Entities required to report to FINTRAC should use these indicators on their own and in combination to identify potential professional money laundering activities. Reporting entities should also use these indicators in conjunction with a risk-based approach and other money laundering indicators. Financial institutions are especially well positioned to recognize and report on suspicious financial transactions that may be connected to professional money laundering. FINTRAC uses these indicators, along with other sources of information, to assess reporting entities' compliance with their reporting obligations.

### Trade-based money laundering

Professional money launderers use trade transactions to legitimize proceeds of crime and move them between jurisdictions and between currencies. FINTRAC has observed two main schemes of this type.

- Schemes involving falsified customs, shipping and trade finance documents, including the following:
  - Phantom shipments: Transferring funds to buy goods that are never shipped, received or documented.
  - Falsely described goods and services: Misrepresenting the quality, quantity, or type of goods or services traded.
  - Multiple invoicing: Issuing a single invoice but receiving multiple payments.
  - Over/under invoicing: Invoicing goods or services at a price above or below market value in order to move money or value from the exporter to the importer or vice-versa.
- The Black Market Peso Exchange, which typically works as follows:
  - Transnational organized crime groups, such as Colombian or Mexican drug cartels, place proceeds of crime into the U.S. financial system through structured cash deposits (deposits that are organized to avoid record-keeping or reporting requirements) of U.S. dollars.

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- A Colombian or Mexican importer buys those dollars from complicit brokers, paying for them in pesos.
- The importer uses the U.S. funds to purchase goods that are then shipped to Colombia or Mexico.
- The brokers return the pesos they received from the importer to the cartel.

There are many variations on the Black Market Peso Exchange—which is essentially a form of unregistered foreign currency exchange—involving locations other than Latin America, other criminal groups and other world currencies (although the U.S. dollar is the most common). The two versions FINTRAC observes most often are the following:

- Brokers send suspected illicit funds held in Latin America or the U.S. to Canadian trading companies, wholesalers, dealers and brokers via electronic funds transfer and, to a limited extent, cash courier. These entities subsequently send the funds to entities in multiple jurisdictions, including China, Hong Kong and the U.S., to pay for goods.
- Brokers send suspected illicit funds held in Latin America to U.S.-based entities of varying types, as well as to China- or Hong Kong-based trading companies, through electronic funds transfer via a Canadian financial institution acting as a correspondent bank.

### **Indicators of trade-based money laundering by professional money laundering networks**

- An entity is a Canadian small or medium-size import/export company, wholesaler, dealer or broker operating in a sector dealing in high-volume, high-demand commodities with variable price ranges, including agri-food, textiles, electronics, toys, lumber and paper, and automotive or heavy equipment.
- The entity has business activities or a business model that is outside the norm for its sector, or conducts no business activities in Canada. It may also be difficult to confirm the exact nature of the business.
- The entity transacts with a large number of entities that have activities in the above-noted sectors or have names that suggest activities in a wide range of unrelated sectors, and also does some or all of the following:
  - receives a sudden inflow of large-value electronic funds transfers;
  - orders electronic funds transfers to the benefit of China- or Hong Kong-based trading companies or individuals, and receives electronic funds transfers from the U.S. and Latin American countries;
  - orders electronic funds transfers to the benefit of entities or individuals in the U.S., Mexico or Latin American countries, and receives such transfers from the U.S.;
  - orders or receives electronic funds transfers to/from entities holding a bank account in Latvia or Cyprus, and are registered to addresses in the U.K., Cyprus, the British Virgin Islands, Panama, the Seychelles, Belize, the Marshall Islands or other offshore financial centers; and
  - orders or receives payments for goods in round figures or in increments of approximately US\$50,000.
- A trading company based in the United Arab Emirates orders electronic funds transfers to the benefit of individuals or entities in Canada.
- An entity's U.S. dollar business accounts held in Canada exhibit flow-through activity—that is, money is taken or transferred out of the account as quickly as it flows in.
- An entity imports currency (predominantly U.S. dollars) from Latin American countries.
- An entity makes large business purchases by credit card, funded by overpayments.
- An individual issues cheques, purchases drafts or orders electronic funds transfers through the account of a legal professional for trade-related payments.

## Money services businesses

Money services businesses provide a wide range of unique and valuable financial services to Canadians and international customers; however, the sector has unique challenges and risks with respect to money laundering. Most money services businesses engage in legitimate activities but some allow professional money launderers to exploit their services with their full cooperation. Others turn a blind eye to the fact that they are serving criminals. Professional money launderers who own or are connected to money services businesses use these entities to place and transfer illicit funds.

### Indicators of professional money laundering through money services businesses

- A Canadian money services business does some or all of the following:
  - receives a sudden inflow of large electronic funds transfers and cash deposits; this is followed by an increased outflow of electronic funds transfers, cheques and bank drafts made out to multiple unrelated third parties for loans or investments, or to the individual conducting the transaction;
  - undertakes numerous currency exchanges involving Canadian and U.S. dollars and/or Euros;
  - carries out business largely with or through Iran or other countries subject to sanctions, the United Arab Emirates, Kuwait, Hong Kong, and China or countries with internal capital controls; and
  - receives electronic funds transfers from foreign exchange and trading companies based in the above-noted countries for real estate transactions, loans or investments.
- A money services business owner, associate or employee does some or all of the following:
  - maintains personal account activity similar to that of a money services business;
  - attempts to avoid reporting obligations when exchanging currency on behalf of another money services business;
  - lists multiple occupations, addresses and/or telephone numbers with financial institutions or online;
  - lists occupation as immigration consultant, student, homemaker or unemployed;
  - lives outside of their reasonable means (i.e., buys real estate beyond what they could reasonably afford on their claimed income);
  - attempts to close an account(s) to avoid due diligence questioning;
  - receives wires and transfers from multiple sources in accounts at numerous banks and credit unions; the individual then depletes these amounts through drafts payable to self or for real estate purchases;
  - places large structured cash deposits into the same account at multiple locations on the same day; and
  - is a customer at many banks and credit unions, and negotiates many self-addressed bank drafts from various financial institutions.
- A Canadian import/export company has account activity similar to that of a money services business, including the following:
  - receives one or two large electronic funds transfers and then orders multiple outgoing cheques and drafts to multiple third-party individuals and companies; and
  - receives large incoming electronic funds transfers from Iran, the United Arab Emirates, Kuwait, Hong Kong and China for living costs, expenses or spare parts.

### Reporting to FINTRAC

To facilitate FINTRAC’s disclosure process, please include the term **#pml** in Part G—Description of suspicious activity on the Suspicious Transaction Report. (See also, [STR guidance](#).)

### Contact FINTRAC

- **Email:** [guidelines-lignesdirectrices@fintrac-canafe.gc.ca](mailto:guidelines-lignesdirectrices@fintrac-canafe.gc.ca) (include Operational Alert 18/19-SIDEL-025) in the subject line)
- **Telephone:** 1-866-346-8722 (toll free)
- **Facsimile:** 613-943-7931
- **Mail:** FINTRAC, 24th Floor, 234 Laurier Avenue West, Ottawa ON, K1P 1H7, Canada

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FINTRAC Operational Alerts provide up-to-date indicators of suspicious financial transactions and high-risk factors related to new, re-emerging or particularly topical methods of money laundering and terrorist activity financing.

# Part XI

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## Enforcement

One of the cornerstones of an effective anti-money laundering regime is the investigation and prosecution of money laundering offences. While money laundering has long been a criminal offence in Canada, a recent assessment by the Financial Action Task Force indicates that law enforcement results in this country are not commensurate with money laundering risks, and evidence tendered during the Commission process demonstrates that there have been very few successful money laundering investigations or prosecutions in recent years. The most high-profile money laundering investigation in this province (E-Pirate) was terminated before the case went to trial and statistics produced by the RCMP establish that, from 2015 to 2020, there were no other major federal investigations that resulted in money laundering charges.

In the following three chapters, I review the law enforcement response to money laundering in this province.

Chapter 39 outlines the history and structure of policing in British Columbia, with particular emphasis on the resources dedicated to the investigation of money laundering / proceeds of crime offences over the past 15 years. It also recommends that all provincial law enforcement bodies engaged in the investigation of profit-oriented criminal activity implement a standard policy requiring that all investigators (a) consider money laundering / proceeds of crime issues at the outset of the investigation and (b) conduct an investigation with a view to pursuing those charges and identifying assets for seizure and/or forfeiture.

Chapter 40 reviews some of the challenges associated with the investigation and prosecution of money laundering offences, including the complexity of money laundering / proceeds of crime investigations, the ever-increasing sophistication of money laundering schemes, and the inability of FINTRAC to reliably produce timely, actionable intelligence with respect to money laundering threats.

Chapter 41 recommends the creation of a specialized provincial anti-money laundering intelligence and investigation unit with a mandate to identify, target, and disrupt sophisticated money laundering activity occurring within the province.

## Chapter 39

# History and Structure of Policing in British Columbia

Broadly speaking, there are three tiers of policing in British Columbia: federal, provincial, and municipal. Federal policing is primarily concerned with national and international priorities such as transnational and serious organized crime, national security, and cybercrime.<sup>1</sup> Provincial policing is primarily concerned with serious crime within the province, as well as the provision of local police services to rural communities and municipalities with a population under 5,000.<sup>2</sup> For many years, the province has engaged the RCMP to provide most of these services (though there are a few provincial units that provide specialized policing functions).<sup>3</sup> Municipal policing is primarily concerned with the provision of police services in municipalities with a population over 5,000 and focuses mostly on local issues such as violent crime.<sup>4</sup> Each level of policing is discussed in turn.

- 1 Exhibit 789, Ministry of Public Safety and Solicitor General, Police Services Division, *Police Resources in British Columbia, 2019* (November 2020) [*Police Resources in British Columbia*], p 2; Exhibit 863, Briefing for the Cullen Inquiry, April 16, 2021: Presentation by Superintendent Brent Taylor, RCMP “E” Division Federal Serious and Organized Crime – Financial Integrity [FSOC Briefing], slides 3–4; Evidence of B. Taylor, Transcript, April 16, 2021, pp 9–10.
- 2 Exhibit 789, *Police Resources in British Columbia*, p 2.
- 3 Ibid, pp 2–3. Section 4.1 of the Police Act, RSBC 1996, c 367, allows the provincial government to create designated policing units to provide policing and law enforcement services “in place of or supplemental to the policing and law enforcement otherwise provided by the provincial police force or a municipal police department.”
- 4 While it is open to these municipalities to create their own municipal police department, most have opted to engage the RCMP to provide these services. Of the 77 municipalities with a population over 5,000, 11 have opted to create their own municipal police department. These municipalities are Vancouver, Victoria, Saanich, Central Saanich, Oak Bay, Delta, Abbotsford, New Westminster, West Vancouver, Nelson, and Port Moody. One municipality (Esquimalt) has entered into a contract with the City of Victoria for the provision of policing services by one police service in both municipalities: Exhibit 789, *Police Resources in British Columbia*, p 3.

## Federal Policing

The RCMP serves as the federal police service across the country and is primarily concerned with the priorities set by national headquarters in Ottawa.<sup>5</sup> The province has no formal input into the prioritization process and has limited visibility into the files and investigative strategies pursued by federal investigators.<sup>6</sup> It does, however, receive information from those involved in federal policing on an informal basis and has been taking steps to increase visibility into federal operations by requesting metrics relating to resources and performance (among other things).<sup>7</sup>

At the present time, there are three key priorities in federal policing: transnational and serious organized crime, national security, and cybercrime.<sup>8</sup> Within each of these priorities are a number of key activities to target, one of which is money laundering.<sup>9</sup>

Superintendent Brent Taylor, officer-in-charge of the Federal Serious and Organized Crime (FSOC) Financial Integrity Unit in British Columbia, testified that the goal is to “go after the highest levels of organized crime” and that all major investigations are “tiered” to ensure that federal resources are deployed in the most effective way.<sup>10</sup> Tier 1 files are defined as the most serious, which signals to the commanding officer of that division that the file should be given priority in terms of time and resources. Tier 2 files are seen as high-level investigations but do not have the same importance as Tier 1 files. Tier 3 files rank much lower in terms of importance.<sup>11</sup>

On an annual basis, the RCMP allocates approximately \$100 million to federal policing in British Columbia.<sup>12</sup> Most of these funds can be moved around by the commanding officer to support different investigations. However, there are some units that operate on a “fenced-funding” model, meaning that the funds allocated to that unit cannot be transferred to other initiatives (though individual officers can sometimes be pulled from those units in order to address other federal priorities, such as wildfires and VIP visits).<sup>13</sup>

5 Ibid, p 2; Evidence of B. Taylor, Transcript, April 16, 2021, pp 7–10.

6 Evidence of W. Rideout, Transcript, April 6, 2021, pp 39–41, 61–62.

7 Ibid, pp 39–41, 77–80; Evidence of B. Taylor, Transcript, April 16, 2021, p 8; Exhibit 792, Letter from B. Butterworth-Carr, assistant deputy minister and director of police services, Policing and Security Branch, to Eric Stubbs, assistant commissioner RCMP, re Federal RCMP Reporting Requirements (May 23, 2019).

8 Exhibit 868, Money Laundering / Proceeds of Crime – RCMP Federal Policing Perspective: Presentation by Superintendent Peter Payne (April 2021) [Money Laundering / Proceeds of Crime Presentation], slide 2; Evidence of P. Payne, Transcript, April 16, 2021, p 133.

9 Exhibit 868, Money Laundering / Proceeds of Crime Presentation, slide 2; Exhibit 869, RCMP Federal Policing, Prioritization and Governance of Major Projects Tool User Guide (January 2020) [RCMP Major Projects User Guide], p 6.

10 Evidence of B. Taylor, Transcript, April 16, 2021, pp 12–13; Exhibit 863, FSOC Briefing, slide 5.

11 Evidence of P. Payne, Transcript, April 16, 2021, pp 125–26. For the criteria used to prioritize these investigations, see Exhibit 869, RCMP Major Projects User Guide.

12 Evidence of B. Taylor, Transcript, April 16, 2021, pp 20, 30. Approximately \$5–6 million is allocated to financial crime: *ibid*, p 31.

13 *Ibid*, pp 13–14, 30–31; Evidence of K. Bedford, Transcript, April 15, 2021, pp 58–59.

## Integrated Proceeds of Crime Units

From 1990 to 2012, the RCMP maintained Integrated Proceeds of Crime (or IPOC) units in most provinces, which were responsible for conducting money laundering investigations. The mandate of these units was to “identify, seize, restrain and forfeit illicit and unreported wealth accumulated by the highest level of organized criminals and crime groups ... thereby removing the financial incentive for engaging in criminal activities.”<sup>14</sup> Funding was provided on a fenced funding model and was in the range of \$23 million per year across all provinces and participating agencies, which included the Canada Border Services Agency (CBSA), the Public Prosecution Service of Canada, Public Works and Government Services Canada Forensic Accounting Management Group, Public Safety Canada, and the RCMP.<sup>15</sup>

IPOC units were mainly regarded as a support unit for other investigations (primarily drug investigations). When such investigations revealed that proceeds of crime were being accumulated, the officers conducting that investigation would ask for support from the IPOC units to conduct a parallel investigation.<sup>16</sup> IPOC units also worked closely with international partners – including, in particular, the US Drug Enforcement Administration – and were often the first point of contact for referrals and inquiries.<sup>17</sup>

While these units were initially supported by members of other federal agencies, the engagement of those agencies diminished over time. In 1992, the IPOC unit in British Columbia (“E” Division) comprised 55 people, including 45 RCMP members, three civilian members, and seven public service employees.<sup>18</sup> By 2010, the unit comprised 41 people, including 38 RCMP members and three representatives of the Public Works and Government Services Canada Forensic Accounting Management Group (which provided forensic accounting services to investigators within that unit).<sup>19</sup>

On March 30, 2011, Public Safety Canada released an evaluation report with respect to the relevance and performance of the IPOC initiative.<sup>20</sup> The report concluded that the underlying objectives of the IPOC units remained relevant as they responded to Canada’s national and international commitments to address organized crime, and that the literature reviewed “overwhelmingly support[ed] the need for continuing efforts to combat organized crime by targeting proceeds of crime.”<sup>21</sup>

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14 Exhibit 822, Canada, Public Safety Canada, *2010–2011 Evaluation of the Integrated Proceeds of Crime Initiative: Final Report* (March 30, 2011) [*Evaluation of the IPOC Initiative*], p 2.

15 Ibid, p 9. In 2005, the initiative was allocated \$116.5 million over five years, averaging \$23.3 million per year. According to the report, this amount was the same, *unadjusted for inflation*, as had been allocated in 1996–97: Ibid. However, there were stringent reporting guidelines concerning how those funds were spent: Evidence of B. Baxter, Transcript, April 8, 2021, pp 6–7.

16 Evidence of B. Baxter, Transcript, April 8, 2021, pp 7–8, 14–15. See also Evidence of T. Farahbakhchian, Transcript, April 15, 2021, p 91.

17 Evidence of B. Baxter, Transcript, April 8, 2021, pp 15, 93.

18 Exhibit 864, Assessment of Proceeds of Crime Responsibilities Within FSOC (July 29, 2015), p 4.

19 Exhibit 822, *Evaluation of the IPOC Initiative*, p 7. See also Evidence of B. Baxter, Transcript, April 8, 2021, pp 19–20.

20 Exhibit 822, *Evaluation of the IPOC Initiative*.

21 Ibid, p ii.

The report also found that the initiative had an impact on organized crime and organized crime groups through operations such as *Opération Colisée*, a joint operation of IPOC partners and provincial and municipal police forces, which succeeded in dismantling the Montréal-based Italian mafia.<sup>22</sup> However, it noted that the integration achieved in the early days of the initiative may have faded over time and highlighted several human resource challenges that were having an adverse impact on efficiency and effectiveness. These challenges included: staff turnover, vacant positions, recruitment difficulties, lack of experience, and insufficient training.<sup>23</sup>

Ultimately, the report recommended that the RCMP take steps to address these issues in order to ensure optimal performance of the IPOC units.<sup>24</sup>

One factor leading to the success of the IPOC units was the high level of expertise they developed in proceeds of crime investigations. Barry Baxter, a retired RCMP officer who was officer-in-charge of the IPOC unit in “E” Division from 2010 to 2012, spoke to the expertise and experience of his investigators when he arrived at that unit:

Generally all of the investigators in IPOC when I arrived were very well experienced, having come from drug section or from commercial crime where you need a level of expertise on the movement of money nationally and internationally. You need to be aware of areas where you could seek assistance, whether it be through mutual legal assistance treaty. You needed to know financial systems and how to restrain assets or have assets seized. So generally well experienced people it’s something that takes many, many years to gather that experience, and in fact several of the members under my command were credited in what was called expert witness program which allowed them to give expert testimony during proceeds of crime prosecutions.<sup>25</sup>

Mr. Baxter’s comments were echoed by Melanie Paddon, a retired RCMP member who was part of the IPOC units from 1992 to 2012:

IPOC, I found, was very beneficial to the actual act of investigating money laundering and proceeds of crime. It was a self-contained unit, there was a lot of expertise in that unit ... [I]t was integrated. We had Department of Justice working with us in house, in IPOC. We had CRA working with us. We had CBSA working with us. And so you had your little group of people all work[ing] on particular projects who all had a role in what their job was. And so to me it was very fruitful because it allowed you to actually go from your predicate offence to money laundering offence, and you had all

22 Ibid.

23 Ibid.

24 Ibid, pp ii–iii.

25 Evidence of B. Baxter, Transcript, April 8, 2021, pp 8–9. For a list of some of the successful investigations conducted by these units, see Exhibit 864, Assessment of Proceeds of Crime Responsibilities Within FSOC, pp 9–11.

that in house expertise helping you out so that at the end of the day you were able to get to the point of prosecution.<sup>26</sup>

One of the investigations undertaken by these investigators during their time at IPOC was an intelligence probe into the large amount of suspicious cash entering Lower Mainland casinos. Mr. Baxter testified that, when he arrived at IPOC in 2010, he conducted a file review and became concerned about the large volume of \$20 bank notes going through BC casinos (as reported by the suspicious transaction reports, large cash transaction reports and section 86 reports received by the RCMP).<sup>27</sup>

After meeting with senior members of the RCMP, he directed the money laundering team (a team known as C-22) to initiate an investigation.<sup>28</sup> The investigation soon became the team's most high profile because of the substantial amount of cash entering Lower Mainland casinos and “the potential that it was backed by organized crime using ... casinos to launder the proceeds of those crimes.”<sup>29</sup>

Although the intelligence probe was not able to make a *definitive* link to criminal activity, there was a strong belief among investigators that the funds were criminal in nature. For example, Sergeant Paddon testified that the manner in which the cash was bundled and brought into casinos led her to conclude that it had criminal origins:

[D]efinitely I believed it was criminal ... cash coming in bags, suitcases, boutique bags is not normal practice ... [I]n my opinion illegal cash is basically held together in bricks, and they're sub-bundled with elastic bands on them usually in amounts of, like, 1,000, 2,000 or 5,000 which makes up the actual brick. Often the bills would be facing in different directions.

Criminals basically take their cash whereas a bank would put together a bundle of cash – it would be 100 notes of one specific denomination. Criminals don't. They basically take their brick of cash, and it's made up in dollar amount, so it would be in even dollars of 5,000, 10,000, that kind of idea. It's not in hundred-note amounts. There are no paper bands around it. It's held together with elastics on both ends, sometimes in the middle.

The bricks are put together and they're often thrown into a boutique bag. They often tend to use, you know, grocery bags, plastic grocery bags, they're concealed in compartments in vehicles, they're hidden in briefcases and they're basically brought into the casino.

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26 Evidence of M. Paddon, Transcript, April 14, 2021, pp 27–28.

27 Evidence of B. Baxter, Transcript, April 8, 2021, pp 15–16. Section 86 reports are reports provided under s 86 of the *Gaming Control Act*, SBC 2002, c 14.

28 Ibid, p 27.

29 Evidence of B. Baxter, Transcript, April 8, 2021, pp 27 –30. See also *ibid*, pp 77–78, where he discusses the possibility of Asian organized crime groups acting as a “depository” for other organized crime groups and assisting them to launder illicit funds. See also Evidence of M. Paddon, April 14, 2021, pp 13–16.

That is dirty cash. I mean, that is ... not from a legal source. A bank would never distribute cash like that.<sup>30</sup>

She also testified that the manner in which the cash was received by gamblers strengthened her belief that it was derived from criminal activity:

Well, it was strengthened because it's never just the cash. It's the circumstances that surround the seizure of cash or anything like that ... [I]t's the fact that maybe the person has no criminal – sorry, has no legitimate income ... maybe they don't have access to a bank account, so for whatever reason – especially in a case when you've got Chinese nationals come in, they don't have access to banking where they can go and take out \$50,000 or \$100,000 because of the restrictions over in China with moving cash across the country – you know, obviously sending cash over to Canada.

[A]s time went on, these loan sharks were seen meeting with these gamblers. Some of the gamblers would go in, they'd gamble, they'd go back out to the parking lot, they'd meet the loan shark and then they would go back into the casino and continue gambling. There was chip passing going on. In some of the VIP rooms you could ... clearly see that these loan sharks were approaching ... the gamblers in the VIP rooms and replenishing their funds.

You know, it was going on in the bathroom because there's no cameras in there. So there would be ... things being slipped in the bathroom. And ... unfortunately because we were unable to see anything through the cameras, you know, someone would come back out with ... a bag of cash, and it's kind of unknown where they'd got it from, but obviously the loan shark had given it to them in the bathroom and then they'd gone back out to the tables to play.<sup>31</sup>

On January 30, 2012, the C-22 team put together an operational plan to address the issue of money laundering in Lower Mainland casinos.<sup>32</sup> The plan notes that investigators had identified “significant money-laundering activity in and around several B.C. casinos” including almost \$40 million in suspicious cash buy-ins in the one-year period ending in August 2011.<sup>33</sup> It also indicates that the methodology used to launder illicit cash through Lower Mainland casinos involves groups of loan shark “facilitators” who are constantly present in and around casinos “ready to supply large quantities of cash to ... high-roller players who pay back the cash facilitators using a “hawala” style of debt-settlement.”<sup>34</sup>

30 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–17. Sgt. Paddon, who is certified as an expert in cash bundling, has provided expert opinion evidence for both the RCMP and the Civil Forfeiture Office: *ibid*, p 18.

31 *Ibid*, pp 20–21.

32 Exhibit 760, RCMP “E” Division IPOC, Investigational and Planning Report, Money Laundering – B.C. Casinos (January 30, 2012) [Casino Operational Plan]. See also Evidence of B. Baxter, Transcript, April 8, 2021, p 86; Evidence of M. Paddon, Transcript, April 14, 2021, pp 12–13.

33 Exhibit 760, Casino Operational Plan, pp 3, 4.

34 Exhibit 760, Casino Operational Plan, p 4. A full description of the *hawala* model of debt settlement is contained in Chapters 3 and 37 of this Report.

The operational plan had two key objectives: (a) to disrupt money laundering activity in and around Lower Mainland casinos (thereby disrupting the activities of organized crime groups within the province); and (b) to work with stakeholders in the gaming industry to effect legislative and regulatory change to minimize and/or eliminate the need for wealthy foreign gamblers to access large amounts of local, criminally derived cash.<sup>35</sup>

If the investigation had been allowed to continue, I expect that the RCMP would have been able to achieve those objectives and stem the flow of suspicious cash into Lower Mainland casinos. IPOC had already made significant progress toward identifying the methodology being used to carry out the money laundering scheme and had a great deal of information about the high-stakes gamblers who were making large cash buy-ins.<sup>36</sup> Moreover, in relatively short order, the RCMP made a direct link between the suspicious cash being provided to high-stakes gamblers and a large underground bank in Richmond when it turned its attention to this issue in 2015.<sup>37</sup>

Unfortunately, however, the federal government decided to make significant cuts to government services, leading to the “re-engineering” of federal policing, the disbandment of the IPOC units, and the termination of the intelligence probe (see below). The result was a lost opportunity to disrupt the flow of illicit funds into Lower Mainland casinos and a significant enforcement gap that allowed those involved in money laundering to operate in plain sight and with relative impunity for the better part of a decade. While I appreciate that the decision to disband the IPOC units was a policy decision made by a federal entity, it is critical to review the timing and effect of that decision in order to make findings of fact and recommendations concerning the law enforcement response to money laundering in this province.

## **The Re-Engineering of Federal Policing**

On June 6, 2011, Jim Flaherty, the federal minister of finance, introduced the 2011–2012 federal budget (Budget 2011) in the House of Commons.<sup>38</sup>

One of the key announcements made in the budget was a strategic review of government spending aimed at improving the “efficiency and effectiveness” of government operations and programs. The strategic review was part of a broader deficit action reduction plan, which called on all federal departments to cut existing spending in order to achieve a specified level of savings.

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35 Ibid.

36 The RCMP officers involved in the intelligence probe also believed it was a promising investigation with considerable potential: see, for example, Evidence of M. Paddon, Transcript, April 14, 2021, pp 14–18; Evidence of B. Baxter, Transcript, April 8, 2021, pp 86–90.

37 The RCMP started surveillance in April 2015 and advised Brad Desmarais that they had made a direct link to a large underground bank in July 2015: see Exhibit 522, Affidavit #1 of Brad Desmarais, exhibit 55, p 313; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22.

38 Budget 2011 received Royal Assent on June 26, 2011.

Superintendent Taylor testified that the strategic review created a situation where the RCMP had to become “cleaner and more focused” and “do less with less” (meaning that the RCMP would have to focus on higher-level priorities and refuse investigations that did not rise to that level).<sup>39</sup>

In an attempt to find greater efficiencies within its operations, the RCMP made the decision to “re-engineer” its federal policing operations and disband the IPOC units.<sup>40</sup> Mr. Baxter attended a number of meetings in which the re-engineering of the IPOC units was discussed. He testified that the officers-in-charge (or OICs) of these units raised concerns about Canada’s international commitments and the RCMP’s ability to “look after” money laundering / proceeds of crime issues if the IPOC units were disbanded. In my view, the concerns raised by these officers were prescient:

Yes, we had had some meetings in Ottawa about the federal re-engineering and some IPOC meetings during which again with senior managers, senior leaders, there was robust discussion and ... some of the concerns being raised by all of us as OICs of IPOC units were, one, that the funding aspect, the specialization, the expert witness program, the international commitments under the United Nations where Canada had signed on to do certain things under the Financial Action Task Force, the FATF, and our concerns myself included was we have these obligations. Who’s going to look after this? Where are we going to go with this? And again it was all discussions and they were difficult decisions, I know, by the senior leaders of the day, and the decision was made that IPOC would be disbanded, and that was the end of it. *We voiced concerns and I said boy, this I think is going to come back and bite us. Canada had played a leading role in that UN resolution where we were monitoring and evaluating other countries’ money laundering regimes and banking industries and here we were shutting down the very people who were a part of that process, myself included.* [Emphasis added].<sup>41</sup>

In British Columbia, officers previously assigned to IPOC were transferred to other areas of federal policing including the FSOC section.<sup>42</sup> The concept was that officers

39 Evidence of B. Taylor, Transcript, April 16, 2021, pp 18, 24–25. Many estimates suggest that British Columbia saw at least a 25 percent reduction in federal policing as a result of these cuts: see Exhibit 790, Email from Lori Wanamaker to Clayton Pecknold, re fwd German Money Laundering (December 15, 2018), p 3; Evidence of C. Pecknold, Transcript, April 6, 2021, pp 51– 55. See also Evidence of W. Rideout, April 6, 2021, pp 16–17 (over recent years, vacancy numbers in federal policing (the difference between the authorized strength of the RCMP and the number of officers filling those positions) have ranged from 140 to 200). In 2019, the authorized strength of the RCMP was 1,038, including 135 positions in protective policing: Exhibit 789, *Police Resources in British Columbia*, p 17. For another area in which these reductions created a policing gap, see Evidence of B. Taylor, Transcript, April 16, 2021, pp 26–27; Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 56–57.

40 Evidence of B. Taylor, Transcript, April 16, 2021, pp 18–22, 37–38. Note, however, that there were other reasons for the restructuring of federal policing, including increased costs and the emergence of serious national security threats: Evidence of P. Payne, Transcript, April 16, 2021, p 153. While not entirely clear, it appears that the decision to re-engineer federal policing operations was made in mid-2012.

41 Evidence of B. Baxter, Transcript, April 8, 2012, pp 80–81.

42 Evidence of B. Taylor, Transcript, April 16, 2021, p 38. See also Evidence of B. Baxter, Transcript, April 8, 2021, p 81.

who came from an IPOC background would bring their expertise to other units and investigate the money laundering aspects of ongoing investigations (such as drug investigations). However, there is widespread agreement that the re-engineering led to a significant dilution of expertise, along with an inability to pursue complex money laundering investigations requiring multiple investigators.<sup>43</sup>

Importantly, it also meant that money laundering investigations were subject to the federal prioritization process and were weighed against other pressures and priorities including national security investigations and requests made by international partners.<sup>44</sup> One of the practical consequences of the new prioritization process was the termination of existing investigations, including the intelligence probe into money laundering in BC casinos (which would have been a priority investigation had the IPOC units remained intact).<sup>45</sup> While I appreciate that the RCMP was forced to make a number of difficult decisions concerning the allocation of law enforcement resources, I find it unfathomable that it would terminate that investigation without taking any meaningful steps to address the growing volume of suspicious cash entering Lower Mainland casinos.

The RCMP had identified serious criminal activity occurring in British Columbia casinos and had developed an action plan that would likely have succeeded in disrupting this criminality. Its decision to terminate the intelligence probe, without taking any meaningful steps to investigate this conduct, allowed for the continued proliferation of money laundering through Lower Mainland casinos in the years that followed.

A report prepared by the provincial Gaming Policy and Enforcement Branch (GPEB) on November 19, 2012 provides the following snapshot of the suspicious activity occurring in and around Lower Mainland casinos from January 1, 2012, to September 30, 2012:

Total Money Laundering/SCT [Suspicious Currency Transaction] files: **794**

Total dollar amount: **\$63,971,727.00**

Total dollar amount in \$20 dollar denominations: **\$44,168,660.00**. This represents 70% of all suspicious cash entering casinos.

79 patrons had SCT buy-ins at least once with \$100,000

17 patrons had total SCT buy-ins over \$1,000,000

The top 22 patrons had SCT buy-ins totaling: \$45,12,130.00 [sic]. This represents 71% of the total dollar amount of all Suspicious Cash Transactions.

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43 See, for example, Evidence of B. Baxter, Transcript, April 8, 2021, pp 82–83; Evidence of M. Paddon, Transcript, April 14, 2021, pp 23–24. In some cases, there was also a *loss* of expertise as many of the people previously working within IPOC (some of whom had law or accounting backgrounds) started rethinking their career paths and trying other things: Evidence of B. Taylor, Transcript, April 16, 2021, p 20; Exhibit 864, Assessment of Proceeds of Crime Responsibilities Within FSOC, p 12.

44 Evidence of B. Baxter, Transcript, April 8, 2021, pp 90–91, 94–95.

45 Ibid, pp 87–89. See also Evidence of M. Paddon, Transcript, April 14, 2021, p 23.

The top ten patrons SCT buy-ins generated 285 separate s. 86 reports from the service providers and BCLC.

The top five patrons SCT buy-ins generated 172 separate s. 86 reports from the service providers and BCLC.

By comparison; the top 22 patrons who generated 285 SCT reports between them, in a nine-month period in 2012, is more that [sic] the total number of SCT reports generated in 2007, 2008 and 2009, and is only ten less than 2010.

Using the figures from the first nine months of 2012, it is estimated that the yearly totals will be;

Total Money Laundering/SCT files: **1060**

Total dollar amount: **\$85,295,636.00**

Total dollar amounts in \$20 denominations: **\$58,891,546.00**

It has become routine for patrons to buy-in with suspicious cash totalling \$200,000, \$300,000, \$400,000, and on two occasions where \$500,000 and \$580,000 respectively, were presented at the cash cage of a casino.<sup>46</sup>

Moreover, there can be no doubt whatsoever that the RCMP was aware of the nature and seriousness of the problem at the time it terminated the intelligence probe. GPEB and the BC Lottery Corporation (BCLC) had long been sharing information with the RCMP concerning suspicious transactions at Lower Mainland casinos<sup>47</sup> and the operational plan prepared by the C-22 team in January 2012 described the problem as follows:

*In a one-year period (ending August, 2011), almost \$40 million dollars in suspicious buy-ins were identified, with the vast majority of these being in \$20 bills.*

As noted, the individuals actually conducting the buy-ins at the casino, and doing the gambling, were wealthy Chinese businessmen, many with little to no ties to Canada. They choose to gamble at the casinos here, and to do so, they need ready access to significant amounts of Canadian cash. Typically, they are wealthy, but their funds are overseas ... and are subject to PRC [People's Republic of China] government currency export and transaction-restrictions.

46 Exhibit 181, Affidavit #1 of Larry Vander Graaf, dated November 8, 2020, exhibit G, Gaming Policy and Enforcement Branch Investigation Division, Money Laundering in BC Casinos 2007–Present (November 19, 2012), pp 88–89.

47 For example, Gordon Friesen, who was manager of investigations at BCLC during the relevant time period, testified, “[W]e were sending reports to the RCMP proceeds of crime unit right from the day I got there [in 2005] ... we actually had a specific dedicated email site where we sent our reports to automatically”: Transcript, October 29, 2020, p 13. See also Exhibit 145, Affidavit #1 of Rob Barber, made on October 29, 2020, paras 48–49; Evidence of B. Baxter, Transcript, April 8, 2021, pp 22–24, 86, 92.

...

To fulfill the need of these gamblers for Canadian cash, there are several groups of people known to regularly frequent the River Rock and Starlight casinos. Investigation by IPOC ... to date indicates that these groups of loan-shark “facilitators” are constantly present in and around the casinos, ready to supply large quantities of cash to these high-roller players. These high-roller players typically pay-back their losses via bank-deposits in the PRC or Hong Kong, which are ultimately brought back to Canada by the loan-sharks (in non-cash form) as “legitimate” money. This is often done by international money-laundering groups, using a “hawalla” style of debt-settlement, where a debt in Canada can be paid-back with a corresponding credit overseas (or vice-versa), with actual money rarely even changing hands between the parties.

These high-roller gamblers are coming into the casino literally with “shopping bags full of cash”, often in the hundreds of thousands of dollars at one time. *It is the root source of this cash that is of greatest concern to law-enforcement. Both by its appearance and the surrounding circumstances, it is apparent that virtually none of this cash was withdrawn from a bank, or any other legitimate source. Especially given the presence of huge amounts of \$20 bills (the most common “street money”), the origins of these actual dollar-bills being used can likely be traced-back to drugs, prostitution, or other street-level criminal activities being run and/or controlled, by organized criminal groups.*

The goal of this “cash-service” provided by the loan-sharks, is both for the purpose of earning interest on the loans, and also to launder illicit funds. The individuals running the drug-operations or bawdy houses where these funds originate pay the loan-sharks a commission in order to turn their \$20 bills into a form (bank drafts or wire-transfers) that they can use to buy their expensive homes, cars, etc. Turning “street money” into a seemingly legitimate form, is a necessary part of any successful criminal enterprise.

The listed targets have been identified by IPOC as being “middle men”, who directly supply high-roller gamblers with large quantities of cash on very short notice, in surreptitious locations. IPOC surveillance and investigation to-date has shown discrete night-time parking-lot meetings, not far from the casino, where high-roller gamblers have met with these “middle men”, then bought-in at the casino only minutes later with a bag full of cash. [Emphasis added.]<sup>48</sup>

Overall, I view the prolonged lack of attention to this issue as a significant failure that allowed for the unchecked growth of money laundering activity in British

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48 Exhibit 760, Casino Operational Plan, p 4. See also Evidence of B. Baxter, Transcript, April 8, 2021, p 86.

Columbia.<sup>49</sup> It is also indicative of a serious disconnect between the priorities of the RCMP and the law enforcement needs in this province. In what follows, I review the RCMP’s response to the money laundering problem in two key periods (2013–2015 and 2015–2020).

### **The 2013–2015 Period**

From 2013 to 2015, the gaming industry continued to struggle with the ever-increasing volume of suspicious cash entering Lower Mainland casinos. A GPEB report dated October 25, 2013, indicates that an “overwhelming amount of suspicious currency, most being in small denominations, continues to flood into casinos in British Columbia” and that “[n]one of the measures introduced by BCLC, the service provider, the AML X-DWG [a cross-divisional working group in the gaming sector] or a combination of these entities over the past 3 years have stopped or slowed that increase.”<sup>50</sup> It also indicates that the number of section 86 reports had increased from a low of 103 in 2008–9 to a projected total of 1,120 in 2013–14, and that the amount of suspicious funds entering BC casinos had increased from approximately \$87 million in 2012 to a projected total of \$95 million in 2013–14.<sup>51</sup> In reality, the actual numbers for 2013–14 far exceeded the projections, resulting in 1,382 section 86 reports, totalling \$118 million in suspicious funds.<sup>52</sup>

In 2014, BCLC was submitting as many as 150 suspicious transaction reports per month (three times as many as in 2011) with most of those reports relating to suspicious cash buy-ins at Lower Mainland casinos.<sup>53</sup> There was also a “rapid acceleration” of suspicious cash entering casinos with the number of section 86 reports filed by service providers increasing to a projected total of 1,750 in 2014–15 and the total dollar value of suspicious funds entering Lower Mainland casinos increasing to a projected total of \$185 million.<sup>54</sup>

Individual occurrences also demonstrate the “alarming” volume of suspicious cash entering BC casinos.<sup>55</sup> On September 24–25, 2014, for example, a patron made two \$500,000 cash buy-ins at the River Rock Casino. The player had initially bought-in for \$50,000 in \$100 bills but exhausted those chips. At approximately 11 p.m., he made a

49 The lack of attention to this issue is particularly troubling when we consider the conclusions reached in the March 2011 IPOC evaluation report concerning the central role played by proceeds of crime investigations in combatting organized crime: see Exhibit 822, *Evaluation of the IPOC Initiative*, p ii.

50 Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit O, Gaming Policy and Enforcement Branch Investigation Division, Suspicious Currency Transactions / Money Laundering in British Columbia Casinos (October 25, 2013), p 161.

51 Ibid, p 159. The projections also estimated that approximately 75 percent of those funds would be accepted at the River Rock Casino, and 67 percent would be in \$20 bills.

52 Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit Q, Gaming Policy and Enforcement Branch Investigation Division, Suspicious Currency Transactions/Money Laundering in British Columbia Casinos (October 27, 2014), p 171.

53 Exhibit 148, Affidavit #1 of Daryl Tottenham, sworn October 30, 2020, para 64.

54 Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit Q, p 171.

55 Ibid, p 172.

telephone call, left the casino, and entered a waiting vehicle. The patron returned a short time later with a black suitcase and a brown bag and used the cash contents of those bags to make a cash buy-in of \$500,040. The cash consisted entirely of \$20 bills that were bundled and secured with elastic bands inside silver plastic bags.<sup>56</sup> By approximately 1 a.m., the patron had lost all or most of the \$500,000. He made another call, left the casino, and interacted with two males outside a waiting vehicle. The patron subsequently returned with another suitcase filled with approximately \$500,000, which he used to make a further cash buy-in of \$500,030. Almost all the cash was in \$20 bills, bundled and secured with elastic bands in silver plastic bags.<sup>57</sup>

Robert Barber, a retired member of the Vancouver Police Department (VPD) and an investigator with GPEB from 2010 to 2017 testified that this was a “fairly typical transaction in that time period.”<sup>58</sup> He also indicated that there may have been another five or six similar events on that same night:

[T]his was an interesting case. It had many obvious factors indicating money laundering and perhaps other offences, but there might have been on that same night another five or six very similar events ... [O]bviously we didn't have surveillance capabilities or any of the other niceties of policing that would have allowed us to move forward with an investigation.<sup>59</sup>

At the time these transactions were occurring, BCLC had adopted a practice whereby all suspicious transaction reports submitted to FINTRAC were copied to the RCMP.<sup>60</sup> However, no meaningful steps were taken to investigate. Daryl Tottenham, a former member of the New Westminster Police Department and the manager of anti-money laundering programs at BCLC, gave evidence that the suspicious transaction reports prepared by BCLC “should have been very useful to law enforcement” and that he was “shocked” by the lack of response:

From 2011 to 2014, I observed that BCLC investigators (and as of 2013 the AML Unit) did not receive any reaction to or feedback about these reports from FINTRAC or GPEB, and was not receiving any assistance from law enforcement on the issues identified in the reports[.]

...

In my view, these reports should have been very useful to law enforcement. If someone had provided that kind of information to me when I was working as a police officer, I would have immediately attempted to initiate a project ...

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56 Exhibit 145, Affidavit #1 of Rob Barber, exhibit E, pp 8–11.

57 Ibid.

58 Evidence of R. Barber, Transcript, November 3, 2020, p 29.

59 Ibid, p 31.

60 Evidence of G. Friesen, Transcript, October 29, 2020, p 13.

I was also shocked at the lack of response I observed from proceeds of crime units and GPEB during the period of 2011 to 2014. There was no indication to me that either were working on the information identified in BCLC's [suspicious transaction reports].<sup>61</sup>

In April 2014, BCLC adopted a new strategy and began actively reaching out to the RCMP (and other law enforcement bodies) to urge them to investigate the suspicious activity occurring in and around Lower Mainland casinos.

Later that month, Mr. Tottenham met with representatives of the Combined Forces Special Enforcement Unit (CFSEU) and presented a package of information about potential targets believed to be involved in cash facilitation at Lower Mainland casinos. He testified that the purpose of the meeting was to “engage them to come help us, to come investigate and deal with [the issue] because we were at a loss [as to how] to deal with it – effectively deal with it.”<sup>62</sup>

In June 2014, Robert Kroeker, who was then vice-president of compliance at Great Canadian Gaming Corporation (Great Canadian), and Patrick Ennis (director of surveillance at Great Canadian) organized a “site orientation” for CFSEU at the River Rock Casino (where the majority of the suspicious activity was believed to be occurring).

Mr. Tottenham testified that the site orientation was “part of ... the pitch for the project. We wanted to come in and show them what they had access to, what we would provide, how we can provide it, what the abilities are of the surveillance operators and how we would be able to assist them if they took a project on.”<sup>63</sup>

At approximately the same time, BCLC compiled a package of its “Top 10 casino cash facilitator targets” which was provided to CFSEU in order to assist in conducting surveillance. The information included in that package included “tombstone” information such as names, driver’s licence numbers, occupations, addresses, and vehicle information. It also included photographs of each target.<sup>64</sup>

Over the next few months, Mr. Tottenham repeatedly followed up with CFSEU to urge an investigation into the individuals he identified. He described this as a “rattle-the-chain moment” where he was trying to determine whether they were “actually going to engage and do a project.”<sup>65</sup> Eventually, he was told that CFSEU’s focus was on guns and gangs, not proceeds of crime, and while they might re-engage if they had time, they were tied up with other projects and were therefore unable to assist.<sup>66</sup>

61 Exhibit 148, Affidavit #1 of Daryl Tottenham, paras 67–69.

62 Evidence of D. Tottenham, Transcript, November 4, 2020, p 65–66.

63 Ibid, p 79. See also Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 19–20; Exhibit 121, Email from John Karlovcec, re CFSEU River Rock Casino Orientation (June 20, 2014).

64 Exhibit 148, Affidavit #1 of Daryl Tottenham, exhibits 27–37. See also Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 21–23.

65 Evidence of D. Tottenham, Transcript, November 4, 2020, p 67.

66 Ibid. See also Exhibit 148, Affidavit #1 of Daryl Tottenham, para 118; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 25.

Mr. Tottenham continued to follow up with CFSEU throughout the fall of 2014, but no investigative steps were taken and they seemed to lose interest in the issue. For example, CFSEU initially offered to have one of its members attend a monthly law enforcement briefing by BCLC. However, it does not appear that anyone ever attended.<sup>67</sup>

While CFSEU was the primary focus of BCLC's efforts to prompt a criminal investigation into the network of cash facilitators operating in and around Lower Mainland casinos, it was not the only law enforcement agency alerted to the issue. Moreover, it appears that BCLC continued to advocate for an investigation by contacting the Real Time Intelligence Centre,<sup>68</sup> the Richmond RCMP detachment, and even their former contacts at IPOC (many of whom were still being copied on the suspicious transaction reports submitted by BCLC).<sup>69</sup> On each occasion, they were told that the law enforcement agencies they approached did not have the mandate or the resources to pursue a large-scale investigation into money laundering in Lower Mainland casinos.<sup>70</sup>

In making these comments, it is not my intention to criticize CFSEU or any of the other provincial and municipal law enforcement agencies approached by BCLC (and others) to report suspicious activity. CFSEU clearly had its hands full with the significant gang violence problem in the Lower Mainland and local detachments will rarely have the capacity, expertise, or resources to undertake complex money laundering investigations. However, the fact that the gaming industry had nowhere to go with evidence of a cash facilitation network responsible for laundering hundreds of millions of dollars highlights the significant enforcement gap created by the disbandment of the IPOC units, and the need for a specialized intelligence and investigative unit with an exclusive focus on proceeds of crime and money laundering.

Unfortunately, these issues were not limited to the gaming industry. It appears that actors in other sectors of the economy experienced a similar level of frustration in getting the attention of law enforcement. For example, an investigation conducted by the Registrar of Mortgage Brokers in 2012 determined that one of its registrants was likely involved in laundering illicit funds for individuals with criminal associations through a series of suspicious mortgage transactions.<sup>71</sup> In August 2013, the matter was referred to the RCMP's FSOC section and assigned to Corporal Karen Best, who

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67 Evidence of D. Tottenham, Transcript, November 4, 2020, p 72; Exhibit 148, Affidavit #1 of Daryl Tottenham, exhibit 25.

68 I understand the Real Time Intelligence Centre to be an intelligence and analysis unit created to give investigators real-time access to information concerning individuals who pose a substantial risk to public safety.

69 Exhibit 148, Affidavit #1 of Daryl Tottenham, paras 118–22; Exhibit 145, Affidavit #1 of Rob Barber, para 60. On the latter point, see Evidence of B. Baxter, Transcript, April 8, 2021, p 92 (“Well, I know they continued to call, if you will. Because I personally received calls because of our personal relationships. And most times I would refer them to Inspector Cal Chrustie, who was overseeing one of the investigative teams ... just so they could pass on relevant information or ongoing intelligence that they were receiving. They wanted some point of contact to continue that ability”).

70 Exhibit 148, Affidavit #1 of Daryl Tottenham, paras 118–22.

71 Evidence of M. McTavish, Transcript, February 22, 2021, pp 126–28.

supplemented the information provided by the Registrar of Mortgage Brokers with information from police sources and developed the theory that what was being observed was mortgage fraud in furtherance of a money laundering scheme.<sup>72</sup>

A report prepared by Corporal Best in March 2016 concluded that “organized crime groups in the Lower Mainland may have been using secondary mortgage financing in order to launder [illicit] funds and that this practice may still be occurring.”<sup>73</sup> Her report is more than 100 pages and contains a detailed review of money laundering risks in the real estate sector. In the fall of 2016, it was sent to the head of FSOC’s Financial Integrity Unit. Corporal Best received compliments on her “exceptional” work. However, the investigation was terminated and the RCMP conducted no further investigation into the alleged money laundering scheme.<sup>74</sup> Notably, the registrant was permitted to carry on his activities until May 2019, when he was the subject of regulatory action.

### **The 2015–2020 Time Period**

In February 2015, Brad Desmarais, BCLC’s vice-president of corporate security and compliance, had an informal meeting with Mr. Chrustie at a coffee shop in North Burnaby. At the time, Mr. Chrustie was a senior member of the RCMP’s Federal Serious and Organized Crime section.

Mr. Desmarais expressed his frustration that the issue of cash facilitation at Lower Mainland casinos was not being treated seriously and Mr. Chrustie agreed to assign a few of his investigators to look into the issue.<sup>75</sup>

After three months of investigation, the FSOC investigation (which ultimately became Project E-Pirate) was able to make a “direct link” between the suspicious cash being provided to patrons at the River Rock Casino and an illegal cash facility in Richmond.<sup>76</sup>

BCLC was also advised that “potentially some of the funds at the cash house were linked to transnational drug trafficking and terrorist financing.”<sup>77</sup>

While the E-Pirate investigation (reviewed in detail in Chapter 3) was undoubtedly a step in the right direction, Mr. Tottenham gave evidence that it seemed to be a constant battle to keep the RCMP engaged on the project.<sup>78</sup> For example, a few months into the

72 Evidence of K. Best, Transcript, February 23, 2021, pp 64–65; Exhibit 652, Affidavit #1 of Karen Best, February 12, 2021, exhibit B, pp 114–16.

73 Ibid, p 116.

74 Evidence of K. Best, Transcript, February 23, 2021, pp 72–79, Exhibit 652, Affidavit #1 of Karen Best, exhibits C, D.

75 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 118–19; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 62–63.

76 Exhibit 522, Affidavit #1 of Brad Desmarais, exhibit 55, p 313; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22. For a full review of the E-Pirate investigation, see Chapter 3 of this Report and Exhibit 663, Affidavit of Melvin Chizawsky, made on February 4, 2021.

77 Exhibit 522, Affidavit of Brad Desmarais, exhibit 55, p 313; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22.

78 Exhibit 148, Affidavit # 1 of Daryl Tottenham, para 126.

investigation, Mr. Tottenham was asked to urgently prepare a presentation for the E-Pirate team in order to justify continued funding for the investigation.<sup>79</sup>

Moreover, there was no sustained effort to investigate and pursue money laundering charges against other individuals and networks engaged in money laundering activity in this province. Between 2015 and 2020, there were only three major money laundering investigations across all of the RCMP's federal, provincial, and municipal business lines that progressed to the charge approval stage. One of those investigations (E-Pirate) resulted in charges that were approved but subsequently concluded before trial, one did not meet the charge approval standard, and the third is currently being considered by prosecutors.<sup>80</sup>

When one considers the nature and extent of the money laundering activity occurring during this time period, it is clear that law enforcement results were not commensurate with the magnitude of the problem. For example, the financial records seized by the RCMP in connection with the E-Pirate investigation revealed that Silver International conducted credit transactions totaling \$81,462,730 and debit transactions totalling \$83,075,330 between June 1 and October 15, 2015. On an annual basis, that corresponds to approximately \$221 million in debit transactions and \$217 million in credit transactions.<sup>81</sup> While I am unable to conclude that all of those transactions were carried out in furtherance of a money laundering scheme, I have previously found that a substantial portion of the cash being left at Silver International was derived from profit-oriented criminal activity and that Silver International was assisting organized crime groups in laundering the funds generated by that activity (see Chapter 3). I also heard evidence from Mr. Chrustie about other money laundering operations in this province that were comparable in size and scope, including one that was allegedly laundering billions of dollars through the BC economy.<sup>82</sup>

While the volume of suspicious cash entering Lower Mainland casinos decreased significantly over the next few years, there was still a large volume of suspicious cash entering those facilities. In 2016, for example, the volume of suspicious cash entering Lower Mainland casinos had decreased significantly, but was still in the range of \$72 million (see Chapter 11). Moreover, the nature of the Vancouver model is such that the illicit cash generated by criminal activity and provided to those seeking to avoid the currency restrictions imposed by the Chinese government can be used for any purpose including, for example, the purchase of real estate and luxury goods.

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79 Ibid, paras 126–27 and exhibit 39. The presentation, entitled “Economic and Social Consequences of Money Laundering,” was delivered to the E-Pirate investigative team in May 2015. Following the presentation, Mr. Tottenham was advised E-Pirate would continue to be resourced.

80 Exhibit 794, Money Laundering and Proceeds Investigations by “E” Division – Response to Item 11 of the Cullen Commission’s May 4, 2020 Request, pp 9, 12–14. See also Evidence of P. Payne, Transcript, April 16, 2021, pp 140–43. Note, however, that there were an additional 24 “open” major money laundering investigations at the time Exhibit 794 was prepared: Exhibit 794, Appendix B, pp 9, 12–14; Evidence of P. Payne, Transcript, April 16, 2021, pp 178–79. Open investigations are defined as “ongoing” investigations with charges yet to be determined by police.

81 Exhibit 663, Affidavit of Melvin Chizawsky, para 99.

82 Evidence of C. Chrustie, Transcript, March 29, 2021, pp 69–70.

Accordingly, the decrease in suspicious cash entering casinos does not necessarily mean there was a decrease in money laundering activity.

I also note that there were other serious forms of money laundering activity occurring within the province during this period. For example, John Zdanowicz, a professor emeritus at Florida International University and a pioneer in the research of illicit financial flows through international trade, prepared a report for the Commission indicating that there were more than \$4.3 billion in undervalued exports and \$4.1 billion in overvalued imports from British Columbia in 2019 (see Chapter 38). While I appreciate that there may be legitimate explanations for some of these transactions, it seems very likely that a substantial number of these transactions were connected to money laundering activity. There is also a large body of evidence suggesting that the real estate industry provided fertile ground for money laundering and that money laundering was a significant problem in other sectors of the economy.

### ***Causes of the Poor Enforcement Outcomes in this Province***

While I accept that there are significant challenges for law enforcement in the investigation and prosecution of money laundering offences, the primary cause of the poor enforcement outcomes in this province appears to be a lack of resources.

Some estimates suggest that there was at least a 25 percent reduction in federal policing following the 2012 re-engineering. Moreover, I heard evidence that it was extraordinarily difficult for the RCMP to staff the units responsible for money laundering investigations.<sup>83</sup> Superintendent Taylor testified that the Financial Integrity Unit “experienced a shortage of personnel” and there “really were challenges ... trying to piece together teams to look after the files that we had.”<sup>84</sup> In March 2019, for example, there were 27 authorized positions within Money Laundering Team 2 (one of two federal units responsible for the conduct of money laundering investigations) but only 10 of those positions were filled. Moreover, there was a significant draw on those resources for other federal priorities – such as wildfires and VIP visits – with the result that there were often few (if any) officers available to investigate money laundering.<sup>85</sup>

In a narrative document prepared for the Commission, Superintendent Taylor estimated that “[a]t any given time, due to leave, training and other duties (fires/ VIP) there [were] likely only 3 or 4 people in the office to work on [money laundering / proceeds of crime files] between 2015 and 2018.”<sup>86</sup> In his testimony before the

83 Exhibit 790, Email from Lori Wanamaker to Clayton Pecknold, re fwd German Money Laundering (December 15, 2018), p 3; Evidence of C. Pecknold, April 6, 2021, pp 51– 55. See also Exhibit 795, RCMP Narrative Document – Business Cases and Proposals for Provincially Funded ML Unit [Business Case for Provincially Funded ML Unit], p 2.

84 Evidence of B. Taylor, Transcript, April 16, 2021, p 73. Similarly, Insp. Tony Farahbakhchian, officer-in-charge of that unit from May 2018 to March 2021, testified that resources were scarce and it was challenging to get capable officers released from other areas to come to the Financial Integrity Unit: Transcript, April 15, 2021, pp 51–52.

85 Exhibit 795, Business Case for Provincially Funded ML Unit, p 2.

86 Ibid.

Commission, Superintendent Taylor stated that these numbers were not accurate and that there were more people working on money laundering issues in that unit.<sup>87</sup> Moreover, it is important to note that Money Laundering Team 2 was not the entirety of the federal response to money laundering and that the RCMP was pursuing other disruption opportunities including covert operations with international partners.<sup>88</sup> However, there can be little doubt that the resources dedicated to money laundering were insufficient to respond to the problem in any meaningful way.

Another cause of the poor enforcement outcomes in this province was an institutional failure, at all levels of policing, to consider money laundering / proceeds of crime charges at the outset of investigations into profit-oriented criminal offences. An RCMP analysis of 127 serious organized crime, financial crime, and cybercrime files between January 1, 2017, and December 31, 2018, illustrates this point. Despite the fact that most, if not all, serious organized crime activity gives rise to the need to launder illicit funds, the analysis found that only 30 of 127 investigations (24%) pursued a money laundering offence as part of their operational goal and that investigators did not even *consider* a money laundering charge in 63 of those investigations (50%) even though money laundering was considered a national priority.<sup>89</sup> Similar results were observed in an analysis of serious organized crime investigations from 2013 to 2017 which found there was no consideration of money laundering / proceeds of crime charges in more than 50 percent of FSOC and financial crime investigations.<sup>90</sup>

Even a basic financial investigation into the accumulation of wealth by those believed to be involved in criminal activity has real benefits for the disruption of organized crime networks insofar as it identifies assets, points to criminal hierarchies and shows how the subjects are laundering their money.<sup>91</sup> Stefan Cassella, a former

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87 Transcript, April 16, 2021, p 74.

88 Dr. German's conclusion that "there are currently no federally funded [RCMP] resources in B.C. dedicated to criminal money laundering investigations" must be approached with particular caution: Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019, p 18. While there may have been a limited number of *dedicated* money laundering investigators (i.e., investigators with an exclusive focus on money laundering), federal RCMP officers were working on money laundering issues: Evidence of B. Taylor, Transcript, April 16, 2021, pp 74–75. For information on these covert operations, which can sometimes engage 30–40 officers and result in significant "disruption" opportunities, including criminal charges in other jurisdictions and the seizure of significant amounts of money, see Evidence of B. Taylor, Transcript, April 16, 2021, pp 32–34; Evidence of C. Chrustie, March 29, 2021, pp 35–36.

89 Exhibit 866, RCMP Federal Policing Projects Review: January 2017–December 2018, p 1, suggests that money laundering charges were not considered in 97 of 127 investigations, with the result that 76 percent of applicable files are not considering such charges. However, page 4 suggests that 63 of 127 investigations did not consider a proceeds of crime component, in the sense there was no mention of conducting a proceeds of crime investigation or seizing any assets in the operational plan.

90 Exhibit 865, FPCO Proceeds of Crime Review, pp 1–2.

91 Exhibit 866, RCMP Federal Policing Projects Review: January 2017–December 2018, p 6. See also Evidence of S. Cassella, Transcript, May 10, 2021, pp 79–82. In some cases, the investigation of money laundering / proceeds of crime charges may also make it easier for the Crown to meet its burden of proof about the predicate offence. For example, the fact the accused was involved in significant money laundering activity may strengthen the inference of knowledge and control necessary to prove many drug offences. Involvement in money laundering activity may also be an aggravating factor that leads to a more significant sentence for the offender.

US prosecutor with significant experience in the prosecution of money laundering offences, explained the impact these measures can have on organized crime groups:

[T]here's no doubt ... and economists have studied this, that you have much more of an effect on, let's say, a drug organization or similar organized crime organization if you take their assets than if you simply arrest low-level people.

[J]ust use the drug case as the prototypical example, you could arrest any number of street sellers and take the cash that was found on their persons or in ... the safe under the bed in their house and they get replaced fairly quickly. It's the large sums of money that are flowing back to Mexico and other places in South America that ... sustain the cycle of a drug trafficking organization.

[W]hen we'd get a ... low-level operative in a drug organization to cooperate with the government and plead guilty and testify, and we would ask him what of our investigation was the most effective in terms of slowing down the drug operation that you used to be a part of? He would say, those seizures; when you took \$500,000 off the courier on the airplane, that was the money that was going to buy the next load and we had to start all over and raise that money again before we can get another load, and the supplier then went to somebody else and so forth in Mexico and caused all kind of problems for us.<sup>92</sup>

On February 4, 2020, RCMP Deputy Commissioner Michael Duheme issued a policy directive requiring that all future operational plans submitted for approval and tiering within the FSOC section “clearly denote all dimensions being considered, examined and investigated in relation to the accumulation of illicit funds and wealth including the laundering of money derived from criminal activity.”<sup>93</sup> If a money laundering / proceeds of crime investigation is not being pursued, the supporting rationale must be documented and submitted with the operational plan. Moreover, the directive states that “charges for the [money laundering / proceeds of crime] offence should be laid at the same time as those related to the underlying offence or shortly thereafter” and that engaging the Public Prosecution Service of Canada at the outset of the investigation “will greatly assist in the determination of timelines and charges.”<sup>94</sup>

I believe that the consistent and rigorous implementation of this directive has the potential to substantially improve law enforcement results in this province. Not only would it allow for additional charges and forfeiture proceedings to be brought against

92 Transcript, May 10, 2021, pp 79–82. For additional evidence concerning the benefits of targeting illicit wealth, see Evidence of C. Hamilton, Transcript, May 12, 2021, pp 9–10, 31–32, 56–58.

93 Exhibit 861, Memorandum from Michael Duheme, re Directive on Proceeds of Crime and Money Laundering in All Future Federal Policing Serious and Organized Crime Investigations (February 4, 2020) [Directive on Proceeds of Crime and Money Laundering].

94 Ibid.

the existing defendant, it would also “expand the universe of potential defendants” and allow for charges to be brought against those who are involved in different aspects of the criminal enterprise. Mr. Cassella described the benefits of this approach as follows:

Money laundering tends to expand the scope of the criminal investigation in several ways. It expands the category or the universe of potential defendants. Some defendants committed the underlying crime. Some defendants committed the underlying crime and laundered the money. Some defendants only laundered the money. If you didn’t charge money laundering, you would not reach that last group of defendants.

The person whose job it is simply to store the money in a drug offence and ... launder it through a series of bank accounts and then go to Mexico, or the professional money launderer, a lawyer or an accountant, who was charged with creating ... trusts or putting money in the names of shell companies or doing whatever it was that was done to conceal or disguise the money. So it expands the universe of possible defendants.<sup>95</sup>

I would therefore encourage the RCMP to ensure that this directive is followed, and that investigators consider money laundering / proceeds of crime issues in every investigation involving serious organized crime groups and profit-oriented criminal offences.<sup>96</sup> I also recommend that all provincial and municipal law enforcement agencies implement a policy requiring all officers involved in the investigation of profit-oriented crime to (a) consider money laundering and proceeds of crime issues at the outset of the investigation, and (b) where feasible, conduct an investigation with a view to pursuing those charges, and identifying assets for seizure and/or forfeiture.

Such investigations are not beyond the competence of these investigators and ought to be pursued as a matter of course whenever provincial law enforcement bodies are involved in the investigation of profit-oriented crime.<sup>97</sup>

**Recommendation 89:** I recommend that all provincial and municipal law enforcement agencies in British Columbia implement a policy requiring all officers involved in the investigation of profit-oriented crime to consider money laundering and proceeds of crime issues at the outset of the investigation and, where feasible, conduct an investigation with a view to pursuing those charges, and identifying assets for seizure and/or forfeiture.

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95 Evidence of S. Cassella, Transcript, May 10, 2021, pp 38–39.

96 I note that a similar directive was discussed as early as 2008, but it does not appear to have gained any significant traction within the FSOC unit: Evidence of B. Taylor, Transcript, April 16, 2021, pp 44–46. Moreover, I heard evidence that current resourcing levels within certain units may preclude any serious attempt to conduct a financial investigation.

97 On this point, see Evidence of S. Cassella, Transcript, May 10, 2021, pp 72–73.

In order to carry out these investigations, it is important that these investigators have proper training in the conduct of basic financial investigations. I therefore recommend that all provincial and municipal law enforcement agencies involved in the investigation of profit-oriented crime (such as drug trafficking, fraud, and human smuggling) develop training modules to ensure that their members have the ability to conduct these types of investigations.

**Recommendation 90:** I recommend that all provincial and municipal law enforcement agencies involved in the investigation of profit-oriented crime develop training modules to ensure that their members have the knowledge and skills to pursue money laundering and proceeds of crime investigations, and identify assets for seizure and/or forfeiture.

The dedicated provincial money laundering intelligence and investigative unit recommended in Chapter 41 may be well positioned to provide training to other investigations with respect to proceeds of crime and money laundering issues.

While I appreciate that the allocation of law enforcement resources to these matters will put additional strain on law enforcement agencies in the short term, I strongly believe they will have a significant impact on organized crime groups and result in substantial financial benefits for the Province (which could be used to fund additional law enforcement resources and other government priorities).

Evidence from other jurisdictions illustrates the massive financial benefits that flow from a focused and effective asset forfeiture regime. For example, an expert report prepared for this Commission on anti-money laundering efforts in New Zealand indicates that the cumulative value of assets restrained by the police-run asset recovery unit between July 2017 and October 2020 was in the range of NZ\$428 million (approximately Can\$358 million). The report states:

On most accounts, the CPR [Criminal Proceeds (Recovery)] Act system in the hands of enthusiastic and well-drilled Police and Prosecutor operations has been wildly successful. It is a high-profile deterrent force, countering to some extent the attractions that organised crime gangs can use, such as cars, motorbikes, boats, jet skis, flashy bling and assets, to lure new recruits. Nothing speaks as symbolically in this field of crime prevention as a fleet of criminal toys being loaded up onto a confiscation truck pursuant to a surprise freezing order operation.

As at the end of October 2020, assets under restraint between the 5 regional Asset Recovery Units for the Commissioner of Police had grown to NZ\$428m cumulative since July 2017. The top 3 offences used as a basis for seeking the asset restraining orders were reported by Police as being: money laundering (56%), drug crime (26%) and fraud (12%).

The largest single forfeiture to date has been a NZ\$43m settlement reached in 2016–17 with a Chinese person resident in New Zealand, Mr William Yan, who was wanted for offences back in China and agreed to forfeit major property and shareholding interests in New Zealand as part of an agreed settlement.

*Property that has eventually been forfeited to the Crown under the CPR Act regime (a process that can take years for all challenges and appeals and third party interests in the property to have been heard) is sold at auction or by other methods. The proceeds from that are lodged in a government Proceeds of Crime Fund administered by the Ministry of Justice. A variety of government agencies and some selected non-governmental organisations can then bid for funding for specific community or criminal justice projects they wish to carry out, such as drug treatment, healthcare services or offender rehabilitation programmes. There is a strong preference for funding initiatives at a grassroots level to fight organised criminal gang influences, especially where they are dealing in methamphetamine and other drugs. [Emphasis added.]<sup>98</sup>*

While it is important to use caution in looking at the experiences of other jurisdictions, New Zealand’s population, GDP, legal system, and government structure are similar to British Columbia’s, which make it a useful point of reference in examining the benefits arising from an effective asset forfeiture regime.<sup>99</sup> If the measures recommended in this Report result in seizures and/or forfeitures that are remotely similar to those in New Zealand, they would dwarf the costs of any new initiatives and result in a significant surplus of funds that could be used to fund other government services.

### **Other Enforcement Gaps**

Finally, it is important to note that other areas of federal policing have suffered as a result of the 2012 federal re-engineering. For example, I heard evidence that the RCMP’s commercial crime section was disbanded, leaving nobody to investigate the “mid-level” frauds that have a significant impact on citizens throughout the province.

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<sup>98</sup> Exhibit 953, Gary Hughes, *Report to the Commission of Inquiry into Money Laundering in British Columbia Regarding the Anti-Money Laundering Regime of New Zealand* (April 2021) [*Anti-Money Laundering Regime of New Zealand*], pp 37–38. Other information suggests that close to \$1 billion in assets have been brought under restraint over the past 10 years: see Evidence of G. Hughes, Transcript, May 3, 2021, p 74. In considering these figures, it is important to understand that they refer to the value of assets seized (or “restrained”) by law enforcement, and not to the value of assets actually forfeited to the state. However, I understand that approximately 57 percent of the assets restrained over the past five years have been forfeited, which works out to approximately NZ\$331 million (Can\$278 million): see Exhibit 976, Dashboard – CPRA (Criminal Proceeds (Recovery) Act 2009), April 30, 2021 (redacted). I also understand that forfeiture proceedings are still underway with respect to most of the other assets restrained by police (these actions take an average of two years to complete). For further evidence with respect to the percentage of restrained assets forfeited to the state, see Evidence of C. Hamilton, May 12, 2021, pp 110–14.

<sup>99</sup> For the similarities between these jurisdictions, see Exhibit 953, *Anti-Money Laundering Regime of New Zealand*.

Before the re-engineering, there were approximately 100 officers and support staff investigating these types of fraud.<sup>100</sup>

An RCMP business case for the creation of a provincial financial crime unit provides a list of some of the financial crime cases that were not investigated because of the federal re-engineering.<sup>101</sup> These files include a number of serious credit card, mortgage, investment, and tax frauds that resulted in significant losses to individuals, businesses, and public sector entities throughout the province.

One of these frauds (described as an “International Lottery Fraud”) has connections to international money laundering and a number of the other files are described as being sophisticated, multi-jurisdictional frauds with links to organized crime.

I strongly encourage the Province’s Policing and Security Branch to work with its federal partners to identify and explore these types of enforcement gaps in order to ensure that the citizens of this province are protected from all forms of criminal activity.

## **Current Structure and Resourcing**

Since the establishment of this Commission, the RCMP has renewed its efforts to address money laundering / proceeds of crime issues through measures such as the February 4, 2020 directive (discussed above). It has also taken steps to address some of the resourcing issues that led to the poor enforcement results from 2012 to 2020. While it remains to be seen whether these changes will lead to any concrete results, I have some optimism that the RCMP may find a measure of success if its newfound commitment to money laundering / proceeds of crime investigations is genuine, and if the federal government prioritizes and devotes sufficient resources to this issue once the work of the Commission is over and the public scrutiny on this issue has diminished.

In what follows, I review the mandate and structure of each federal law enforcement agency with responsibility for the investigation of money laundering offences.

### ***FSOC Financial Integrity Unit***

The FSOC unit continues to have primary responsibility for the investigation of money laundering offences at the federal level.<sup>102</sup> It does so through two operational

<sup>100</sup> Exhibit 796, RCMP “E” Division, Business Case Proposal for a Provincial Financial Crime Unit (November 9, 2016), pp 2–3. See also Evidence of B. Taylor, Transcript, April 16, 2021, pp 26–27; Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 119–22; Evidence of K. Bedford, Transcript, April 15, 2021, pp 122–32; Evidence of D. LePard, Transcript, April 7, 2021, pp 55–57.

<sup>101</sup> Exhibit 797, Business Case for Financial Crime Unit, Appendix D, Examples of files affected by federal re-engineering.

<sup>102</sup> Closing submissions, Government of Canada, July 9, 2021, p 64; Exhibit 868, Money Laundering / Proceeds of Crime Presentation, p 2.

groups (Group 1 and Group 2), which together make up the RCMP's Financial Integrity Program.<sup>103</sup>

Group 1 is made up of two separate teams: the Integrated Market Enforcement Team (IMET) and the Sensitive Investigations Unit (SIU). Neither of these teams has a specific money laundering mandate (though money laundering issues may arise in the course of their investigations, and they have been directed to consider money laundering charges at the outset of each investigation).<sup>104</sup>

IMET has a mandate to detect, deter, and investigate capital market fraud that is of regional or national significance and that poses a threat to investor confidence, economic stability, and the integrity of capital markets.<sup>105</sup> It has an authorized strength of 27 positions (though there have been staffing problems within the unit and only 15 of these positions were occupied in March 2021).<sup>106</sup> IMET receives “fenced” funding from the federal government and its files are prioritized within “E” Division (as opposed to the federal prioritization process).<sup>107</sup> At the time of writing, it has 14 active investigations, many of which have been referred by federal and provincial partners such as the BC Securities Commission.<sup>108</sup>

While money laundering is not part of its core mandate, there appears to be a genuine desire to build in a money laundering component to its investigations, in accordance with the directive made by Deputy Commissioner Michael Duheme on February 4, 2020.<sup>109</sup>

SIU has a mandate to investigate “sensitive” files such as breach of trust, corruption, fraud, and similar offences involving government officials and employees in British Columbia. It also has a mandate to investigate threats directed towards government institutions that imperil political, economic, or social integrity.<sup>110</sup> Like IMET, its files are prioritized within “E” Division and are not subject to the federal prioritization process.

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103 The Financial Integrity Program also contains a dedicated intelligence unit, which reviews strategic intelligence, open-source information, and information available to law enforcement to ascertain transnational organized crime involvement in financial crime (see Closing submissions, Government of Canada, p 65.) S/Sgt. Bedford testified that the intelligence unit is critical in developing a strategic focus for these units so they can move in the right direction. However, he said it has been a challenge to get proper intelligence analysts into their unit and a number of vacancies remain: Transcript, April 15, 2021, pp 23–25. See also Exhibit 856, Presentation – FSOC Financial Integrity Program Group 1 (March 15, 2021) [FSOC Presentation], slide 7, which indicates that six of the 11 positions in the intelligence unit are vacant.

104 Exhibit 856, FSOC Presentation, slides 3–4; Exhibit 861, Directive on Proceeds of Crime and Money Laundering.

105 Exhibit 856, FSOC Presentation, slide 4.

106 Ibid, slide 6. See also Evidence of K. Bedford, Transcript, April 15, 2021, pp 16–17.

107 Exhibit 856, FSOC Presentation, slides 4, 6; Evidence of K. Bedford, Transcript, April 15, 2021, pp 14–16, 86–87.

108 Exhibit 856, FSOC Presentation, slide 6.

109 Evidence of K. Bedford, Transcript, April 16, 2021, pp 86–91, 115–18. See also Exhibit 861, Directive on Proceeds of Crime and Money Laundering.

110 Exhibit 793, RCMP, Financial Crime Resources in “E” Division (August 31, 2020), p. 2; Exhibit 856, FSOC Presentation, slide 3.

SIU has an authorized strength of 28 positions (19 of which were occupied at the time of writing) and has 11 active investigations.<sup>111</sup>

Group 2 is made up of two teams with a specific focus on money laundering (Money Laundering Teams 1 and 2).<sup>112</sup> It also includes an Asset Forfeiture Unit, made up of three members, which is responsible for referring files to the Civil Forfeiture Office.

Money Laundering Team 1 has an authorized strength of 19 positions, focuses on regional files and works with various partner agencies within Canada.<sup>113</sup> It is also responsible for tracking and undertaking cryptocurrency and cyber-related financial transaction investigations.<sup>114</sup>

Money Laundering Team 2 has an authorized strength of 25 positions, has more of an international focus, and works with international partners to target individuals tied to transnational criminal networks.<sup>115</sup>

At the time of writing, 17 of 19 positions were occupied within Money Laundering Team 1, and 21 of 25 positions were occupied within Money Laundering Team 2.<sup>116</sup> This is a significant improvement from the situation from 2015 to 2020, when less than half of those positions were filled and there was a significant draw on those resources for other federal priorities.<sup>117</sup>

I heard also evidence that there has been a “positive increase, not only in the capacity and the training, but ... overall in the mindset and the satisfaction of the work that’s being done within the unit” and that there are “a lot of very confident investigators out there right now that are ready to take on some significant files.”<sup>118</sup>

While I am encouraged by these developments, it is important to note that the renewed focus on money laundering is very recent, much of it being announced in the context of the public scrutiny of this Commission, and has yet to yield any tangible results. It remains to be seen whether these resourcing levels will be maintained once the work of the Commission is over and the attention of law enforcement turns to other matters.

111 Exhibit 856, FSOC Presentation, slides 3, 6.

112 I understand that the recently created Integrated Money Laundering Investigation Team will also be housed within Group 2 of the Financial Integrity Unit. I discuss those teams in the section below.

113 Exhibit 856, FSOC Presentation, slide 16; Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 42–43.

114 While Team 1 was previously known as the Project Development Unit and was tasked with evaluating and proposing potential projects for investigation, it has always been responsible for the review and evaluation of money laundering files (though the recent “rebranding” seems to have sharpened its focus on money laundering): Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 42–48.

115 Exhibit 856, FSOC Presentation, slide 17; Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 42–43.

116 Exhibit 856, FSOC Presentation, slides 16–17.

117 Note, however, that VPD secondments account for four of the positions in Money Laundering Team 1 and Money Laundering Team 2 (with two officers assigned to each of those teams): Evidence of T. Farahbakhchian, Transcript, April 15, 2021, p 46.

118 Evidence of B. Taylor, Transcript, April 16, 2021, pp 75–77. See also Evidence of P. Payne, Transcript, April 16, 2021, p 102 (“So the RCMP is taking this rather seriously. It is a priority”).

### **The IMLIT Initiative**

On December 17, 2020, the RCMP announced that it would be using a portion of the money allocated to the RCMP in Budget 2019 to create Integrated Money Laundering Investigative teams (IMLITs) in Ontario, Quebec, Alberta, and British Columbia.

Five investigator positions were created in each of these provinces and one position was created at national headquarters. In British Columbia, four of these investigators will be working alongside investigators from Money Laundering Team 1 and 2 in the Financial Integrity Unit and one of the investigators has been assigned to the Counter Illicit Finance Alliance (CIFA; discussed below).<sup>119</sup> The RCMP has also invested in data scientists and other support teams.<sup>120</sup>

I understand that the mandate of these units is to build integrated partnerships with municipal and provincial partners – as well as federal agencies such as the Canada Revenue Agency (CRA), Canada Border Services Agency, and the Public Prosecution Service of Canada – and increase enforcement actions against targeted organized crime groups through the removal of their assets.<sup>121</sup>

While the IMLIT initiative is a step in the right direction, a 2021 IMLIT work plan acknowledges that federal policing will “still require far more of a shift in focus to get the results it needs” and that additional resources will be needed to achieve any tangible results.<sup>122</sup> Others are more cynical and suggest that adding five new resources will not have any real impact when there are already 160 vacancies in federal policing:

My understanding of the IMLIT proposal is approximately \$20 million spread over five years in four provinces. I think the numbers that I’ve recently seen indicate a 22R CIFA initiative that was born here but is now being managed by the RCMP and then three additional resources into federal policing. That’s five resources. There’s already 160 vacancies in federal policing. It’s not going to do anything.

If you add a little expertise, I suppose, but at the end of the day ... it gets absorbed into this big giant pond, then I think that that is inherently the problem ... you know, there’s very little that two or three people can actually accomplish.<sup>123</sup>

I appreciate that there remain a large number of vacancies in federal policing and it is obvious that the addition of four new investigators in British Columbia is unlikely to have any drastic impact on the investigation and prosecution of money

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119 Exhibit 859, “E” Division Criminal Operations Chart (March 15, 2021); Evidence of B. Taylor, Transcript, April 16, 2021, p 70; Evidence of P. Payne, Transcript, April 16, 2021, p 161. I also understand that CRA has committed one resource for the IMLIT team in British Columbia.

120 Evidence of P. Payne, Transcript, April 16, 2021, p 111.

121 Exhibit 872, 2021 IMLIT Way Forward, p 1. See also Exhibit 849, Letter from Bill Blair to David Eby (December 10, 2020).

122 Exhibit 872, 2021 IMLIT Way Forward, p 2.

123 Evidence of W. Rideout, Transcript, April 6, 2021, pp 124–25.

laundering offences. At the same time, the *total* number of investigators assigned to money laundering and proceeds of crime issues, including those assigned to Money Laundering Teams 1 and 2, is now approaching the levels seen in the IPOC days.<sup>124</sup>

While I am encouraged by the renewed focus on money laundering at the federal level, I believe that more is required to respond to the significant – and perhaps unique – money laundering vulnerabilities in this province. I am deeply concerned by the apparent disconnect between the priorities of the RCMP federal police service and law enforcement needs in this province over the past 10 years. If not obvious from my earlier comments, I also have concerns that the RCMP’s newfound commitment to money laundering / proceeds of crime issues may be short-lived, and that current resourcing levels will not be maintained once the work of the Commission is over.

In light of the significant benefits that flow from prioritizing money laundering and proceeds of crime issues, it is my sincere hope that the federal government will continue to focus on this issue and add the additional resources needed to achieve tangible law enforcement results. However, it is essential for the province to take matters into its own hands and ensure that the unique money laundering / proceeds of crime issues that arise in this province are properly addressed.

I therefore recommend that the Province create a dedicated provincial anti-money laundering intelligence and investigation unit to lead the law enforcement response to money laundering in this province by (a) identifying, investigating, and disrupting sophisticated money laundering activity, and (b) training and otherwise supporting other investigators in the investigation of the money laundering / proceeds of crime offences.<sup>125</sup>

**Recommendation 91:** I recommend that the Province create a dedicated provincial money laundering intelligence and investigation unit to lead the law enforcement response to money laundering in this province by (a) identifying, investigating, and disrupting sophisticated money laundering activity, and (b) training and otherwise supporting other investigators in the investigation of the money laundering and proceeds of crime offences.

I also recommend that the AML Commissioner (discussed in Chapter 8) as well as the Policing and Security Branch make best efforts to monitor the response to money laundering within the RCMP federal police service by seeking detailed metrics concerning the resources dedicated to money laundering investigations, the number of money laundering investigations undertaken by the RCMP, and the results of those investigations.

<sup>124</sup> At their height, these units comprised at least 50 investigators. However, it is important to note that the C-22 team responsible for conducting money laundering investigations comprised five investigators who undertook money laundering investigations with support from other members of the IPOC units.

<sup>125</sup> I return to what I consider to be the essential elements of that unit in Chapter 41.

**Recommendation 92:** I recommend that the AML Commissioner and the Policing and Security Branch make best efforts to monitor the response to money laundering within the RCMP federal police service by seeking detailed metrics concerning the resources dedicated to money laundering investigations, the number of money laundering investigations undertaken by the RCMP, and the results of those investigations.

One way those metrics could be provided without compromising the integrity of ongoing investigations is for the RCMP to publish annual reports concerning the resources dedicated to money laundering and the performance of those units.

While I appreciate the cost associated with the creation of a specialized money laundering intelligence and investigation unit, I strongly believe that the new asset forfeiture opportunities created by the implementation of these measures will offset, if not exceed, the cost of the new unit and result in a net financial gain for the province.

### ***Other Federal Initiatives***

Three other RCMP initiatives play a role in the federal response to money laundering: the Anti-Money Laundering Action, Coordination and Enforcement team; the Counter Illicit Finance Alliance; and the Trade Fraud and Trade-Based Money Laundering Centre of Expertise.

#### ***The Anti-Money Laundering Action, Coordination, and Enforcement Team***

The Anti-Money Laundering Action, Coordination, and Enforcement (ACE) team was created as a pilot project to bring together experts from intelligence and law enforcement agencies to identify significant money laundering and financial crime threats and to strengthen inter-agency cooperation and coordination.<sup>126</sup>

In the first phase of the pilot project, the ACE team consulted with Canadian and international partners and used the information collected during that process to guide it during the second phase of the project (the operational phase).<sup>127</sup>

In the second phase of the project, the ACE team was renamed the Financial Crime Coordination Centre (FC3) to better reflect its role – namely, to coordinate support to anti-money laundering operational partners, including law enforcement bodies.<sup>128</sup>

While the second phase of the project is still in the planning stage, FC3 plans to offer support to anti-money laundering partners in three main areas: policy, training, and operations. FC3's policy support role will be focused on working with operational partners to modify and develop anti-money laundering strategies, legislation, and

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<sup>126</sup> Exhibit 1019, Affidavit #1 of Lesley Soper, May 11, 2021, para 5.

<sup>127</sup> Ibid, para 10.

<sup>128</sup> Ibid, para 13.

policies. FC3's training role aims to support the development of financial crime knowledge, skills, and expertise by providing anti-money laundering partners with greater access to training programs.<sup>129</sup> I understand that one of the initiatives being undertaken by FC3 is to host a national-level anti-money laundering conference for those who work in financial crime enforcement or prosecution services at the federal, provincial, and municipal level.<sup>130</sup>

FC3's operational support role will focus on providing its partners with the support they require to undertake financial crime investigations effectively. These activities may include assistance in accessing federal support services such as forensic accounting services and the development of subject matter experts who can assist and provide guidance to partners on specific issues.<sup>131</sup>

While it remains to be seen whether this initiative will be able to provide any meaningful assistance, the development of subject matter experts who can provide assistance to law enforcement bodies and regulators has been an invaluable tool in guiding money laundering investigations in other countries.

Training programs aimed at improving financial crime knowledge may also strengthen the effectiveness of anti-money laundering initiatives, and I would encourage FC3 to develop basic training programs aimed at front-line investigators, in addition to advanced courses for experienced financial crime investigators. Such programs will enhance the ability of those involved in the investigation of predicate offences to conduct effective financial crime investigations at the same time they are investigating the predicate offence (an approach that has a number of significant benefits, including the disruption of organized criminal activity).

### ***Counter Illicit Finance Alliance of British Columbia***

CIFA is a financial information sharing partnership that evolved out of two previous initiatives spearheaded by Sergeant Ben Robinson: the Bank Draft Intelligence Probe and Project Athena.

The Bank Draft Intelligence Probe was an intelligence probe conducted by CFSEU in the aftermath of Dr. German's interim recommendation that gaming service providers complete a source of funds declaration whenever they receive cash deposits or bearer bonds in excess of \$10,000.

While that recommendation was intended to stem the flow of illicit funds into BC casinos, CFSEU continued to have concerns about the anonymity and transferability of bank drafts, including the fact that most financial institutions did not include the name of the purchaser or the account number from which the funds were sourced on the

<sup>129</sup> Ibid, paras 16–17, 20.

<sup>130</sup> Ibid, para 22.

<sup>131</sup> Ibid, paras 23–24.

bank draft.<sup>132</sup> Sergeant Robinson testified that the absence of that information made it much easier for bank drafts to be passed from underground service providers to casino patrons who were not the account holder in furtherance of a money laundering scheme.

In March and April 2018, CFSEU analyzed bank drafts received at BC casinos in January and February of that year. It also contacted the financial institutions that issued those bank drafts to determine whether the person presenting the bank draft at the casino held an account with that financial institution. While the analysis revealed that most casino patrons had an account at the financial institution that issued the bank draft, it uncovered a number of discrepancies in the source-of-funds declarations completed by casino patrons when they made large cash buy-ins at BC casinos.<sup>133</sup> For example, the analysis revealed that parts of the source-of-funds declarations were not fully complete and that casino patrons were often including the bank draft number rather than the account number from which the funds were sourced on the declaration.<sup>134</sup>

A briefing note prepared by GPEB in December 2018 summarizes the concerns associated with bank drafts as follows:

Both JIGIT [the Joint Illegal Gaming Investigation Team] and CFSEU-BC have expressed concerns with the risk presented by bank drafts and the process in place to establish the source of funds. There is concern that due to the limited information on bank drafts and a policy that permits patrons to write-in missing information (e.g., account name and number) onto receipts, bank drafts can be passed from underground service providers to casino patrons who are not the account holder.<sup>135</sup>

In May 2018, CFSEU hosted a meeting with financial institutions, BCLC, and GPEB, where it shared its concerns about the exploitation of bank drafts and facilitated a round-table discussion about the use of bank drafts in BC casinos. One of the solutions proposed during the discussion was to put the purchaser's name on the front of the bank draft to reduce anonymity.<sup>136</sup> The meeting also had the effect of raising awareness of the issue, which allowed stakeholders to be on alert for it and report any concerns to FINTRAC.<sup>137</sup>

In order to streamline the reporting process, the RCMP renamed the intelligence probe Project Athena and reporting entities were asked to identify the typology as "Project Athena" in submitting reports to FINTRAC.<sup>138</sup> Sergeant Robinson testified:

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132 At the time, CIBC was the only major bank that included this information on its bank drafts.

133 Evidence of B. Robinson, Transcript, April 14, 2021, pp 44–46, 50.

134 Ibid, p 50.

135 Exhibit 841, GPEB Briefing Note – Bank Drafts and Source of Funds Update (December 28, 2018), p 2. Importantly, Sgt. Robinson testified that other aspects of these source-of-funds declarations piqued his interest as an investigator, including full sections missing, entries in multiple different colours of ink, and items crossed out: Transcript, April 14, 2021, p 50.

136 Evidence of B. Robinson, Transcript, April 14, 2021, pp 51–52.

137 Ibid.

138 Ibid, pp 161–62.

The rationale for the name was to assist FINTRAC in identifying the reports that were being filed by reporting entities. So one important part to emphasize here is that between the naming of Project Athena, there was a meeting that took place between the stakeholders that each had a varied view on the problem. So we brought together GPEB, BCLC and financial institutions and CFSEU presented what the problem was. And as a result of that discussion ... that meeting, we talked about anonymity of bank drafts, and one of the solutions that was presented ... to reduce the anonymity of bank drafts was to put the purchaser's name on the front of the draft.

With respect to the part about Project Athena and the naming of Project Athena was that now that reporting entities were aware of the typology and the activity, they could now ... be on alert for it and they could file reports. And when those reports were filed ... it's helpful for FINTRAC to be able to sort them and to identify them as a Project Athena typology.<sup>139</sup>

On October 24, 2018, CFSEU hosted the inaugural Project Athena meeting at "E" Division headquarters. Present at the meeting were representatives from CFSEU, BCLC, GPEB, FINTRAC, CRA, and a number of major financial institutions.<sup>140</sup>

One of the items discussed at that meeting was the exchange of *tactical* information relating to the exploitation of bank drafts (i.e., the exchange of information with respect to specific individuals and bank drafts). As I understand it, the anticipated flow of information was as follows:

- BCLC would provide CFSEU with information concerning the suspicious use of bank drafts at BC casinos;
- CFSEU would analyze that information and seek information from financial institutions as to whether the individual in possession of a suspicious bank draft held an account with the issuing financial institution;<sup>141</sup>
- CFSEU would share that information with BCLC, which could conduct an investigation into the use of that bank draft and, where appropriate, file a suspicious transaction report with FINTRAC;
- the financial institution that issued the bank draft could conduct its own investigation and, where appropriate, file a suspicious transaction report with FINTRAC;
- where the statutory pre-conditions were met, FINTRAC would share relevant information concerning the bank draft (or the person in possession of the bank draft) with CFSEU and other law enforcement bodies; or

<sup>139</sup> Ibid, pp 51–52.

<sup>140</sup> Exhibit 840, CFSEU, Project Athena Stakeholders Meeting Presentation (October 24, 2018) [Project Athena Presentation], slide 9.

<sup>141</sup> Typically, a bank draft would be flagged as suspicious when the casino patron was presenting bank drafts from multiple financial institutions or a high total volume from a single financial institution.

- CFSEU could submit a voluntary information record to FINTRAC with respect to a suspicious transaction and share any information received from FINTRAC with BCLC and/or the financial institution that issued the bank draft.<sup>142</sup>

While participation was strictly voluntary, it is easy to see how the exchange of tactical information in this manner would assist all parties in identifying suspicious transactions. From a law enforcement perspective, knowing whether a particular customer has an account with the financial institution that issued the bank draft allows investigators to focus their efforts on bank drafts that are truly suspicious (rather than sorting through every bank draft tendered at BC casinos in an attempt to identify suspicious conduct).

It also creates a more efficient and effective reporting regime in which BCLC and individual financial institutions are able to file reports in relation to conduct that is truly suspicious and flag those reports in a way that ensures they are brought to the attention of the proper law enforcement agency.

As a result of these efforts, CFSEU received numerous FINTRAC disclosures related to the use of bank drafts at BC casinos and reviewed these disclosures to determine next steps. Sergeant Paddon described the process of analyzing these disclosures as follows:

So as a result of STRs that were filed from the banks to FINTRAC under Project Athena, FINTRAC ... would then forward FINTRAC disclosures to me ... I would go through each FINTRAC disclosure ... looking at the gambler [and] ... the banking activity of what that gambler was doing.

...

[A]fter looking at each FINTRAC disclosure, we would establish what we were going to do with it, what was going to be the next process we were going to go through. Some of them looked somewhat legit. It was just their banking activity, so they were put aside. Other ones were identified that may be suspect or were clearly layering in the money laundering process, and then they would be spin-off files. We would open separate files for each of those gamblers and we would look at investigating them further.

Of the [ones] identified for interviews, we would work with GPEB. GPEB would deal with BCLC as well. Sometimes BCLC would interview the patron themselves. Other times, if it was an investigative process, we were looking at them possibly for money laundering, we would actually organize an interview to have them come in and then we would interview them and ask them ... what was going on in their banking activity.

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<sup>142</sup> Transcript, April 14, 2021, pp 55–56; Exhibit 840, Project Athena Presentation, slide 10.

Sometimes other detachments would have a money laundering investigation or a cash seizure at the casinos or whatever it was, and then they would ask me to share the FINTRAC disclosure or talk about what it was ... they had FINTRAC disclosures they actually obtained, and then I would help them to analyze what was in them.

There were four lawyers identified in some of the FINTRAC disclosures, two notary publics, and there was a number of ... car dealerships and other things.<sup>143</sup>

In my view, the success of this initiative in raising awareness of the issue among stakeholders, putting in place preventive measures such as the inclusion of the purchaser's name and account number on bank drafts, and generating actionable intelligence with respect to the misuse of bank drafts illustrates the value of strategic and tactical information sharing in responding to the money laundering threat. At the same time, it is important to note that the ultimate success of information-sharing initiatives such as Project Athena will depend on whether law enforcement has sufficient resources to act on the intelligence generated through these initiatives.

In mid- to late 2019, the decision was made to expand the scope of Project Athena to include other money laundering typologies in other sectors of the economy, including real estate and luxury vehicles. While the expansion of Project Athena to these sectors was soon suspended in favour of a more permanent information-sharing partnership (see below), Sergeant Paddon's laudable efforts to develop strategic intelligence with respect to the luxury vehicle sector are deserving of mention.

After being chosen to lead the luxury vehicle subgroup, Sergeant Paddon conducted wide-ranging interviews with representatives of legitimate, well-respected luxury vehicle dealerships, as well as dealerships that were frequently mentioned on suspicious transaction reports, to determine whether there was any difference in the way they were conducting business.<sup>144</sup> Her analysis revealed that the more reputable dealerships took a 5 percent deposit, with the remainder of the purchase price being paid with certified cheques, credit cards, and bank drafts (all of which can be traced). Moreover, they always confirmed the source of funds used to pay the purchase price by calling the bank to confirm that the purchaser of the bank draft was, in fact, the person purchasing the vehicle.<sup>145</sup>

By contrast, the less reputable dealerships would routinely take 20 percent in deposits and rarely conducted any due diligence in relation to the source of funds used to pay the purchase price (taking the position that it was for the bank to do that work). They often had multiple bank accounts, held their inventory off-site in order to create distance between themselves and the vehicle, and used leasing companies operating under different names in different locations. One dealer even complained

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143 Transcript, April 14, 2021, pp 78–81.

144 Evidence of M. Paddon, Transcript, April 14, 2021, pp 88–89.

145 Ibid, pp 91–92.

that the Cullen Commission was causing him to lose a great deal of revenue from his customers.<sup>146</sup>

Sergeant Paddon presented the results of her analysis at the first (and only) meeting of the luxury vehicle subgroup, which included stakeholders such as RBC, HSBC, ICBC, the Vehicle Sales Authority, the New Car Dealership Association of British Columbia, CBSA, CRA, the Criminal Intelligence Service and the Automobile Retailers Association. Based on the minutes of that meeting, it appears there was a wide-ranging and productive discussion about regulatory gaps and the steps that could be taken to strengthen the anti-money laundering regime as it relates to luxury vehicles.<sup>147</sup>

In my view, the extraordinary work undertaken by Sergeant Paddon illustrates the potential value of enforcement-led information sharing partnerships in identifying regulatory gaps and addressing money laundering vulnerabilities in various sectors of the economy.

In late 2019, the RCMP and CFSEU came to the realization that Project Athena was not sustainable in light of the demands presented, the number of resources dedicated to the project, and the level of oversight needed for a project of this nature. A February 13, 2020, RCMP report describes Project Athena as a “corner of the desk initiative” and states that the rapid expansion of Project Athena “exposed the Project’s need for defined structure, clear governance, and co-ordination among participants – both internally and externally.”<sup>148</sup> In more concrete terms, Sergeant Robinson testified that nobody was “seconded” to Project Athena specifically and that it was being run by a few dedicated officers within CFSEU in addition to their other responsibilities:

This all started with the bank draft intelligence probe, which was understanding source of fund declarations and ... identifying criminality. Soon we found that there was incredible interest from other stakeholders in this type of forum and it grew and it grew. All the while in my case as a team leader at JIGIT managing a team of investigators and investigations. So it was a corner of the desk, and we did our best with Sgt. Paddon and Ben Granger and GPEB resources assigned to CFSEU JIGIT to maintain Project Athena operations. But it was a very heavy lift.<sup>149</sup>

In light of these concerns, the RCMP decided to suspend the expansion of Project Athena and transition it into a permanent information-sharing partnership within

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146 Ibid, pp 92–94.

147 Exhibit 844, Project Athena – High End Luxury Vehicle Working Group Minutes (January 22, 2020). Sgt. Paddon also presented a “case scenario” to the group to solicit feedback on what each of the stakeholders could do to assist the investigation: Transcript, April 14, 2021, p 90; Exhibit 843, Luxury Vehicle Case Scenario. A full description of money laundering risks that arise in the luxury vehicle sector, along with measures that could be taken to address those risks, is set out in Chapter 35.

148 Exhibit 846, RCMP Investigational Planning and Report, Project Athena (February 13, 2020), p 1.

149 Transcript, April 14, 2021, p 86. Similarly, Sgt. Paddon testified that “we were all running other files and investigations off the side of our desk” and it was “a lot of work for us to continue maintaining and keeping up with [Project] Athena on top of other tasks and priorities”: *ibid*, p 87.

federal policing known as the Counter Illicit Finance Alliance.<sup>150</sup> A report dated April 9, 2021, on the new initiative states that “[t]he experiences from Project Athena highlighted the need for a formalized [information-sharing partnership] with a clearly defined structure, strategic objectives, governance model, and operational process”<sup>151</sup> but indicates that the three “pillars” of the initiative remain the same:

- prevention of money laundering activity by raising awareness and improving understanding among stakeholders;
- identification of money laundering risks and threats; and
- disruption of money laundering activity.<sup>152</sup>

While I appreciate the need to lay the necessary groundwork for a national information-sharing partnership, I have serious concerns about the extent to which the original concept has been watered down. First, it appears the analytical work associated with the information-sharing partnership will no longer be done by law enforcement and that the RCMP will be relying on its partners to carry out that work.<sup>153</sup> Second, and most significantly, it appears that CIFA is only intended to be a *strategic* information-sharing partnership and will not be engaging in any tactical information sharing (at least in the short term). Sergeant Robinson testified that the only information that will be shared within CIFA is “strategic general information.”<sup>154</sup> Moreover, the April 9, 2021, report discussed above warns that expectations need to “tempered” in light of that reality:

[T]he type of information being shared at CIFA-BC, namely strategic information, holds certain implications for outcomes. Traditionally, public-private tactical information sharing is the most direct means of supporting law enforcement and disruption efforts across international FISP [financial information sharing partnership] models. Without a tactical component, the path to progress intelligence generated at FISPs to law enforcement investigations becomes less linear. *As a law enforcement led initiative, expectations for CIFA-BC results may steer towards traditional enforcement-centric outcomes that include quantitative measures of investigations, prosecutions, and charges. Potential misunderstandings around traditional outcomes stem from a mismatch between the type of input needed for enforcement-centric outcomes (i.e. tactical public-private information sharing) and the type of input currently possible given understandings of provincial and national legislative frameworks in place (i.e. strategic public-private information sharing). As a strategic information sharing public-private partnership, the correlation between the type of information shared at CIFA-BC and the outcomes that are produced as a result,*

150 Exhibit 847, RCMP “E” Division, CIFA-BC Framework (revised April 9, 2021), p 5.

151 Ibid.

152 Ibid, p 9.

153 Evidence of B. Robinson, Transcript, April 14, 2021, pp 109–10.

154 Ibid, p 123.

*will conceivably be less traditional and expectations will need to be tempered accordingly.* [Emphasis added.]<sup>155</sup>

I see both elements (analytical work by law enforcement and tactical information sharing between public- and private-sector entities) as being critical to the initial success of Project Athena, and I am not persuaded that the new model will be as effective as the Project Athena model in the identification and disruption of money laundering activity.

I am strengthened in that view by the evidence of Nicholas Maxwell, one of the world's leading experts on public-private financial information-sharing partnerships.<sup>156</sup> Mr. Maxwell repeatedly emphasized the need for law enforcement to provide strategic *and* tactical insight to reporting entities in order to guide the collection of intelligence with respect to money laundering. He also stressed the need for ongoing assessment and analysis of tactical information by law enforcement in order to inform the direction and collection of further intelligence by reporting entities:

[A]nyone that's familiar with an intelligence cycle knows that the direction needs to inform the collection of intelligence, and viewed as an intelligence asset, reporting entities are the collection arm. So they are meant to report what's happening in the real world and then it needs to be assessed, generated into intelligence and understood by the users, whether they are decision-makers or operational stakeholders, and then that informs further direction and further collection.

So there's no direction of collection in this cycle. It's not a cycle. The reporting entities stand there in isolation, not able to speak to each other, not able to get insights, tactical level insights from public agencies and try to their best to look at their data and find all crime as it might come through as money laundering. And then they never hear anything back. So it's a black box situation where the reports are filed and they don't get any feedback. So any system that doesn't have feedback is unable to improve and that is why we describe the system as fundamentally broken from the perspective of an intelligence cycle and it's certainly built backwards in terms of direction happening within the individual reporting entities in isolation and a lack of any form of tactical direction.<sup>157</sup>

Mr. Maxwell went on to explain that the absence of a legal gateway for tactical information sharing between public- and private-sector entities has led to a disjointed and ultimately ineffective anti-money laundering regime:

[F]undamentally these reporting entities are part of the AML/ATF [anti-money laundering / anti-terrorist financing] system, they are required to

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155 Exhibit 847, RCMP "E" Division, CIFA-BC Framework (revised April 9, 2021), p 15.

156 Mr. Maxwell's evidence is reviewed in detail in Chapter 7.

157 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 90-91.

identify crime, so if you don't assist them in that process then they are going to be less effective. And when crimes are priorities and you have particular crimes of concern, money laundering issues of concern in British Columbia and there isn't a process for those priorities to inform the collection process, at the strategic level we talked about prioritization but at a tactical level, your law enforcement officers who are working on serious organized crime in British Columbia should be able to understand for intelligence purposes what the financial intelligence AML/ATF system has in terms of relevant information to their investigation. That's the whole point of the AML/ATF regime, that it provides useful information to law enforcement. *But your law enforcement officers are not able to request any specific information. They are not able to outside of a production order for evidence where they must already know that the financial institution holds the account. They are not able to share tactical information with specific financial institutions or other reporting entities to allow those reporting entities to be responsive to the law enforcement collection requirements, so that is why the flow of information is so disjointed and ultimately the effectiveness and challenges that we see in terms of the lack of ability for the Canadian regime to demonstrate effective results in a large part are due to this lack of information sharing and lack of a cycle that really is fit for purpose.* [Emphasis added.]<sup>158</sup>

While I appreciate the constitutional concerns that arise in this context, I have concluded that more must be done to explore constitutionally permissible ways of developing actionable intelligence that is responsive to the needs of law enforcement agencies.<sup>159</sup> I return to this topic below in discussing the creation of the specialized provincial money laundering intelligence and investigation unit.

### ***Trade Fraud and Trade-Based Money Laundering Centre of Expertise***

The Trade Fraud and Trade-Based Money Laundering Centre of Expertise is a federal initiative aimed at strengthening Canada's response to trade-based money laundering. A full discussion of this initiative, along with its potential value in addressing the risks associated with trade-based money laundering, is set out in Chapter 38.

## **Provincial Policing**

In British Columbia, two government officials have primary responsibility for policing and law enforcement: the minister of public safety and solicitor general (minister of public safety) and the director of police services. The minister of public safety is the highest law enforcement official in the province and has a statutory duty to maintain an "adequate and effective" level of policing.<sup>160</sup> The director of police services has

<sup>158</sup> Ibid, pp 92–93.

<sup>159</sup> For a discussion of the constitutional concerns that arise in this context, see Chapter 7.

<sup>160</sup> *Police Act*, s 2. See also Evidence of W. Rideout, April 6, 2021, pp 8–9.

statutory responsibility for superintending police and law enforcement functions, including the responsibilities set out in section 40(1) of the *Police Act*, RSBC 1996, c 367. The director also holds the position of assistant deputy minister and is responsible for the Policing and Security Branch.<sup>161</sup>

The *Police Act* allows the minister of public safety (with assistance from the director of police services and the Policing and Security Branch) to establish priorities, goals, and objectives for policing and law enforcement agencies in British Columbia.<sup>162</sup> However, these individuals are not involved in the operational management of the provincial police force or the establishment of tactical priorities. These are established independently by senior police officers in line with their constitutionally protected independence.<sup>163</sup>

In what follows, I review the mandate and structure of the provincial police service in British Columbia, along with a number of specialized agencies created by the province.

## **RCMP Provincial Police Service**

Since at least the 1950s, the Province has chosen to provide provincial police services through a series of agreements with the federal government (Police Service Agreements).<sup>164</sup> The agreements contemplate that the federal and provincial government will share the costs of provincial policing, with the RCMP providing provincial police services in addition to its federal policing responsibilities.<sup>165</sup> In the current iteration of the Police Service Agreement, these costs are shared on a 70/30 basis, with the Province reimbursing the federal government for 70 percent of the costs of providing a provincial police service.<sup>166</sup>

While a full review of that agreement is beyond the scope of this Report, a few aspects of it have particular relevance to the work of the Commission.

### ***Purpose, Term, and Scope***

The overall purpose of the Police Service Agreement is to have the federal government “provide and maintain” a provincial police service within the province.<sup>167</sup>

The preamble states that “[c]ontract policing is recognized as an increasingly effective national policing model to address the cross-jurisdictional (i.e., municipal, provincial, territorial, national and international) and evolving nature of crime.”<sup>168</sup>

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<sup>161</sup> Ibid, p 9.

<sup>162</sup> *Police Act*, s 2.1.

<sup>163</sup> Exhibit 790, Email from Lori Wanamaker to Clayton Pecknold, re fwd German Money Laundering (December 15, 2018), p 3.

<sup>164</sup> Evidence of W. Rideout, April 6, 2021, p 10.

<sup>165</sup> Importantly, however, the *Police Act* also gives the Province the ability to establish a designated policing unit to provide policing and law enforcement services “in place of or supplemental to the policing and law enforcement otherwise provided by the provincial police force” (s 4.1).

<sup>166</sup> Exhibit 788, Province of British Columbia, Provincial Police Service Agreement (April 1, 2012) [Police Service Agreement], art 11.1.

<sup>167</sup> Exhibit 788, Police Service Agreement, art 2.1.

<sup>168</sup> Ibid, p 5.

It also states that both the federal and provincial government receive benefits from the RCMP acting as the provincial police service by:

- i. facilitating the flow of intelligence between all levels of policing;
- ii. having a direct connection, though the RCMP, between municipal, provincial, territorial, national and international policing that is important to modern policing and the security of provincial infrastructure and communities;
- iii. promoting Canadian sovereignty through the RCMP's presence across Canada including in isolated communities and at Canada's borders;
- iv. having RCMP members available for redeployment;
- v. sharing the costs and use of common police and administrative services; and
- vi. having a professional, efficient and effective police service that reflects reasonable expenses for operating and maintaining a police service.<sup>169</sup>

The agreement was signed on April 1, 2012, and has a 20-year term that expires on March 31, 2032, though it can be extended or renewed for an additional period on terms agreed to by the parties.<sup>170</sup> There is also provision for the agreement to be terminated by either party by giving notice to the other party not less than two years before the termination date.<sup>171</sup>

At present, the services provided by the RCMP include (a) general police services, such as the investigation and prevention of gang and gun violence, and (b) detachment policing (defined as the provision of local police services to municipalities with a population under 5,000 as well as unincorporated areas throughout the province).<sup>172</sup>

Federal police services such as policing services of a national or international nature, national security investigation services, protective security, and services provided to federal government departments are excluded from the scope of the agreement.

So, too, are municipal police services (defined as local police services provided to municipalities with a population over 5,000), though such municipalities can enter into separate contracts with the provincial government for RCMP services (see below).<sup>173</sup>

<sup>169</sup> Ibid.

<sup>170</sup> Ibid, art 3.0.

<sup>171</sup> Ibid, art 3.3. Note also that the federal government will be conducting an assessment of contract policing before the expiry of that agreement, with the result that there could be significant changes to the RCMP's policing agreements before the expiry of the 20-year term.

<sup>172</sup> Exhibit 789, *Police Resources in British Columbia*, pp 2-3.

<sup>173</sup> Ibid, p 3. See also Exhibit 788, *Police Service Agreement*, art 10.2.

## **Objectives, Goals, and Priorities**

Articles 6 and 7 of the Police Service Agreement provide that the minister of public safety will set the “objectives, priorities and goals” of the provincial police service and that the commanding officer of the RCMP provincial police service will “act under the direction of the [minister of public safety]” and “implement the objectives, priorities and goals as determined by the [minister of public safety] to the extent practicable.”<sup>174</sup>

In practice, these objectives, priorities, and goals are communicated to the RCMP through a formal letter to the commanding officer of the provincial police service.<sup>175</sup> However, there are a number of formal and informal mechanisms in place by which the Policing and Security Branch communicates with the RCMP to “assess the evolving nature of crime and pressures that are facing the RCMP.”<sup>176</sup> In some cases, these mechanisms also allow the Policing and Security Branch to track progress on the objectives, priorities, and goals set by the minister of public safety.<sup>177</sup>

Overall, I am satisfied that there is a high level of engagement between the RCMP provincial police force and the Policing and Security Branch with respect to the objectives, priorities, and goals of the RCMP *provincial* police service (though there remains a fundamental disconnect between the objectives, priorities, and goals of the RCMP *federal* police service and criminal activity in the province). The bigger problem in relation to the provincial police force seems to be one of resourcing.

Over the past 10 years, provincial priorities have largely been focused on organized crime, guns and gang violence, and the opioid crisis.<sup>178</sup> It does not appear that money laundering has ever been identified as a priority for the provincial police service (though there is evidence that the Policing and Security Branch has sought to deal with that issue as part of its overall organized crime strategy).<sup>179</sup> It is also important to recognize the significant pressures on the provincial police force during that period.

Not only was the province in the midst of a very serious gang violence problem, in which sophisticated organized crime groups were engaging in open air violence, but the provincial police force was required to “lean in heavily” to assist the federal force in the aftermath of the deficit reduction action plan and the national security surge that occurred in or around 2014.<sup>180</sup> There were also a large number of prosecutions for

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174 Ibid, arts 6, 7.

175 For example, see Exhibit 791, Briefing Note to Mike Farnworth, Minister of Public Safety and Solicitor General, re Organized Crime Priorities (April 30, 2018).

176 Evidence of W. Rideout, April 6, 2021, p 29. See also Evidence of C. Pecknold, Transcript, April 6, 2021, pp 31–32, where he discusses information sharing through formal committee structures and reporting through the contract policing group, as well as informal processes with senior leadership of the RCMP.

177 Evidence of W. Rideout, Transcript, April 6, 2021, pp 28–31. The Police Service Agreement also requires the commanding officer of the RCMP provincial police service to produce an annual report to the minister of public safety regarding the implementation of the Province’s objectives, priorities, and goals for the provincial police service: Exhibit 788, Police Service Agreement, art 7.2.

178 Evidence of C. Pecknold, Transcript, April 6, 2021, pp 35, 57.

179 Ibid, p 36.

180 Evidence of W. Rideout, Transcript, April 6, 2021, pp 58–60.

major offences such as murder, conspiracy, and kidnapping, which were a significant draw on police resources.<sup>181</sup> All of these pressures must be considered in evaluating the law enforcement response to money laundering at the provincial level and in making recommendations. That said, the failure to attach any meaningful priority to money laundering resulted in a lost opportunity to disrupt the organized crime groups fuelling many of the issues that the RCMP provincial police force had to address.

### **Resourcing**

One of the principal challenges in provincial policing is ensuring that sufficient resources are in place to meet the objectives set by the minister of public safety.

Annex A of the Police Service Agreement sets out the “authorized strength” of the RCMP provincial police force as agreed upon by the parties.

“Authorized strength” refers to the maximum number of positions that the federal and provincial government have committed to funding. However, it does *not* refer to the number of positions within the RCMP provincial police force that have been filled, and there are often a large number of vacancies within the RCMP provincial police force.<sup>182</sup> Under Article 11.1 of the Police Service Agreement, the Province is required to pay 70 percent of the *cost* of providing and maintaining the RCMP provincial police service,<sup>183</sup> with the result that it does not pay for positions that are not filled.

Since April 2012, the authorized strength of the RCMP provincial police force has been 2,602.<sup>184</sup> However, there are approximately 110 vacancies in the provincial force, and there is evidence that the impact on core policing has reached “critical” levels.<sup>185</sup>

Because of these shortages, the Province has to be cautious when looking to staff large units because of the “cascading effect on the provincial force” and has started to look at building some permanent legacy infrastructure within designated policing units such as the Organized Crime Agency of British Columbia (OCABC; discussed below) to ensure that these units do not have a direct impact on the provision of core provincial

181 Ibid, p 59.

182 Exhibit 789, *Police Resources in British Columbia*, p 25; Evidence of W. Rideout, Transcript, April 6, 2021, pp 13–14.

183 Exhibit 788, Police Service Agreement.

184 Exhibit 789, *Police Resources in British Columbia*, p 17. RCMP contributions to specialized units such as CFSEU come out of that total, with the result that core policing services provided by the RCMP provincial police force – such as policing in rural communities – could potentially be “hollowed out” by the creation of too many specialized agencies. Note, however, that the Province has, in recent years, been able to find ways of creating specialized units that do not detract from the provincial force: Evidence of W. Rideout, Transcript, April 6, 2021, pp 17–19.

185 Evidence of W. Rideout, Transcript, April 6, 2021, pp 14, 16–17, 115–16. See also Exhibit 800, Ministry of Public Safety and Solicitor General Policing and Security Branch – Decision Note (June 7, 2019), p 4 (“The pressures and resource shortages in front-line policing and resulting risk has reached a critical point”). Note, however, that these numbers fluctuate over time and that “federal police numbers generally suffer from greater vacancy patterns than the provincial police force”: Evidence of W. Rideout, Transcript, April 6, 2021, p 16.

resources.<sup>186</sup> Such units also allow the Province to hire police officers and civilian specialists with the proper credentials to do the work.<sup>187</sup>

Article 5 of the Police Service Agreement allows the province to request an increase or decrease in the total authorized strength of the RCMP provincial police force. Such a request must be made in accordance with Annex B and include written confirmation that the Province will fund its share of the increase.<sup>188</sup>

Wayne Rideout, the current director of police services, testified that increasing the authorized strength of the force is a complex process that requires the Policing and Security Branch to secure funding from both the federal and provincial government.<sup>189</sup>

At the same time, the Province has found some success using existing vacancies within the total authorized strength to support provincial initiatives.<sup>190</sup> In such cases, it is not necessary to seek the approval of the federal government to fill these positions. All that is required is the willingness of the Province to fund them.<sup>191</sup>

### ***Emergencies and Events***

Another issue that arises in this context is the impact of provincial and federal emergencies on the ability of the RCMP provincial police force to deliver on its mandate.

Article 9.0 of the Police Service Agreement contains detailed provisions governing the redeployment of police officers in the event of a provincial or federal emergency.

If an emergency occurs in an area of provincial responsibility, the RCMP provincial police service must, at the written request of the minister of public safety, be redeployed to such an extent as is “reasonably necessary to maintain law and order, keep the peace and protect the safety of persons, property or communities.”<sup>192</sup> If an emergency occurs in an area of federal responsibility, or in a province other than British Columbia, the federal government is entitled to temporarily withdraw up to 10 percent of the RCMP provincial police service to deal with that emergency.<sup>193</sup>

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186 Evidence of W. Rideout, Transcript, April 6, 2021, p 116–17.

187 Ibid.

188 Exhibit 788, Police Service Agreement, art 5.0.

189 Transcript, April 6, 2021, pp 21–22. See also Evidence of C. Pecknold, Transcript, April 6, 2021, p 34. On its face, article 5 of the Police Service Agreement (Exhibit 788) does not require the approval of the federal government to increase the total authorized strength of the force. However, there may be other provisions of the agreement which require federal approval before the authorized strength of the provincial force can be increased. At the very least, it appears that the approval of the federal government is a practical necessity.

190 Evidence of C. Pecknold, Transcript, April 6, 2021, p 34. For example, JIGIT was staffed using existing vacancies within the RCMP provincial police service.

191 Ibid.

192 Exhibit 788, Police Service Agreement, art 9.1. Examples include wildfires and floods.

193 Ibid, arts 9.3, 9.4.

Likewise, the federal government is entitled to temporarily withdraw up to 10 percent of the RCMP provincial police service where there is a need to use those officers in connection with a major event (defined as “an event of national or international significance that is planned in advance, within Canada, that requires additional police resources, if the overall responsibility for security for that event rests with Canada”).<sup>194</sup>

While there is no doubt that the deployment of RCMP officers in these circumstances is necessary and appropriate, it has a significant impact on the core responsibilities of the RCMP provincial police service, particularly where resources are already constrained.<sup>195</sup>

### ***Proposals for Reform***

In order to respond to perceived “gaps” in provincial policing, the RCMP provincial police force often develops proposals for new provincial units. These proposals are broad in nature and are normally made in response to “changing community needs, changing expectations on the police [and] changing requirements for the courts.”<sup>196</sup>

In 2016, the RCMP developed a business case for the creation of a provincial financial crime unit designed to fill the gap between the large commercial frauds investigated by federal investigators and mid-level frauds that did not meet the threshold for a federal investigation but had a significant impact on vulnerable citizens in the community.<sup>197</sup> While the proposal was never implemented, it provided the impetus for an exchange of proposals concerning the creation of a dedicated provincial money laundering unit.

On November 21, 2017, Clayton Pecknold, then director of police services, wrote to RCMP Deputy Commissioner Brenda Butterworth-Carr acknowledging receipt of a business case for the creation of a provincial fraud unit and advising that the province would be interested in receiving a proposal for the creation of a provincial financial integrity unit. The proposed unit would be similar in nature to the provincial fraud unit but focused on the “prevention, disruption and enforcement against organized crime infiltration, and compromise of public and private institutions critical to the British Columbia economy,” including the investigation of money laundering.<sup>198</sup>

<sup>194</sup> Ibid, arts 1.0, 9.5. Examples include security for G7 meetings and the Olympic Games.

<sup>195</sup> Evidence of B. Taylor, Transcript, April 16, 2021, pp 10–18. Note, however, that because the RCMP has more time to prepare for the loss of resources within its core policing operations, major events have less of an impact than emergencies such as wildfires and floods.

<sup>196</sup> Evidence of W. Rideout, Transcript, April 6, 2021, pp 92–93. Examples include the creation of an emergency response team or changing the focus of highway patrols.

<sup>197</sup> Exhibit 796, RCMP “E” Division, Business Case Proposal for a Provincial Financial Crime Unit (November 9, 2016) is one version of this business case. However, as an iterative document, it changed over time, leaving numerous versions of the business case in circulation: see Evidence of W. Rideout, Transcript, April 6, 2021, pp 96–97; Exhibit 795, Business Case for Provincially Funded ML Unit, p 1; Exhibit 799, Ministry of Public Safety and Ministry of Attorney General, Joint Briefing Note (February 7, 2018).

<sup>198</sup> Exhibit 798, Letter from Clayton Pecknold to Brenda Butterworth-Carr, re Request for Proposal Provincial Economic Integrity Unit (November 21, 2017), p 1; Exhibit 795, Business Case for Provincially Funded ML Unit, p 1.

On January 22, 2018, the RCMP developed a business case for the creation of a provincial financial integrity / financial crime unit comprising 38 members at an approximate annual cost of \$7.7 million as well as start-up costs of \$825,000.<sup>199</sup>

Upon the release of Dr. German's 2018 *Dirty Money* report, that proposal was updated to include a specific focus on money laundering. A "concept paper" produced by the RCMP in February 2019 states that there is currently "no dedicated agency, team or department in place within BC to organize or lead a coordinated, collaborative and focused effort around the prevention, disruption and enforcement of provincial financial crime priorities [including money laundering]."<sup>200</sup> It goes on to state that the FSOC section is focused on national priorities dictated by Ottawa and will only address money laundering activities that occur in BC when the criminality is multi-jurisdictional or international in scope. The next level of policing would be economic crime units within municipal police departments, which are focused on smaller scale financial crimes and do not have the capacity to address regional or provincial-level issues or priorities.<sup>201</sup>

The solution proposed in that paper is a dedicated provincial financial crimes unit that would be responsible for "identifying, engaging and bringing together various stakeholders (government, private, public, prosecution, associations and regulators) to organize and lead a coordinated / collaborative effort of addressing money laundering in BC."<sup>202</sup> The proposed unit would be focused on provincial priorities but would be supported by the FSOC section.<sup>203</sup>

While that proposal was being developed, the Province was developing an "alternative" model that contemplated the creation of a provincial unit to be housed within CFSEU. The idea was to maintain the "core expert teams" designed to address gang violence but add a team of financial crime specialists to enhance its ability to disrupt organized crime and gang activity.<sup>204</sup>

On June 7, 2019, the Policing and Security Branch sent a briefing note to the minister of public safety recommending the creation of a financial intelligence and investigations unit (FIIU) to "gather actionable intelligence for enforcement and prosecution."<sup>205</sup> A draft proposal indicates that the FIIU "will identify and address cases

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199 Exhibit 804, RCMP "E" Division, Draft Proposal for a Provincial Financial Integrity / Crime Unit (January 22, 2018), pp 1–2. The proposal contemplates that these costs would be shared on a 70/30 basis, with the Province's share of the annual costs being in the range of \$5.4 million.

200 Exhibit 805, RCMP "E" Division FSOC, Concept Paper: Designated Provincial Financial Crimes Unit (February 15, 2019), p 1.

201 Ibid.

202 Ibid, p 2.

203 Ibid, p 4.

204 Exhibit 799, Ministry of Public Safety and Ministry of Attorney General, Joint Briefing Note (February 7, 2018), p 2.

205 Exhibit 800, Ministry of Public Safety and Policing and Security Branch – Decision Note (June 7, 2019); Exhibit 60, Anti-Money Laundering Financial Intelligence and Investigations Unit – Draft Proposal (May 7, 2019) [FIIU Draft Proposal], p 4.

of money laundering ... that are linked to public safety concerns and social harms.”<sup>206</sup> The proposal called for a total of 78 police and support positions and had an estimated cost of \$18.5 million in the 2019–20 fiscal year (with that number decreasing somewhat in subsequent years).

While the proposal contemplated a governance model that would allow for ongoing dialogue and co-operation with national partners,<sup>207</sup> it advocated for the unit to be 100 percent provincially funded and housed within the CFSEU / OCABC structure given the “historical realities” of the 70/30 cost-share structure.<sup>208</sup> The proposal also suggests that tethering specialized units such as the FIIU to the federal RCMP or a provincial force would “compromise human resource capacity and expertise, staffing levels, provincial priorities, information flow, and the agility to respond to emerging issues.”<sup>209</sup> Finally, it notes that the nature of the work to be undertaken by the FIIU calls for “expertise, specialists, and continuity under a provincial strategic vision that identifies and responds to BC priorities.”<sup>210</sup>

In recognition of the “widely held” view that police agencies are unlikely to achieve any notable success without multidisciplinary support, the proposal recommends a multidisciplinary approach that includes various police officers, experts, and analysts broken down into two units: (a) an intelligence unit responsible for the intake, analysis, and dissemination of information; and (b) an investigative unit responsible for the investigation and disruption of money laundering offences that fall within its mandate.<sup>211</sup>

The proposed intelligence unit would be made up of numerous police officers, analysts and subject-matter experts and include (among other things):

- a senior management team responsible for the overall management of the intelligence unit;
- an intake team responsible for receiving information from other law enforcement agencies, Crime Stoppers, confidential informants, mainstream media, social media, and other sources;
- an intelligence analysis support team responsible for compiling information from various open and closed sources, and assisting with the creation and analysis of intelligence work product;

<sup>206</sup> Examples include the opioid crisis, gang violence, and housing affordability: Exhibit 60, FIIU Draft Proposal, p 4.

<sup>207</sup> Ibid, p 7. Interestingly, the proposal is complementary to federal efforts to address the problem, noting that “in March 2019, the federal government made significant financial commitments towards their national priorities related to money laundering by announcing a proposal that mirrored, in many ways, this FIIU proposal.”

<sup>208</sup> Ibid, p 15.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid, p 10.

- a covert asset support team responsible for the recruitment, development, and management of confidential informants; and
- an administrative and operations support team responsible for human resources, IT support, media relations, and various other tasks.<sup>212</sup>

The proposed investigative unit would primarily consist of police and investigator positions supported by forensic accountants, subject-matter experts and two embedded prosecutors (one from the federal Public Prosecution Service of Canada and the other from the BC Prosecution Service).<sup>213</sup>

The FIIU proposal is substantially similar to the proposal made in a report prepared for the Commission by Christian Leuprecht, Jeff Simser, Arthur Cockfield, and Garry Clement,<sup>214</sup> which is discussed in greater detail below.

After considering these proposals, I am strengthened in my view that there is a need for a specialized money laundering unit similar to the FIIU to lead the law enforcement response to money laundering in this province. I am also persuaded that the new unit must have both an intelligence and an investigative function and should be located within the CFSEU structure to avoid “hollowing out” the RCMP provincial police force; ensure the new unit has the flexibility it needs to hire and retain officers and staff with the requisite knowledge and expertise to conduct effective money laundering investigations; and enable the Province to direct the strategic priorities of the new unit. I return to the mandate and structure of the new unit in Chapter 41.

## **CFSEU / OCABC**

While the RCMP provincial police service is primarily responsible for provincial policing in British Columbia, there are a number of other units which perform designated, and in many cases, specialized policing functions. One such unit is CFSEU, a provincially funded law enforcement agency established to respond to the spike in gang violence in the province.

CFSEU is made up of seconded police officers from 14 police agencies, including the RCMP, the VPD, and OCABC (a designated police agency created under section 4.1 of the *Police Act*).<sup>215</sup>

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212 Ibid, pp 20–22.

213 Ibid, p 24.

214 Exhibit 828, *Detect, Disrupt and Deter: Domestic and Global Financial Crime – A Roadmap for British Columbia* (March 2021) [Leuprecht Report].

215 Section 4.1 allows the Province to create a designated policing unit to provide policing and law enforcement services “in place of or supplemental to the police and law enforcement otherwise provided by the provincial police force or a municipal police department.” It appears that the *provincial* officers working within the CFSEU are seconded to that unit from OCABC, with the remaining officers seconded from the RCMP or municipal police departments.

While the RCMP provides operational leadership, CFSEU has its own board of governance that is responsible for providing “policy objectives and operational strategic direction” to the officer-in-charge of CFSEU.<sup>216</sup> The board of governance is accountable to the minister of public safety and includes representatives from various federal, provincial, and municipal police agencies, including the commanding officer of “E” Division (who chairs the CFSEU Board of Governance), the “E” Division criminal operations officer, the commander of the RCMP’s Lower Mainland District, and the chief constable of the VPD.<sup>217</sup>

CFSEU also has stringent reporting requirements, which give the Policing and Security Branch a high degree of visibility into its operations.<sup>218</sup> It is also responsible for the provincial tactical enforcement priority, a prioritization tool that allows for the identification and investigation of individuals who pose the greatest risk to public safety.<sup>219</sup>

Mr. Rideout testified that the establishment of CFSEU and other similar agencies allows the province to build a “separate police agency that is integrated with the RCMP.”<sup>220</sup> The RCMP contribution to these agencies comes out of the authorized strength of the RCMP provincial police force (as negotiated under the provincial Police Services Agreement). However, seconded police officers from OCABC are not taken from the RCMP provincial police force, with the result that there is less of an impact on core policing.<sup>221</sup>

### ***Joint Illegal Gaming Investigation Team***

Over the past few years, the province has been exploring ways to enhance the capacity of CFSEU to allow it to take on additional issues beyond its current mandate. One example is JIGIT, a specialized unit within CFSEU that was created in April 2016 to provide a “dedicated, coordinated, multi-jurisdictional investigative and enforcement response to unlawful activities” in BC gaming facilities.<sup>222</sup> A March 10, 2016, letter from the minister of public safety, Mike Morris, identifies JIGIT’s strategic objectives as “targeting and disrupting top-tier organized crime and gang involvement in illegal gaming, and the prevention of criminal attempts to legalize the proceeds of crime

216 Exhibit 803, Doug LePard and Catherine Tait, Review of the Joint Illegal Gaming Investigation Team (JIGIT) (November 2020) [LePard Report], pp 72–73.

217 Exhibit 803, LePard Report, pp 72–73. The Policing and Security Branch also exercises its oversight and stewardship responsibilities by meeting twice monthly with the officer-in-charge of CFSEU and the heads of each of the fenced-funding units. It uses its annual delegation letter to ensure these units are on mandate and aligned with provincial priorities: *ibid*, p 77.

218 Evidence of C. Pecknold, Transcript, April 6, 2021, pp 84–85; Evidence of W. Rideout, Transcript, April 6, 2021, p 37 (“We also participate with the CFSEU board of governance and are aware on an ongoing basis as to where that particular agency is performing and we receive reports relative to that performance”).

219 Evidence of C. Pecknold, Transcript, April 6, 2021, p 67; Evidence of T. Steenvoorden, Transcript, April 6, 2021, pp 68–69.

220 Evidence of W. Rideout, Transcript, April 6, 2021, p 117.

221 *Ibid*, pp 116–17.

222 Exhibit 902, Letter from Mike Morris to Michael de Jong, re Creation of JIGIT (March 10, 2016), p 1.

through gaming facilities.”<sup>223</sup> It goes on to identify a secondary objective of public education with respect to the “identification and reporting of illegal gambling in British Columbia.”<sup>224</sup> In many ways, JIGIT provides a model for the creation of a provincial anti-money laundering investigative unit.

JIGIT has an annual budget of \$4,285,700 and consists of 22 law enforcement positions along with four investigators from GPEB. The provincial government covers 70 percent of those costs, with the federal government covering the remaining 30 percent.<sup>225</sup>

While the initial plan was to create two investigative teams (one to handle long-term investigations and the other to handle “quick-hit” investigations), the lack of actionable intelligence on gaming-related offences was quickly identified as a key challenge, and a decision was made to reorganize JIGIT into a single investigative team supported by an intelligence team, which became known as the gaming intelligence and investigative unit (GIU).<sup>226</sup> Staff Sergeant Joel Hussey, unit commander of JIGIT, explained the rationale for that decision:

We noted a lack of coordinated collaborative intelligence model and we sought to change that ... we did form a team called the gaming intelligence and investigation unit, which ... allowed timely, actionable intelligence and combined the GPEB resources with our JIGIT resources. And today ... it’s an intelligence hub that’s effective in guiding law enforcement and GPEB in their regulatory and criminal investigations as well. So we feel we are a centralized hub for gaming intelligence that is very effective and we’re very proud of that.<sup>227</sup>

In carrying out its intelligence functions, the GIU uses the Crime Analysis Search Tool (CAST) to query various police databases and cross-reference that information with information from other sources, including suspicious transaction reports and unusual financial transaction reports, to produce actionable intelligence for use by investigators.<sup>228</sup>

A November 2020 report by Doug LePard and Catherine Tait (the LePard Report) concludes that JIGIT has delivered on key parts of its mandate while also developing considerable subject-matter expertise. The report goes on to state that JIGIT provides a “valuable tool for prevention, disruption, and enforcement against money laundering in casinos and the operation of illegal gaming houses” and acts as a “force multiplier” in increasing the knowledge and ability of other police departments to take action.<sup>229</sup>

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223 Ibid.

224 Ibid.

225 Ibid; Exhibit 803, LePard Report, pp 46–47.

226 Exhibit 803, LePard Report, p 11; Evidence of J. Hussey, Transcript, April 7, 2021 (Session 2), p 15.

227 Evidence of J. Hussey, Transcript, April 7, 2021 (Session 2), p 15.

228 Exhibit 803, LePard Report, pp 115–16.

229 Ibid, p 17. In preparing the report, the authors interviewed a number of prosecutors who commented positively on the quality of JIGIT investigations. One prosecutor with experience on several JIGIT files described its work as of the “highest quality” and “exceptionally thorough”: *ibid*, p 106.

At the same time, the LePard Report makes a number of findings and recommendations aimed at increasing the overall effectiveness of the unit. One of these recommendations is that consideration be given to expanding JIGIT's mandate to include the investigation of money laundering activity in all sectors of the economy. In what follows, I review some of the key findings and recommendations contained in the LePard Report with particular emphasis on the performance of that unit in the investigation of money laundering.

### **Governance**

With respect to governance, the report indicates that the CFSEU Board of Governance is primarily focused on the performance of CFSEU as a whole and recommends that it take a more active role in providing strategic guidance to individual teams (such as JIGIT) to ensure that their work remains on mandate, that they are achieving expected outcomes, and that they are furthering the goals of the agency as a whole.<sup>230</sup> It also recommends that an advisory committee be established to advise on JIGIT's mandate, role, and priorities, including its role within the provincial anti-money laundering strategy.

At the same time, the LePard Report indicates that there is a well-defined and robust management process in place *within* CFSEU, which ensures appropriate oversight of the team, its operations, human resources, and finance.<sup>231</sup>

Interviews with JIGIT team members indicate there is a high degree of satisfaction with the internal management of the team and the decisions made by their superiors.<sup>232</sup>

### **Mandate**

With respect to mandate, the LePard Report notes that there is some debate within JIGIT as to the value of investigating illegal gaming houses, with some members expressing frustration about the resources needed to conduct a successful investigation as well as the minimal sentences that typically result.<sup>233</sup> While recognizing that the police and the public often believe that penalties for these offences are inadequate, the authors emphasize that consideration must be given to other factors, including the highly profitable nature of illegal gaming as well as the collateral crimes (loan sharking, extortion, assaults, etc.) arising from these operations.<sup>234</sup> They write:

While there are many offences in BC for which sentences appear to police to be “too short,” the likely sentence cannot be the only determining factor in deciding whether to pursue an investigation; rather, consideration must also be given to the impact on public perception of safety, the ability and willingness of the police to take action regarding community concerns, the

<sup>230</sup> Ibid, p 79.

<sup>231</sup> Ibid, p 76.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid, p 53.

<sup>234</sup> Ibid.

suppression of illegal activities, and the deterrent effect. Given that gaming houses presented 50% of the General Occurrence files ... it is important to ensure there is a provincial entity providing support for the investigation of these offences. Further, despite relatively few cases and the perceived insufficient sentences, seizures of gaming paraphernalia and cash for referral to the CFO [Civil Forfeiture Office] also have a beneficial impact that may be greater than the consequences of the criminal charge.<sup>235</sup>

With respect to money laundering, there was no debate within JIGIT about the value of pursuing investigations into such activity and the LePard Report praises the work undertaken by JIGIT in connection with the E-Nationalize investigation (which is described in the report as a “groundbreaking,” “extraordinary,” and highly complex investigation into a multimillion-dollar casino-related money laundering operation).<sup>236</sup>

### **Structure and Resourcing**

With respect to the structure of JIGIT, there was a “strong consensus” that the creation of the gaming intelligence and investigative unit (as opposed to the creation of a “quick-hit” investigative team) was a better model that made better use of GPEB members’ knowledge and skills, resulted in better information sharing and intelligence, and allowed the investigative team to focus more of their efforts on investigative tasks.<sup>237</sup> However, the LePard Report raises a number of capacity concerns, including the fact that the long-term investigative team could become completely consumed by a complex investigation, leaving nobody to conduct quick-hit investigations of illegal gaming houses.<sup>238</sup>

The officer-in-charge of the RCMP’s Richmond detachment, who praised JIGIT’s work, made the following comments about the need for a quick-hit team:

[T]here really needs to be the team that does the quick hits like when JIGIT started. They learn a lot doing those investigations, and it’s good for the public to see the reactivity, that the police are doing something. The quick hits help with deterrence, demonstrating to the targets we’re there and looking for them, even the lower level ones. We’re really remiss if we don’t have a quick hit team because the bigger team can get bogged down in complex investigations, disclosure and so on.<sup>239</sup>

Importantly, the LePard Report also raises significant concerns about vacancy rates within JIGIT, especially at the senior levels. From the end of 2017 to the end of 2018, there was no staff sergeant assigned to the team, and a number of other senior positions were filled in an acting capacity in the four years preceding the review.<sup>240</sup> There was also

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235 Ibid, p 56. See also Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 29–31.

236 Because of the ongoing nature of these investigations, I have not had the opportunity to assess the work undertaken by JIGIT. My comments are based solely on the information in the LePard Report.

237 Exhibit 803, LePard Report, pp 65–66.

238 Ibid, pp 66–67.

239 Ibid, p 67.

240 Ibid, p 59.

a high level of attrition within JIGIT caused in part by the failure to incorporate OCABC members as part of the JIGIT structure in any meaningful way.<sup>241</sup> Mr. LePard explained the impact of these vacancies as follows:

[I]t just makes it very difficult because if you don't have that continuity, you're always onboarding new members and they have to get up to speed and be developed and they're being trained as they're working ... [T]his is not unique to JIGIT. It's just one of the realities of policing where you have members coming in and out.

The attrition in JIGIT, just based on my experience, did seem to be quite high but also they're mostly RCMP members, and ... the RCMP have so many and varied demands on them as, you know, municipal, provincial and federal policing that it didn't surprise me to see that. I note in the RCMP's own report, for example, describing the proposal for the FIU, it talks about the 30 percent vacancy in federal positions and so on.

So it ...is more difficult to function well when you've got that sort of turnover. At one point we were told ... when we were doing the review that only three of the original members from 2016 were still in the unit. So that's quite a bit of turnover and it just makes it more challenging because ... you're constantly bringing people up to speed, getting them the training they need. They're learning on the fly essentially.<sup>242</sup>

Another issue raised by Mr. LePard was the lack of available surveillance capacity within CFSEU. In policing, surveillance resources are generally shared among various units rather than being attached to a particular unit. They are always in high demand and police managers generally allocate these resources based on the risk posed to the public. For example, surveillance to gather evidence against a homicide suspect will take priority over a break-and-enter suspect.<sup>243</sup>

At present, there are four surveillance teams within CFSEU, which are shared among the various units and may also be used to assist external units such as the Integrated Homicide Investigative Team (IHIT). Because these resources are, quite properly, allocated to investigations where there are significant public safety concerns, there are often no surveillance resources available to JIGIT, with the result that JIGIT members spend considerable time doing their own surveillance. Not only does that take them away from other investigative tasks (and decrease their capacity to take on more cases), but it makes for less effective surveillance and risks compromising investigations.<sup>244</sup>

241 Ibid, p 60. Indeed, the original JIGIT business case contemplated that these members would provide "expertise, tenure, and operational continuity ... required to achieve results."

242 Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 19–20.

243 Exhibit 803, LePard Report, p 61.

244 Ibid, pp 61–62. It is important to note that surveillance is a highly specialized field of policing that carries with it considerable risk and liability. Training for surveillance teams is extensive, and the standards for surveillance operations are high: *ibid*.

In response to these concerns, the LePard Report recommends the creation of an additional surveillance team that is able to prioritize JIGIT's needs. It notes that such units are not without precedent and have been successfully created in other police agencies:

The only way to address this resource gap is to create a surveillance team that prioritizes JIGIT's needs. There is certainly precedent for such an initiative. For example, the VPD created two "Strike Force" surveillance teams in the 1980s ... to provide 24/7 capacity when needed ... The members are trained to a very high level to conduct mobile surveillance of often high-risk targets, usually for units in the Major Crime Section (e.g., Homicide, Robbery/Assault) or the Specialized Crime Section (e.g. Sex Crimes, High Risk Offenders Unit). However, VPD managers responsible for addressing property crime – which affects more citizens than any other crime type – experienced the same frustrations as JIGIT in accessing these resources, and so eventually additional surveillance teams were created whose priority is property crime. There are currently two such teams, which report to the Inspector in charge of the Property Crime Section, as well as one more team responsible to conduct [surveillance] for the Organized Crime Section. It is in a similar situation to JIGIT in that its investigations are proactive, rather than in response to an imminent risk to public safety.

There is a case to be made that an additional surveillance team should be created in CFSEU-BC whose priority would be JIGIT investigations. It could also support any other CFSEU-BC unit engaged in investigations that are currently not prioritized because of a lack of imminent risk to the public.<sup>245</sup>

A third issue relating to the structure and staffing of JIGIT is the need for prompt, ongoing legal advice. The report indicates that "policing has become increasingly complex and that it is important that police have competent legal advisors throughout the life cycle of the investigation."<sup>246</sup> It also states that "having expert legal advice leads to better search warrant and wiretap applications, and improved disclosure to Crown."<sup>247</sup>

In addressing this issue, the authors explored three different models for providing prompt, ongoing legal advice. One model is to have an organized crime prosecutor embedded within JIGIT to provide legal advice to investigators on an ongoing basis. However, one prosecutor interviewed by the authors suggested that the embedded prosecutor model "could create problems with respect to the mutual independence of police and Crown." They also raised concerns about "potential problems created by having a prosecutor giving advice to police in circumstances where the prosecutor was not responsible for the charge approval and prosecution phases [of the investigation]."

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245 Ibid, p 62.

246 Ibid, p 67.

247 Ibid, pp 67–68.

A second model is for the investigative agency to retain dedicated in-house counsel to provide JIGIT with legal advice and liaise with Crown counsel to ensure that Crown is in agreement with their legal analysis.<sup>248</sup>

A third model (which the authors describe as “the WorkSafeBC Model”) involves the creation of a pre-assigned group of prosecutors with expertise in the relevant area. When investigators need legal advice, they can contact the director of the group who will assign a prosecutor to assist. If a Report to Crown Counsel is submitted, that prosecutor (or another prosecutor from the group) will be responsible for reviewing it and making a decision on whether to proceed with criminal charges.<sup>249</sup>

The report recommends that JIGIT adopt the WorkSafeBC Model and create a stable of prosecutors with the requisite expertise to provide ongoing legal advice and prosecute money laundering / illegal gambling offences. They write:

The advantages of this model are that rather than relying on a single embedded prosecutor, who will not always be available due to absences, there are a group of prosecutors to draw on with expertise in the relevant areas of law. Further, there is a consistency in approach because of the centralization of this expertise. Finally, just as discussion and brainstorming is important in police investigative teams to develop the best investigative approach, in this model, the preassigned group of prosecutors benefits from the round-tableing of cases and the synergy that results, rather than being isolated from their Crown colleagues and precluded from regular discussion on legal issues.<sup>250</sup>

I agree that this model has a number of advantages and return to this issue in my discussion of the provincial anti-money laundering intelligence and investigation unit.

### ***Information Sharing and Public Outreach***

One of the most important aspects of JIGIT’s mandate is to engage in public outreach activities aimed at *preventing* financial crime. Mr. LePard described the benefits of prevention as a law enforcement strategy as follows:

[I]f war is a failure of diplomacy, crime is a failure to a great extent of policy ... [P]olicing is not necessarily the best response except where police can be very influential and effective in prevention because investigating is complicated and expensive and the results are uncertain. And even when they are successful, the nature of the crime may be that the sentences don’t provide necessarily deterrent or incapacitation of the offenders.

So that’s why police recognize that it’s far better to look upstream and engage in prevention activities and police have an important role

<sup>248</sup> Ibid, p 68.

<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

in that, but so do many others. And so around policy and legislation and regulation, cooperation between businesses and government and so on, far better to prevent than to try to investigate or to use investigation as the way to address a problem.<sup>251</sup>

One of the key outreach activities undertaken by JIGIT was the bank draft intelligence probe (which ultimately led to the creation of Project Athena and the Counter Illicit Finance Alliance of British Columbia). The authors note that this initiative was “... critical to exposing criminal activity, identifying new trends and activities, and contributing to informed decision-making so as to deter money laundering activity at BC casinos.”<sup>252</sup>

The LePard Report also notes that JIGIT has delivered on its mandate with respect to providing education to police and industry stakeholders, with the authors indicating that they were impressed by the “passion, knowledge and articulateness” of the JIGIT members.<sup>253</sup>

### **Conclusion**

Overall, the LePard Report concludes that JIGIT has delivered on key portions of its mandate while also developing considerable subject matter expertise in the identification and investigation of money laundering activity.

While the E-Nationalize investigation is still in the charge approval stage, the authors describe it as a “groundbreaking” investigation into a sophisticated money laundering operation, and I view the bank draft intelligence probe and subsequent creation of Project Athena as one of the most important anti-money laundering initiatives in recent years.

In light of these successes, I have carefully considered whether JIGIT’s mandate should be expanded to include the investigation of money laundering activity in all sectors of the economy. While there is some appeal to this approach, given that the unit exists and has, by all accounts, been doing some very good work, I believe the Province would be better served by creating a specialized provincial money laundering intelligence and investigation unit with an exclusive focus on proceeds of crime and money laundering.

Like many investigative agencies, JIGIT has faced significant resourcing challenges in recent years. Asking it to take on the resource-intensive work of conducting money laundering investigations has already interfered with its mandate to investigate illegal gaming. It also bears repeating that money laundering activity is not limited to one sector of the economy and requires a coordinated response across multiple sectors.

In light of the challenges faced by investigators in responding to money laundering in all its various forms, it is essential that investigators have an exclusive focus on

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251 Transcript, April 7, 2021 (Session 1), pp 21-22.

252 Exhibit 803, LePard Report, p 117.

253 Ibid, p 123.

money laundering / proceeds of crime offences and not have additional responsibilities for investigating illegal gaming. I do, however, acknowledge the significant money laundering knowledge, expertise, and infrastructure developed by JIGIT over the past five to six years, including the expertise it has developed in money laundering typologies and the information-sharing agreements it has developed with various public- and private-sector entities. I believe it is essential for CFSEU to incorporate those elements into the new money laundering unit as much as possible. Moreover, CFSEU may also wish to consider whether the new unit would benefit from the incorporation of individuals who have developed money laundering knowledge and expertise through their work with JIGIT.

## Municipal Policing

Under section 3(2) of the *Police Act*, municipalities with a population of more than 5,000 persons must provide policing and law enforcement services within their municipality. They can do so in one of three ways. First, they can enter into an agreement with the minister of public safety to have the RCMP provide policing and law enforcement services within their municipality. Second, they can establish a municipal police department to provide policing and law enforcement services. Third, they can enter into an agreement with a municipality that has a municipal police department to have that police department service both municipalities.<sup>254</sup>

In 2019, there were 77 municipalities in British Columbia with a population over 5,000. Of these 77 municipalities, 65 opted to have the RCMP provide policing and law enforcement services within their municipality and 11 opted to create their own municipal police department (Vancouver, Victoria, Saanich, Central Saanich, Oak Bay, Delta, Abbotsford, New Westminster, West Vancouver, Nelson, and Port Moody). One municipality (Esquimalt) entered into a contract with another municipality (Victoria) for the provision of policing and law enforcement services within both municipalities.<sup>255</sup>

## RCMP Municipal Police Services

RCMP municipal police services are provided pursuant to an agreement between the federal and provincial government known as the municipal police service agreement.

Like the provincial police service agreement, the municipal police service agreement states that contract policing is increasingly recognized as an effective national policing model to address the cross-jurisdictional (i.e., municipal, provincial, territorial, national, and international) and evolving nature of crime.

<sup>254</sup> *Police Act*, s 3(2).

<sup>255</sup> Exhibit 789, *Police Resources in British Columbia*, p 3. In 2018, the City of Surrey opted to create a municipal police service, and efforts are currently underway to transition from the RCMP to the Surrey Police Service.

It also states that the federal and provincial government both receive benefits from the RCMP acting as the provincial police service by:

- i. facilitating the flow of intelligence between all levels of policing;
- ii. having a direct connection, though the RCMP, between municipal, provincial, territorial, national and international policing that is important to modern policing and the security of provincial infrastructure and communities;
- iii. promoting Canadian sovereignty through the RCMP's presence across Canada including in isolated communities and at Canada's borders;
- iv. having RCMP members available for redeployment;
- v. sharing the costs and use of common police and administrative services; and
- vi. having a professional, efficient and effective police service that reflects reasonable expenses for operating and maintaining a police service.

Under the terms of that agreement, municipalities with a population between 5,000 and 14,999 pay 70 percent of the policing costs, with the federal government covering the remaining 30 percent. Municipalities with a population over 15,000 pay 90 percent of their policing costs, with the federal government covering the remaining 10 percent. Municipalities are also responsible for 100 percent of costs such as accommodation and support staff.<sup>256</sup>

In 2019, the total authorized strength of the RCMP municipal police service was 3,969 officers, with 3,512 serving municipalities with a population over 15,000 and 457 serving municipalities with a population between 5,000 and 14,999.<sup>257</sup>

In many areas of the province, the RCMP operates integrated detachments (defined as a detachment comprising two or more provincial and/or municipal police units). For example, the North Vancouver detachment includes three policing units: two municipal units (North Vancouver District and North Vancouver City) and one provincial unit (North Vancouver Provincial). The detachment works on a post-dispatch system, which means that members respond to calls in any of the three policing jurisdictions regardless of their assignment.<sup>258</sup>

The RCMP also maintains a number of regional detachments that offer a central point of management and coordination for integrated or stand-alone detachments in a particular area. For example, the Kelowna Regional Detachment provides a central point of management for the Kelowna municipal unit, the West Kelowna integrated

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<sup>256</sup> Exhibit 789, *Police Resources in British Columbia*, p 3.

<sup>257</sup> *Ibid*, pp 4, 16. These numbers will likely change with the establishment of the Surrey Police Service.

<sup>258</sup> *Ibid*, p 3.

detachment (consisting of the West Kelowna municipal unit, the Peachland municipal unit, and the Kelowna provincial unit), and the Lake Country municipal unit.<sup>259</sup>

## Municipal Police Departments

Eleven municipalities have elected to create their own police department to provide policing and law enforcement services in their communities. Each municipal police department is governed by a police board that determines the priorities and objectives for the municipal police department.<sup>260</sup> Under section 25 of the *Police Act*, the mayor of the municipality is the chair of the municipal police board. In 2019, the total authorized strength of all municipal police departments across the province was 2,461 officers.<sup>261</sup>

While each municipal police department is organized differently, they generally consist of front-line (or “patrol”) officers who are responsible for responding to calls for service as well as general, and in some cases, specialized investigative units. For example, the Abbotsford Police Department is made up of 224 sworn members in four separate branches: a patrol branch responsible for responding to calls for service; an investigative support branch that conducts investigations beyond the scope of front-line patrol officers; a major crime unit that conducts investigations into serious offences such as homicide, assault, arson, and missing persons; and an operational support branch that is made up of a community policing unit, a youth squad, and a traffic branch.<sup>262</sup>

The Vancouver Police Department is made up of approximately 1,348 sworn members and 441 civilian members divided into three divisions: an operations division made up of front-line patrol officers responsible for responding to calls for service; an investigations division made up of a number of specialized investigative units including organized crime, major crime (homicide and robbery), sex crime, domestic violence, child exploitation, and forensic identification; and a support services division that provides research and administrative support to members of the VPD.<sup>263</sup>

The VPD also has 72 members seconded to other units including the RCMP FSOC section, the Integrated Market Enforcement Team, the Waterfront Joint Forces Operation, and CFSEU.<sup>264</sup>

While municipal police departments come across money laundering in the investigation of other offences, their primary focus is on violent crime and other public safety concerns, and they do not have the resources or expertise to embark on complex proceeds of crime investigations. For example, Inspector Christopher Mullin testified that the New Westminster Police Department is largely concerned with local issues such as violent and property crime:

<sup>259</sup> Ibid, p 4.

<sup>260</sup> *Police Act*, s 26.

<sup>261</sup> Exhibit 789, *Police Resources in British Columbia*, p 3.

<sup>262</sup> Evidence of B. Crosby-Jones, Transcript, March 30, 2021, pp 17–18.

<sup>263</sup> Evidence of L. Rankin, Testimony, March 30, 2021, pp 20–22.

<sup>264</sup> Ibid, p 22.

[O]ur priorities really do fall to local level issues as it relates to violent crime. Property crime is a significant fact for our organization. Our major crime unit focuses primarily on ... investigations such as robberies or crimes against children, sexual exploitation type investigations, attempted murders, those sorts of things. Our street crime unit essentially is our only proactive unit, and when they're not assisting major crime on some of the more significant investigations that they have underway, they do tend to focus a lot on local drug trafficking and distribution. Through there we do have good working relationships with our partner agencies within the Lower Mainland and even provincially if the case may take us to that level. But that's more or less the focus of our proactive efforts as far as targeting anyone that may be tied to money laundering.<sup>265</sup>

He went on to state that his department takes financial crime investigations as far as it can but does not have the capacity to follow through on those investigations and sees its contribution to these investigations occurring mainly through secondments to regional units such as FSOC and CFSEU.<sup>266</sup>

Deputy Chief Brett Crosby-Jones gave similar evidence concerning the Abbotsford Police Department. He stated that the primary focus of his department is responding to calls for service and ensuring that front-line resources are properly staffed to deal with issues such as domestic violence, mental health, homelessness, and gang violence:

We're governed by a police board. We have a strategic plan that we come out with every year. It's Abbotsford-centric. Basically responding to calls for service, ensuring we staff our frontline resources in order to meet public safety needs. We're looking at domestic violence, our advancing mental health response, our dealing with homelessness and our gang crime issue. Proactively, similar to New West, we have a gang crime unit, a drug enforcement unit, a crime reduction unit. So based on some of their investigations we do enter into financial crime type files, but we are limited [in] our ability to investigate and respond to those.<sup>267</sup>

Even the larger municipal departments – such as the VPD – lack the expertise to investigate sophisticated money laundering schemes. Inspector Michael Heard, an experienced investigator with the VPD, gave the following evidence with respect to these matters:

[T]hese investigations are extremely complex. I think that they're very nuanced, and quite frankly from a municipal perspective ... our predicate offences are the ones that identify the money laundering ... in a lot of money, vehicles, car leases, et cetera. But I think that when you start

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265 Transcript, March 30, 2021, pp 28–29.

266 Ibid, p 31.

267 Transcript, March 30, 2021, p 30.

getting into more sophisticated investigations where you're doing trade-based money laundering, you start involving shell companies, you have some more level of sophistication, we just don't have the subject matter experts that have the ability to investigate these on a continual basis.<sup>268</sup>

Another concern that arises in this context is the need to get certain offenders off the street for public safety reasons. Because proceeds of crime investigations are often slow and time-consuming – particularly where they require production orders or assistance from international partners – municipal police departments often elect to proceed only on the predicate offence without following up on the money laundering aspect of the investigation. Inspector Heard explained that dynamic as follows:

I think that for public safety and ... to ensure that we meet our disclosure obligations to obtain a criminal charge or have judicial conditions on the person upon release. We will go forward with the charges for the substantive offence ... [but] with the other offences, unfortunately based on timelines and seeking multiple production orders and obtaining all the orders required to follow the money and follow where it's going, we just don't have the time or the resources ... if we have a substantive offence that requires us to ... put someone in custody right away for public safety.<sup>269</sup>

For these reasons, I have concluded that it is unreasonable and unrealistic to expect municipal police departments to take on any significant responsibility for the investigation of complex money laundering schemes. Such investigations must be undertaken by specialized units that have the time, expertise, and resources to conduct a proper investigation.

At the same time, it is important that municipal police officers involved in the investigation of profit-oriented criminal offences (particularly at the project level) have the training, confidence, and available expertise to follow the money and pursue money laundering charges of low to medium complexity in conjunction with the underlying investigation. These investigations are well within the competence of most municipal police officers and present a number of significant disruption opportunities, including additional criminal charges and the identification of assets for seizure and/or forfeiture.

I turn now to some of the key challenges faced by law enforcement bodies in the investigation and prosecution of money laundering offences.

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<sup>268</sup> Transcript, March 30, 2021, pp 42–43.

<sup>269</sup> Transcript, March 30, 2021, p 33.

## Chapter 40

# Challenges Faced by Investigators

While there can be little doubt that law enforcement results in British Columbia are not commensurate with money laundering risks, it is useful to consider some of the challenges associated with the investigation and prosecution of money laundering offences in order to make effective recommendations to the Province concerning the investigation of these matters. These challenges include (a) the legal complexity of money laundering investigations and prosecutions; (b) the inability of FINTRAC to reliably produce actionable intelligence concerning money laundering threats; and (c) the complexity of many money laundering schemes. Each of these challenges are discussed in greater detail (below).

### Legal Complexity

One of the key challenges associated with the investigation and prosecution of money laundering offences is the complexity of these investigations. Such complexity begins with the definition of the offence. Section 462.31 of the *Criminal Code* provides:

#### **Laundering proceeds of crime**

**462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.<sup>1</sup>

Over the course of the evidentiary hearings, I repeatedly heard evidence that proving the predicate offence (i.e., proving that the property or proceeds were obtained or derived from the commission of a designated offence) is a significant hurdle for investigators in many cases. For example, an RCMP report with respect to the large amounts of suspicious cash entering BC casinos makes the following comments concerning the need to draw a “concrete” or “definite” link to criminal activity:

Although intelligence gleaned to-date indicates that these “bags of cash” involved in these large buy-ins have their ultimate origins in street-level criminal activity, drawing a concrete link to those activities has thus far been an elusive goal. In order for IPOC [Integrated Proceeds of Crime units] to pursue a successful prosecution for Possession of Proceeds or Money Laundering, it is essential to show a definite link to criminal activity. IPOC will task E Div CIS [Criminal Investigation Service] to provide this “missing link” to criminal activity. The task for CIS would be to gain sufficient information and evidence to conduct enforcement action, resulting in the seizure of currency and the successful prosecution of the individual(s) involved in the money-laundering activity. If an opportunity for significant enforcement action does not come to light in the course of the CIS intel-probe, it is anticipated that CIS will be able to open new investigative avenues for IPOC to pursue upon conclusion of the intel-probe.<sup>2</sup>

I also heard evidence with respect to the considerable difficulties faced by investigators in proving the knowledge element of the offence (i.e., that the accused knew or believed, or was reckless as to whether, the property or proceeds were obtained or derived from the commission of a designated offence).<sup>3</sup> For example, Mr. Baxter made the following comments with respect to proof of these elements in connection with the casino probe:

[I]n order to conduct the criminal side of the investigation, you got to prove knowledge. You got to prove intent. You have to show the source of funds. And those were hurdles that were very, very difficult for investigators to locate to a sufficient level of beyond a reasonable doubt ... [T]here was lots of ... levels of intelligence and conclusions, but to get to that threshold, we just weren't there yet.<sup>4</sup>

1 *Criminal Code*, RSC 1985, c C-46.

2 Exhibit 760, RCMP “E” Division IPOC, Investigational and Planning Report: Money Laundering – B.C. Casinos (January 30, 2012), pp 3, 5.

3 In order to prove the knowledge element of the offence, the prosecution must prove that the accused knew that the proceeds were obtained or derived from the commission of a *specific* designated offence (e.g., drug trafficking). However, it is not necessary to prove that the accused knew about the details of the offence (e.g., what specific drugs were trafficked or how the trafficking was carried out): *R v Tejani* (1999), 138 CCC (3d) 266 (Ont C.A.) [*Tejani*] at para 36.

4 Transcript, April 8, 2021, p 88.

While the essential elements of the offence are a matter of exclusive federal jurisdiction under section 91(27) of the *Constitution Act, 1867*, I make two observations with respect to these matters which may be useful to law enforcement agencies in the investigation and prosecution of money laundering offences. First, the 1997 amendments to the *Criminal Code* (which replaced the term “knowing” with the terms “knowing or believing”) may obviate the need to prove that the property or proceeds *were* obtained or derived from the commission of a designated offence in circumstances where the Crown can prove that the accused *believed* the property was obtained in that manner.

While it is not my place, as a Commissioner, to decide that issue, a plain reading of section 462.31 suggests that the *actus reus* of the offence is complete when an offender deals with any property or the proceeds of any property in any of the ways set out in that provision (using, transporting, sending, delivering, etc.), and the knowledge element will be satisfied where the offender did so knowing *or believing* that the property or proceeds were obtained or derived through the commission of a designated offence.<sup>5</sup>

Second, I note that section 462.31 was recently amended to include recklessness as one of the mental elements of the offence, thereby expanding the circumstances in which criminal liability can be imposed. The inclusion of recklessness in section 462.31 will no doubt make it easier for law enforcement to make out the mental element of the offence in circumstances where the evidence is insufficient to prove knowledge but the accused was aware of the *risk* that the property was obtained or derived from the commission of a designated offence.

It strikes me that these amendments will be particularly useful in bringing criminal proceedings against third-party money launderers, including professional money launderers who were not involved in the commission of the predicate offence but who receive a commission for laundering illicit funds generated by other criminal groups.

The inclusion of recklessness as one of the mental elements of the offence also increases the number of individuals and groups who could potentially be caught by these provisions. For example, a currency exchange or money services business that becomes aware of a *risk* that certain funds were obtained or derived from the commission of a designated offence may acquire criminal liability if it chooses to convert those funds into another form. Lawyers, accountants, realtors, mortgage brokers, financial institutions, and others could also face criminal penalties in circumstances where they become aware of a money laundering risk and proceed nonetheless.

Another form of legal complexity relates to the labour-intensive nature of most major money laundering investigations. Even getting a basic financial picture can take multiple production orders (which typically have a 30- to 60-day turnaround) and require a significant amount of time to review and analyze the results. Investigators

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<sup>5</sup> For case law on the essential elements of the offence see *United States of America v Dynar*, [1997] 2 SCR 462 at paras 39–45, 69–71, *Tejani* at para 29, *R v Bui*, 2010 ONSC 6180 and *R v Drakes*, 2006 Carswell Ont 1585 (Ont. S.C.J.). While *Dynar* appears to be dispositive of the issue, it is important to note that the decision was rendered before the 1997 amendments to section 462.31.

may also need to seek the assistance of professionals – such as forensic accountants – to understand the information they receive and need to cope with the constantly evolving ways in which organized crime groups are laundering illicit funds through the BC economy. Inspector Heard described some of these challenges as follows:

[D]uring a course of an investigation to follow the money we may come into unexplained wealth like cars, houses, et cetera, that ... aren't consistent with the lifestyle that they're leading. And during the course of our investigation we may uncover banking information from a myriad of different banks ... depending on the level of sophistication to ... disguise their money to [a] multitude of financial institutions, but each of those require production orders for us to get the information back from the bank. Production orders ... are supposed to have a 30-day turnaround, but unfortunately ... everybody has capacity issues, even the financial sector. So production orders that were supposed to get back within 30 days now are leading up to towards 60 days of being returned ... I always say one production order turns into about three or four more once you start gleaning information. And then you start thinking about ... between 30 and 60 days upon return of each order and you keep kind of adding and compounding those on top of each other ... and then by the time you analyze the information and have someone that either we can bring in people with financial backgrounds, we have people in our financial crime units that are accountants, but to go over the information to make assessments on the money it just isn't feasible.<sup>6</sup>

A serious money laundering investigation will almost certainly require the use of other investigative techniques, including wiretaps, search warrants, undercover operations, and police agents, which significantly increase the cost and complexity of these investigations.<sup>7</sup>

On a related note, I heard a great deal of evidence concerning the challenges faced by investigators in complying with the requirements of *R v Stinchcombe*<sup>8</sup> (which requires the Crown to make full disclosure, to the accused, of all evidence needed to make full

6 Evidence of M. Heard, Transcript, March 30, 2021, p 34–35. See also Exhibit 821, RCMP, A Resourcing Overview of Major Money Laundering Investigations in BC, p 5, where the RCMP states that a production order for a bank typically exceeds 100 pages, takes approximately 35 hours to review and produces up to 300 pages of disclosure. Another source of delay arises from the Mutual Legal Assistance Treaty (MLAT) process, which is often used when the investigation extends beyond Canada. Jeffrey Simser, a lawyer with the Ontario Public Service and an expert on money laundering issues, described that process as ponderous, slow, and bureaucratic – and one that often results in the production of “stale” information: Transcript, April 9, 2021, pp 105–6. For additional evidence concerning the labour-intensive nature of money laundering investigations, including the work required to properly analyze FINTRAC reports, see Evidence of M. Paddon, Transcript, April 14, 2021, pp 78–81.

7 Indeed, an RCMP analysis of money laundering investigations indicates that a major money laundering investigation can require ten times as many person hours as a major drug operation and cost four times as much. Money laundering investigations may also require twice as many judicial authorizations as a major drug investigation and can involve as many as 20,000 documents, 35,000 intercepts, dozens of electronic devices, and various other types of evidence that must be reviewed and analyzed: see Exhibit 821, RCMP, A Resourcing Overview of Major Money Laundering Investigations in BC, pp 1, 5.

8 *R v Stinchcombe*, [1991] 3 SCR 326 [*Stinchcombe*].

answer and defence) and *R v Jordan*<sup>9</sup> (which requires the Crown and the courts to get the matter to trial within strict time limits). Multiple witnesses testified that the disclosure requirements that arise in this context require law enforcement to expend considerable time and resources organizing and facilitating disclosure.<sup>10</sup>

I also understand that the disclosure requirements mandated by *Stinchcombe* can cause challenges for Canadian law enforcement agencies when working with international partners who have less stringent disclosure requirements. These challenges are particularly acute when dealing with police agents and confidential informants (which form an essential part of many organized crime files). Indeed, Mr. Chrustie testified that there were many instances where law enforcement bodies were unable to take action in Canada because of the requirement to disclose source information:

[W]ith transnational organized crime networks ... the matrix and the enforcement activity and the operations take place ... worldwide. And ... our own legal system really precluded us because of the disclosure laws under *Stinchcombe* to take enforcement action here because a lot of the key pieces of ... intelligence and/or source information quite often came out of places like Colombia at the highest level. And those parties were quite often in, what we would refer to, the agent capacity within the Canadian legal system, which meant we had to disclose that information if it reached the Canadian court.

So ... when we looked at making a decision where to prosecute, where to arrest, knowing that it wasn't going to be compatible to the Canadian courts and trying to mitigate those four threats ... social harm, public safety, national security and financial integrity – collectively as a collaborative group of investigators from around the world, we would pick places that were going to likely result in a trial and a conviction. And quite often it was never Canada because of those problems.<sup>11</sup>

While I appreciate that complex financial crime investigations involve massive amounts of disclosure and that mistakes in the disclosure process – particularly as it relates to source information – can sometimes “blow up” an entire prosecution,<sup>12</sup> it is important to understand the constitutional basis of *Stinchcombe* disclosure and the critical role it plays in ensuring the fairness of the criminal justice system. Before *Stinchcombe*, there were no uniform rules governing pre-trial disclosure and there were cases where prosecutors used the element of surprise to their advantage or did not disclose exculpatory evidence to the accused.<sup>13</sup> Such practices have repeatedly been identified as one of the leading causes of wrongful convictions. For example, the Royal

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9 *R v Jordan*, 2016 SCC 27 [*Jordan*].

10 For reference to the “punishing” nature of these disclosure requirements, see Evidence of J. Simser, Transcript, April 9, 2021, pp 68–69.

11 Evidence of C. Chrustie, Transcript, March 29, 2021, pp 109–10.

12 Evidence of J. Simser, Transcript, April 9, 2021, p 69.

13 Exculpatory evidence is any evidence that may show an accused's innocence or justify his or her actions.

Commission on the Donald Marshall, Jr., Prosecution found that the failure to disclose prior inconsistent statements to the accused was an important contributing factor to the wrongful conviction and concluded that “anything less than complete disclosure by the Crown falls short of decency and fair play.”<sup>14</sup>

In *Stinchcombe*, the court recognized that the constitutional right to make full answer and defence demands that the prosecution make full disclosure of all relevant information (subject to certain exceptions). It also emphasized that the right to make full answer and defence is one of the pillars of the criminal justice system “on which we heavily depend to ensure that the innocent are not convicted”<sup>15</sup> and held that the practical arguments in favour of such a duty are overwhelming. In the 30 years since that decision was rendered, the precise contours of the duty have been the subject of thousands of decisions, which have not been without criticism. However, *Stinchcombe* is one of the most important decisions in recent history and the principles underlying it are unlikely to change any time soon. Nor, in my view, should they.

The implication is that law enforcement bodies must put the necessary infrastructure in place to ensure they can comply with their disclosure obligations. Jeffrey Simser, a lawyer with the Ontario Public Service and an expert on money laundering issues, gave the following evidence with respect to these matters:

[I]f you’re really serious about going after organized crime and about going after money laundering, aside from the data analytics you need an infrastructure to do it. Disclosure requirements are punishing, they’re massive, and the last thing that you want to do is two or three or four years into a major project on organized crime [is] discover whoops, in the first tranche we revealed three confidential informants in our disclosure to the defence lawyer or whatever because that will blow up the entire prosecution and the best you’ll be able to do is maybe a civil forfeiture action. So you need the technology and you need the people that know how to use it and war game it strategically so that you don’t end up investing massive amounts of resources going after a target and then losing it in the year three or four because that will [undermine] confidence in the whole system.<sup>16</sup>

While the *Jordan* decision is more recent than *Stinchcombe*, it has also led to significant changes within the criminal justice system. In that decision, the Supreme Court of Canada sought to cure the “excessive delays” and “culture of complacency” within the criminal justice system by introducing a presumptive ceiling on the time it should take to bring an accused person to trial.<sup>17</sup> For cases going to trial in the provincial

14 Royal Commission on the Donald Marshall, Jr., Prosecution, *Vol. 1: Findings and Recommendations* (1989), pp 238, 243 as cited in *Stinchcombe* at para 17.

15 *Stinchcombe*, para 17.

16 Evidence of J. Simser, Transcript, April 9, 2021, pp 68–69.

17 *Jordan*, paras 4, 40–41.

court, the presumptive ceiling is 18 months. For cases going to trial in the superior court, the presumptive ceiling is 30 months. If the total delay from charge to the actual or anticipated end of trial (minus defence delay) exceeds the presumptive ceiling, the delay is presumptively unreasonable.<sup>18</sup> The Crown can rebut the presumption of unreasonableness by showing that the delay was attributable to exceptional circumstances outside the Crown's control such as family and medical emergencies.<sup>19</sup>

If the Crown cannot establish the presence of exceptional circumstances, the court will be required to find that the delay is unreasonable and enter a stay of proceedings.

While *Jordan* undoubtedly poses challenges for law enforcement bodies, it is important to note that the *Jordan* clock starts to run from the time the information is sworn (i.e., from the time criminal proceedings are commenced) and *not* from the time of the offence or the time the police commence their investigation. The implication is that law enforcement can prepare the disclosure package and otherwise ready the case for trial before starting the *Jordan* clock. Indeed, the main issue with *Jordan* seems to be that drug investigations and proceeds of crime investigations often progress at a different pace, with investigators being forced to choose between waiting for the proceeds of crime investigation to be completed before laying charges on all counts or proceeding only on the drug charges in order to get the offender off the street.

Superintendent Peter Payne, current director of financial crime at RCMP national headquarters, explained:

Q Just to pick up on the *Jordan* point. The way I understand that the Supreme Court of Canada decision articulates ... the ticking clock on cases is that ... the start of when the stopwatch goes is when a charge is brought in court, so an information or indictment is preferred. And if that's the case, is it not the case that *Jordan* imposes pressure on the prosecutor once the case starts in court to get it done within the timeline but doesn't necessarily impose pressure on the police to get an investigation done in a certain period?

A Yes, that's correct. But I think where some issues might come into play, let's say we have a large scale investigation into an organized drug group and we wait until that investigation is done and charges are laid against those drug charges [*sic*]. Then we start our POC/ML [proceeds of crime / money laundering] investigation. It's going to take time for us to get success – the required evidence for that POC/ML charge down the road, which could take another year or two while the *Jordan* clock is ticking on the other charges.<sup>20</sup>

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18 Ibid, paras 46–47.

19 Ibid, paras 71–74, 77.

20 Evidence of P. Payne, Transcript, April 16, 2021, pp 106–7. See also Evidence of M. Heard, Transcript, March 30, 2021, p 33 with respect to the need to move forward immediately with the substantive offence in order to get dangerous offenders off the street.

In my view, these considerations underscore the need for investigators to consider and pursue money laundering / proceeds of crime charges at the same time as the predicate offence (as recommended in Chapter 39). While there may be cases in which public safety concerns require the Crown to lay charges on the predicate offence before the money laundering / proceeds of crime investigation is complete, these cases should be the exception if a serious attempt is made to implement my recommendation.

I would add that there is a perception within law enforcement that there is little to be gained by pursuing money laundering charges because the courts will often impose concurrent sentences for the predicate and the money laundering offence. While I would certainly encourage prosecutors to give greater consideration to seeking consecutive sentences in these circumstances, there is much to be gained from conducting a money laundering / proceeds of crime investigation even if concurrent sentences are imposed (see above).

## **FINTRAC**

A second challenge faced by law enforcement is the ineffectiveness of FINTRAC in producing timely, actionable intelligence for use by investigators. Christian Leuprecht, an internationally renowned money laundering expert and lead author of the Leuprecht Report, testified that FINTRAC is a “very good entity that is very good at watching things and observing things, but there’s relatively little that it can actually do with what is provided.”<sup>21</sup>

Similar evidence was given by Nicholas Maxwell, one of the world’s leading experts on financial information-sharing partnerships, as well as individual law enforcement officials such as Inspector Heard, who spoke to the lack of timely disclosures by FINTRAC.<sup>22</sup>

While it is not my intention to make recommendations to the federal government concerning the management and administration of federal entities, it is essential to explore the shortcomings in the current regime in order to understand the constraints faced by those charged with investigating and prosecuting money laundering offences and make effective recommendations to the Province concerning the law enforcement response to money laundering. In what follows, I review four specific criticisms of the financial intelligence provided to law enforcement bodies.

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21 Evidence of C. Leuprecht, Transcript, April 9, 2021, p 42.

22 Evidence of N. Maxwell, Transcript, January 14, 2021, p 93 (“that’s the whole point of the AML/ATF regime, that it provides useful information to law enforcement”). See also Evidence of M. Heard, Transcript, March 30, 2021, p 78

## High-Volume, Low-Quality Information

One of the key criticisms of FINTRAC is the ratio between the volume of information collected and the number of proactive disclosures made to law enforcement.

In the 2019–20 fiscal year, a total of 31,417,429 individual reports were submitted to FINTRAC (up from 28,119,852 in the 2018–19 fiscal year and 25,319,625 in the 2017–18 fiscal year).<sup>23</sup> Of these reports, 386,102 were suspicious transaction reports (up from 235,661 in 2018–19 and 179,172 in 2017–18).<sup>24</sup>

However, there were only 2,057 “unique” disclosures made to law enforcement (down from 2,276 in 2018–19 and 2,466 in 2017–18)<sup>25</sup> and it appears that only 1,582 of these disclosures were directly related to money laundering (with 296 related to “terrorism financing and threats to the security of Canada” and 179 related to “money laundering, terrorism financing and threats to the security of Canada”).<sup>26</sup>

Law enforcement agencies in British Columbia received 335 disclosures during the 2019–20 fiscal year (though a large number of disclosures were provided to national headquarters, which may have been used to support investigations in this province).<sup>27</sup>

Even more concerning is the fact that FINTRAC received 2,519 voluntary information records from law enforcement agencies across the country in the 2019–20 fiscal year (down from 2,754 in 2018–19).<sup>28</sup> Voluntary information records are used by law enforcement to prompt FINTRAC to provide information relevant to ongoing investigations. Investigators will provide FINTRAC with information relating to an ongoing investigation (such as the name of a target). FINTRAC will review that information and determine whether it is in possession of any additional information that could assist with the investigation. If so, it will disclose that information to investigators, provided the statutory conditions for disclosure are satisfied.<sup>29</sup>

While there is limited evidence before me concerning the number of FINTRAC disclosures made in response to voluntary information records, I expect that most of the 2,057 unique disclosures made to law enforcement in 2019–20 were made in response to these requests. If so, the number of proactive disclosures (i.e., disclosures not prompted

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23 Exhibit 828, Christian Leuprecht, Jeff Simser, Arthur Cockfield, and Garry Clement, *Detect, Disrupt and Deter: Domestic and Global Financial Crime – A Roadmap for British Columbia* (March 2021) [Leuprecht Report], Appendix 3, p 2 (Table 5).

24 Ibid.

25 Ibid, Appendix 3, pp 2–3 (Table 6). It is my understanding that “unique” disclosures represent the number of distinct reports disclosed, as opposed to the total number, as in some cases, the same report is sent to multiple law enforcement agencies: *ibid*, p 2 (Table 6), footnote 4. See also Evidence of C. Leuprecht, Transcript, April 9, 2021, pp 138–39.

26 Exhibit 733, *FINTRAC Annual Report 2019–20*, p 8.

27 Ibid, p 9.

28 Ibid, p 10.

29 See, for example, Evidence of P. Payne, Transcript, April 16, 2021, p 149; Evidence of M. Heard, Transcript, March 30, 2021, p 78; Evidence of B. Baxter, Transcript, April 8, 2021, pp 12–13; Exhibit 828, Leuprecht Report, p 22.

by voluntary information requests) would be considerably smaller than the 1,582 unique disclosures referenced in FINTRAC's 2019–20 annual report.<sup>30</sup>

The issue is important because proactive disclosures may prompt the commencement of a new investigation (or assist in identifying a new target), whereas voluntary information records are typically made to support an investigation already underway. If the number of proactive disclosures is small, it could be a sign that the financial intelligence unit is not able to effectively identify and report money laundering activity.

On one hand, the small number of disclosures that make their way into the hands of law enforcement could suggest that FINTRAC is taking its statutory obligations very seriously and is disclosing information to law enforcement agencies only where there are reasonable grounds to suspect that the information would be relevant to the investigation and prosecution of a money laundering offence.

On the other hand, I have serious concerns about the number of proactive disclosures made to law enforcement agencies, given that the primary purpose of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [PCMLTFA] is to detect money laundering activity and provide actionable intelligence to law enforcement.

Legitimate concerns could also be raised about the cost of the PCMLTFA regime in light of these concerns. At present, there are approximately 24,000 individuals and businesses with reporting obligations under the PCMLTFA and a 2019 survey by LexisNexis put their annual cost of compliance in the range of \$6.8 billion.<sup>31</sup>

Moreover, I understand that FINTRAC's annual expenditures are in the range of \$55 million<sup>32</sup> and that the reporting obligations mandated by the PCMLTFA impose a considerable burden on many designated non-financial businesses and professions.

While I appreciate that FINTRAC's mandate extends beyond the production of actionable intelligence, it is difficult to reconcile those costs with the production of 2,057 disclosures, particularly when many of those disclosures were likely prompted by voluntary information records. It may be that there are better, and more cost-effective, measures the Province could put in place to identify money laundering activity.

Mr. Maxwell testified that the large number of reports submitted to FINTRAC, as compared to the extremely low number of disclosures being provided to law enforcement, is the product of a “defensive” reporting regime in which reporting entities are required to report everything from a \$20 transaction to a \$20 million transaction.<sup>33</sup> He also indicated that Canadian reporting entities file roughly 10 million

30 Of course, that assumes that the number of unique disclosures includes disclosures made in response to voluntary information records. However, even if voluntary information record disclosures are not included in those statistics, the number of proactive disclosures is still very small.

31 On this point see Evidence of N. Maxwell, Transcript, January 14, 2021, pp 53–54, 59.

32 Exhibit 733, *FINTRAC Annual Report 2019–20*, p 35.

33 Transcript, January 14, 2021, pp 65–66, 72–73.

more reports each year than their counterparts in the United States, and 30 million more reports each year than their counterparts in the United Kingdom (notwithstanding the population differences between these countries).<sup>34</sup> This places a huge financial burden on the private sector without a corresponding increase in the ability of law enforcement to identify and disrupt financial crime because of broader information-sharing challenges.<sup>35</sup>

Another concern that arises in this context is uneven reporting among reporting entities in different sectors of the economy. For example, I heard evidence that reporting entities in the BC real estate sector submitted only 37 suspicious transaction reports in the 2019–20 fiscal year (though I note that other reporting entities such as banks and credit units will sometimes file reports concerning suspicious activity in the real estate sector).<sup>36</sup> The lack of consistent reporting in these areas gives rise to serious concerns about the quality and comprehensiveness of information in the FINTRAC database.

## **Lack of Direct, Real-Time Access**

Another factor that impairs the ability of law enforcement to conduct effective money laundering investigations is the lack of direct and real-time access to information in the FINTRAC database. Mr. Simser testified that the federal government took a “timorous” approach when it created FINTRAC because of concerns about privacy.<sup>37</sup> He contrasted the Canadian system with the US system – where investigators can “literally go right into the database and look at the [suspicious transaction reports] or [suspicious activity reports] and the currency transaction reports and then try and see whether something fits with the investigative footprint they’re developing for a particular target.”<sup>38</sup>

While I have no doubt it would assist law enforcement agencies to have direct and real-time access to information in the FINTRAC database, it is important to understand that the constraints on access in Canada are the product of constitutional limitations

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34 Ibid, pp 72–73.

35 Ibid, pp 72–73. In concrete terms, I understand that Canadian reporting entities filed approximately 31 million reports in 2019–20, whereas US reporting entities filed approximately 21.6 million reports, and reporting entities in the UK filed 573,085 reports. Note, however, that the number of suspicious transaction reports filed by Canadian entities was 386,102, as compared with 5,596,620 in the US and 573,085 in the UK (which only requires reporting entities to file suspicious activity reports). The large number of FINTRAC reports made by reporting entities also has a significant impact on privacy rights: see, for example, Evidence of N. Maxwell, Transcript, January 14, 2021, pp 73–76. While constitutional constraints prohibit me from making recommendations concerning the administration of federal entities such as FINTRAC, the solution proposed by Mr. Maxwell is increased tactical and strategic information sharing between the public and the private sector to guide the collection of intelligence by reporting entities: see, for example, Transcript, January 14, 2021, pp 90–93.

36 Evidence of D. Achimov, Transcript, March 12, 2021, pp 94–95. Indeed, it appears that 90 percent of reports filed with FINTRAC come from major financial institutions: Evidence of B. MacKillop, Transcript, March 12, 2021, p 96.

37 Transcript, April 9, 2021, p 102.

38 Ibid, pp 102–3. Detective Inspector Craig Hamilton gave evidence of a similar database in New Zealand that is accessible by police when investigating financial crimes: Transcript, May 12, 2021, pp 71–76. Other witnesses also testified that it would be of great use to law enforcement to have real-time access to financial data: see, for example, Evidence of M. Heard, Transcript, March 30, 2021, pp 79–80.

rooted in section 8 of the *Canadian Charter of Rights and Freedoms*, which protects against state interference with privacy rights and will be engaged whenever law enforcement conducts a search that interferes with a recognized privacy interest.<sup>39</sup>

One of the privacy interests protected by section 8 is informational privacy (i.e., the right to control how much information about ourselves and our activities we can shield from the “curious eyes of the state”).<sup>40</sup> While there are circumstances in which law enforcement can access information protected by section 8, investigators will normally be required to apply for and obtain a production order before they can access that information. With respect to financial records, investigators normally require reasonable and probable grounds to suspect that an offence has been or will be committed, and must establish that the information will assist in the investigation of the offence).<sup>41</sup>

Given this legal landscape, law enforcement bodies cannot realistically expect to receive unfettered access to information in the FINTRAC database.

## Lack of Timely Disclosure

While constitutional considerations may prevent FINTRAC from giving law enforcement agencies direct and real-time access to its database, the lack of *timely* disclosure is not rooted in any recognized constitutional principle and is a source of significant frustration for investigators. For example, Inspector Heard testified that FINTRAC disclosures often arrive many months after the information has been requested, which creates significant challenges for investigators in formulating investigative plans and otherwise moving forward with their investigations:

[W]hen it comes to proactive investigations, in my experience, FINTRAC hasn't been as timely. Unfortunately as an investigation goes on you provide FINTRAC with the information you're looking for, targets you're looking at obtaining information on. [For] [s]ome of those the return on information is three, four, five months past when it's been asked for or requested ... if you have whatever the predicate offence is and you're coming up with your plans to investigate the person for the named offences and then three, four, five months later the investigation is progressing, the information comes forward with the FINTRAC information, it definitely delays and it makes it challenging trying to investigate when the information isn't timely, in my opinion.<sup>42</sup>

39 *R v Cole*, 2012 SCC 53 at para 34 (“An inspection is a search and a taking is a seizure, where a person has a reasonable privacy interest in the object or subject matter of the state action and the information to which it gives access”).

40 *R v Tessling*, 2004 SCC 67 at paras 20–23.

41 *Criminal Code*, s 487.018(1).

42 Evidence of M. Heard, Transcript, March 30, 2021, pp 78–79.

These comments were echoed by Inspector Mullin of the New Westminster Police Department, who testified that he has seen instances of sophisticated targets selling off assets while investigators wait for FINTRAC disclosures:

Targets are sophisticated, they do know how we work and we've had instances where the information from FINTRAC has been delayed and by the time we've traced some of the money to properties, the properties have been sold off, so it makes it difficult for us ... from a civil forfeiture aspect [to] capture all of the assets people possess that may be linked to the proceeds.<sup>43</sup>

While I acknowledge that the experiences of these senior officers are anecdotal, there is no excuse for these types of delays in getting information to law enforcement. I recommend that the Policing and Security Branch develop a way of tracking FINTRAC disclosures made in response to voluntary information records, in order to ensure that they are received promptly. If there are systemic delays with the receipt of these disclosures, the Policing and Security Branch should bring these concerns to the attention of the federal minister of public safety as well as the AML Commissioner.

**Recommendation 93:** I recommend that the Policing and Security Branch develop a way of tracking FINTRAC disclosures made in response to voluntary information records, in order to ensure that they are received promptly.

If law enforcement agencies are to be successful in their efforts to investigate money laundering / proceeds of crime offences, it is essential that they have as much support as possible from FINTRAC through the production of timely disclosures.

## Lack of Useful Disclosure

Finally, I note that some witnesses raised issues with respect to the quality of FINTRAC disclosures received by law enforcement bodies. For example, Christian Leuprecht and his co-panellists gave evidence that much of the intelligence provided by FINTRAC to law enforcement agencies is often nothing more than information concerning specific transactions and is not connected to other suspicious activity or otherwise accompanied by any explanation about what is happening from a money laundering perspective.<sup>44</sup>

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<sup>43</sup> Evidence of C. Mullin, Transcript, March 30, 2021, p 82.

<sup>44</sup> See, for example, Evidence of A. Cockfield, Transcript, April 9, 2021, p 41 (“they take it all in, but they don’t necessarily turn it into operationalized intelligence for law enforcement”) and p 140 (“it’s not ... what we call actionable intelligence ... like they’ve got a cross border transfer of over 10,000, maybe it has to do with a real estate transaction, and they send that to some agency, but they don’t necessarily tell the agency what exactly is happening. Nor do they know themselves, FINTRAC ... [T]hey’re just coughing up information. It may or may not be useful”). See also Evidence of G. Clement, Transcript, April 9, 2021, p 101; Evidence of J. Simser, Transcript, April 9, 2021, p 104; Evidence of A. Cockfield, Transcript, April 9, 2021, pp 123–24.

So, as not to jeopardize any ongoing criminal investigation or proceeding, I have not conducted a comprehensive review of the disclosures received by law enforcement agencies in this province and am unable to comment on the quality of the information received by law enforcement. However, it is essential that law enforcement bodies receive timely, useful intelligence with respect to money laundering networks and typologies in addition to information concerning specific transactions. If law enforcement bodies have concerns about the quality of these disclosures, I would encourage them to bring their concerns to the attention of the Policing and Security Branch and the AML Commissioner to ensure they are properly addressed.

While law enforcement should continue to seek access to and make use of FINTRAC disclosures when available, the issues set out above, including, in particular, the lack of timely, proactive disclosures, have led me to conclude that law enforcement agencies in this province cannot rely on FINTRAC to provide timely, proactive intelligence with respect to money laundering threats and must take steps to develop their own intelligence with respect to money laundering activity within the province.

Accordingly, I have recommended that the provincial anti-money laundering intelligence and investigative unit recommended in Chapter 41 include a robust intelligence division with the expertise and resources to identify money laundering activity in the province. I have also recommended that the intelligence division explore new ways of developing intelligence with respect to money laundering activity.

## **Complexity of Money Laundering Schemes**

A third challenge for law enforcement in the investigation and prosecution of money laundering offences is the ever-increasing sophistication of higher-level money laundering schemes. Examples of these schemes are reviewed in previous chapters of this Report and include the use of shell corporations and offshore financial havens, trade-based money laundering, and the use (or, more accurately, misuse) of cryptocurrency and informal value transfer systems to transfer illicit funds from person to person. When new and emerging technologies are added to the mix, or when these techniques are used in combination, it becomes exponentially more difficult for law enforcement to follow the money and uncover evidence of criminal activity. Moreover, there is evidence that transnational organized crime groups are using increasingly sophisticated countermeasures – such as encrypted communications devices – to defeat attempts by law enforcement to investigate money laundering schemes:

[A] lot of these organized crime groups today, they're using encrypted communications. So having secure comms is a big factor in a lot of these major investigations.

Virtual currency is at the forefront now. I mean, they look at different ways, more secure ways of looking at the funds going back and forth as they try to normalize the funds and [bring] them into the regular system.

Dark web marketplace, et cetera. So all these areas are themselves complex and they create the extra burden on these types of investigations.<sup>45</sup>

The Leuprecht Report suggests that it is unreasonable to expect even the most highly trained investigator to become an expert in all of these areas, which underscores the need for a multidisciplinary team comprised of legal experts, forensic accountants, computer specialists, and others to investigate money laundering activity. It also suggests that law enforcement bodies must make better use of experts in the private sector to gain a more complete understanding of complex money laundering schemes:

To be more effective and disrupt criminal organizations and their activities, law enforcement must explore recruiting private experts who fully understand some of these more complex techniques. There has been a real reluctance in Ontario and Canada to enter in public-private partnerships and, unlike most countries, it has been relatively absent from law enforcement investigations. Although there is no real legal framework for these relationships, it is mostly absent due to ignorance, legal uncertainty, security clearance and cost.<sup>46</sup>

While I appreciate the added costs associated with the use of outside experts, I agree that they can sometimes add great value and would encourage law enforcement agencies to reach out to private-sector experts in appropriate cases.

I hasten to add that consultations with *legal* experts in the private sector may also be useful for law enforcement bodies in understanding the structures put in place to launder illicit funds (either generally or in connection with a specific investigation). While law enforcement bodies are always entitled to seek legal advice from prosecutors, the intricacies of these structures may be such that specific expertise in areas such as company law, real estate, debt financing, and international trade may be required in order to unravel some of the more sophisticated money laundering schemes.

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45 Evidence of P. Payne, Transcript, April 16, 2021, p 99. Mr. Simser also gave the example of “peekaboo” trusts, which are set up so that the money is automatically wired to an account in another jurisdiction as soon as a law enforcement demand is made for information about the trust. The problem with these trusts is that investigators will “spend all this time fighting to get information and when you finally get it you find out that the money has then transited to Panama or somewhere else and it’s then put beyond your reach” (see Evidence of J. Simser, Transcript, April 9, 2021, pp 36–37). Investigation of money laundering offences is also hampered by the fact that criminals deliberately exploit weaknesses in the anti-money laundering regimes of different countries: Evidence of G. Clement, Transcript, April 9, 2021, pp 35–36.

46 Exhibit 828, Leuprecht Report, p 44.

## Chapter 41

# A Dedicated Provincial Anti–Money Laundering Unit

One of the key recommendations made in this Report is the creation of a specialized provincial anti–money laundering investigation and intelligence unit to lead the law enforcement response to money laundering in this province. While I acknowledge – and appreciate – the submissions of the BC Civil Liberties Association concerning the effectiveness of specialized police units in the fight against money laundering, I am persuaded that the investigation of sophisticated money laundering activity by a specialized, multidisciplinary team has the potential to significantly disrupt organized crime activity in this province and that the new provincial unit will make substantial progress in the fight against money laundering if it is properly structured and resourced.

I also expect that the cost of the new unit will be offset through the increased asset forfeiture opportunities created by that unit, though I would not tie the funding of the new unit to that revenue to avoid potential conflicts. The New Zealand experience (reviewed in Chapter 39) demonstrates that a focused and effective asset forfeiture regime can have a significant impact on organized crime, and lead to substantial financial benefits for the state, which can be used to fund a range of important government services.

In what follows, I review what I consider to be the essential components of the new unit with particular emphasis on its location and governance, mandate, and organizational structure.

## Location and Governance

While I have considered whether the new unit should be located (or “housed”) within the RCMP provincial police force as suggested by the RCMP in its January 22, 2018 business case,<sup>1</sup> I have concluded that the Province would be better served by placing the new unit within the Combined Forces Special Enforcement Unit (CFSEU) framework for three principal reasons.

First, the placement of that unit within CFSEU gives the Province a higher degree of oversight and visibility into its operations. Unlike the RCMP provincial police force, CFSEU has its own board of governance which is responsible for providing policy objectives and strategic direction to the officer-in-charge of CFSEU.

The board of governance is accountable to the provincial minister of public safety and includes representatives from various federal, provincial, and municipal police agencies, including the commanding officer of “E” Division (who chairs the board of governance), the “E” Division criminal operations officer, the commander of the RCMP’s Lower Mainland District and the chief constable of the Vancouver Police Department.<sup>2</sup>

The Policing and Security Branch also meets regularly with the officer-in-charge along with the heads of each of the fenced-funding units and has a compliance and evaluation group that monitors the performance of CFSEU on an ongoing basis.<sup>3</sup>

While there is also communication between the Policing and Security Branch and the RCMP provincial police force, that communication is less specific and less frequent.<sup>4</sup>

Second, there is a very real risk that the creation of a new unit within the RCMP provincial police force would have a cascading effect on core police services. A decision note prepared for the minister of public safety in connection with the Financial Intelligence and Investigations Unit (FIIU) proposal indicates that the pressures and resource shortages in front-line policing have reached a “critical point” and I have serious concerns about further “hollowing out” the provincial police force.<sup>5</sup>

Third, the placement of the new unit within CFSEU gives the Province greater flexibility to hire *and retain* police officers and civilian specialists with the knowledge, skills, and abilities to do the work. Mr. Rideout summarized these factors as follows:

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1 A full discussion of the RCMP’s business case can be found in Chapter 39.

2 Exhibit 803, Doug LePard and Catherine Tait, Review of the Joint Illegal Gaming Investigation Team (JIGIT) (November 2020) [LePard Report], pp 72–73.

3 Evidence of W. Rideout, Transcript, April 6, 2021, p 37. I note as well that CFSEU maintains the provincial tactical enforcement priority (PTEP) which may assist in identifying high-level targets involved in money laundering: see Evidence of C. Pecknold, Transcript, April 6, 2021, p 67; Evidence of T. Steenvoorden, Transcript, April 6, 2021, p 68.

4 Evidence of W. Rideout, Transcript, April 6, 2021, p 37.

5 Exhibit 800, Ministry of Public Safety and Solicitor General, Policing and Security Branch, Decision Note (June 7, 2019), p 4; Evidence of W. Rideout, April 6, 2021, pp 116–17. A full discussion of the FIUU proposal can be found in Chapter 39.

I think it's an important distinction [that] simply providing the funding to the provincial force doesn't necessarily immediately solve the problem because as you accurately describe, ... those experienced resources have to come from somewhere. So if you stand up a unit say like FIIU and you need 30 police officers immediately, you need to pull them from other locations, detachments, provincial resources that are often already under great pressure, and as described in the provincial force there's already some resource gaps that exist on an ongoing basis; federal resources have similar if not greater pressures.

So when we're establishing significant units we have to look at the global picture and understand that when we look to staff large units there is [a] cascading effect on the provincial force and it has to be considered holistically. I think part of the reason that this proposal and others look at building some permanent legacy infrastructure within our designated policing unit such as OCABC is that it can operate outside of that environment so that it's not having a direct impact at least permanently on the ebb and flow of the provision core resources.

In other words you're essentially building a separate police agency that is integrated with the RCMP. I think that also provides the ability to hire specialists rather than your traditional gun-wearing police officer but somebody with the right academic and/or experienced credentials to do this kind of work.<sup>6</sup>

Likewise, the FIIU proposal states that “tethering specialized units, such as the FIIU, to the federal RCMP or a provincial force that used the 70/30 cost-share would compromise human resource capacity and expertise, staffing levels, provincial priorities, information flow, and the agility required to respond to emerging issues.”<sup>7</sup>

I want to be clear, however, that what is contemplated by this recommendation is the contribution of *additional* resources to CFSEU using the existing Organized Crime Agency of BC (OCABC) structure. This will require a significant investment by the Province and does not appear to have happened with the Joint Illegal Gaming Investigation Team (JIGIT), which has mostly been staffed by RCMP officers drawn from the RCMP provincial police, as opposed to new members seconded by OCABC).<sup>8</sup>

6 Evidence of W. Rideout, April 6, 2021, pp 116–17. For evidence with respect to the need to *retain* police officers with the necessary knowledge and expertise to conduct complex investigations, see Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 18–20.

7 Exhibit 60, Anti-Money Laundering Financial Intelligence and Investigations Unit – Draft Proposal (May 7, 2019) [FIIU Draft Proposal], pp 4, 15. I would add simply that CFSEU is seen by municipal police departments as a “capable organization” with the ability to take on significant money laundering files, possibly in collaboration with a major municipal police department: Evidence of C. Mullin, March 30, 2021, p 51; Evidence of B. Crosby-Jones, March 30, 2021, p 51.

8 Exhibit 803, LePard Report, p 60. Of course, there may also be RCMP officers and officers from municipal police departments who are seconded to the new unit.

It is also essential that the new unit does not distract from the critically important work that CFSEU is already doing in other areas. My objective in making this recommendation is to maintain the “core expert teams” designed to address gang violence but add a team of financial crime specialists to enhance its ability to disrupt organized crime activity.<sup>9</sup>

## Mandate

In my view, the mandate of the new unit should be to lead the law enforcement response to money laundering in this province by (a) identifying, investigating, and disrupting sophisticated money laundering / proceeds of crime offences occurring in the province; and (b) training and otherwise supporting other investigators in the investigation of money laundering / proceeds of crime files of low to medium complexity. There may also be a role for the new unit in liaising with regulatory bodies, conducting public outreach activities, and advocating for legislative and regulatory change.<sup>10</sup>

I would not limit the mandate of the new unit to one sector of the economy, nor would I limit it to one type of offender (though I would note that most serious money laundering activity is committed by or on behalf of organized crime groups).<sup>11</sup>

In carrying out this mandate, the new unit will need to be aware of federal efforts to tackle money laundering and should work closely with Federal Serious and Organized Crime’s (FSOC) Financial Integrity Unit in developing a coordinated, co-operative, and collaborative approach to the investigation of money laundering activity. I note, in particular, that FSOC may be better placed to investigate money laundering activity involving transnational organized crime groups, as well as specific types of money laundering (such as trade-based money laundering) that fall within the exclusive jurisdiction of the federal government. Conversely, the provincial unit may be better placed to investigate money laundering activity that predominantly occurs within the province. That said, the provincial unit should not shy away from targeting or investigating national or even international organized crime groups who seek to launder illicit proceeds through the BC economy or hold illicit proceeds in this province (for example, in real estate).

I understand that FSOC and CFSEU currently have an excellent relationship and I have full confidence that will continue when the new unit is created.

I also expect that both units will be fully immersed in new files almost immediately and that there will be many opportunities for collaboration.

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9 On this point see Exhibit 799, Ministry of Public Safety and Ministry of Attorney General, Joint Briefing Note (February 7, 2018), pp 2–3.

10 While money laundering and proceeds of crime offences are separate offences involving different elements, it is my expectation that the new unit will come across a variety of proceeds of crime offences in the conduct of money laundering investigations. For this reason, it makes a great deal of practical sense for the new unit to investigate both offences.

11 In this respect, the mandate of the new unit fits well within the CFSEU structure.

For these reasons, I do not see any redundancy in having two units charged with the investigation of sophisticated money laundering activity within the province. To the contrary, the existence of two units, each with a slightly different mandate, may create some synergy in the law enforcement response and allow each unit to focus on money laundering activity that properly falls within its mandate.<sup>12</sup>

## Organizational Structure

With respect to the structure of the new unit, I believe it is essential for the new unit to have both an intelligence division and an enforcement division in order to mount an effective response to money laundering.

### Intelligence Division

One of the key components of an effective money laundering investigation unit is an intelligence division capable of developing actionable intelligence concerning money laundering threats. While FINTRAC was created to fulfill that role, it has proven to be incapable of reliably producing proactive, actionable intelligence concerning money laundering threats (see Chapter 40). Further, it does not do everything needed from an intelligence perspective. For example, FINTRAC does not conduct interviews, perform surveillance, or cultivate informant information.

It is therefore essential that the Province put in place additional measures to identify money laundering activity.

It is also important that the Province put in place a deliberate triage process to ensure that law enforcement resources are put toward money laundering investigations that provide maximum disruption of organized crime networks.<sup>13</sup>

A robust intelligence division would help to ensure that investigators receive timely intelligence with respect to money laundering activity in the province and are able to tailor their investigations to the most serious threats.<sup>14</sup>

<sup>12</sup> For example, where FSOC comes across money laundering activity that falls within the federal prioritization matrix but has important implications for the province, it could refer that file to the provincial unit for investigation. Likewise, there may be files the provincial unit refers to FSOC because the nature of the investigation demands that it be investigated by the RCMP.

<sup>13</sup> On these points, see Evidence of G. Clement, April 9, 2021, p 35; Evidence of C. Leuprecht, April 9, 2021, pp 62–63, 141–42; Evidence of N. Maxwell, January 14, 2021, pp 92–93.

<sup>14</sup> While the Province could also create a separate financial intelligence unit like FINTRAC to receive reports from financial institutions and other reporting entities, that unit would suffer from many of the same problems as FINTRAC, including the fact that disclosure could only be made to law enforcement where there are reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a criminal offence. Moreover, information included in that database would be largely the same as the information in the FINTRAC database. For additional evidence concerning the utility of developing an intelligence division within the money laundering intelligence and investigation unit based on the New Zealand model, see Evidence of C. Hamilton, May 12, 2021, pp 17–18. Law enforcement has access to a broad range of information, including information from police databases, confidential sources, and active investigations, which can significantly enhance their ability to identify and target money laundering activity.

The FIIU proposal recommends the creation of an intelligence division made up of a senior management group along with the following support teams:

- an intake team responsible for receiving information from FINTRAC, other police agencies, regulators, banks, confidential informants, the media, and other sources;
- an intelligence analysis support team responsible for gathering and compiling information from various open and closed sources, assisting with the creation and analysis of intelligence work product, and liaising with foreign partners;
- a covert asset support team responsible for the recruitment, development, and management of confidential informants; and
- an administrative and operations support team responsible for human resources, IT support, media relations, and various other tasks.<sup>15</sup>

While I am not inclined to make any specific recommendations with respect to the number of sworn officers and civilian analysts assigned to the intelligence division, the staffing level identified in the FIIU proposal is the minimum that will be required.<sup>16</sup> I would add that, in staffing this division, and the investigative division, the province should prioritize expertise and experience relevant to the investigation of money laundering and proceeds of crime offences. The mandate of the new provincial unit is to identify and disrupt sophisticated money laundering operations. A high level of knowledge and expertise will be required if the new unit is to achieve those objectives.

I would also emphasize the need for the new intelligence division to be proactive in its efforts to identify money laundering activity and take active steps to seek out information concerning money laundering threats. Land title records, court filings, and other government and commercial databases can be valuable sources of information, especially when combined with information in the possession of law enforcement.<sup>17</sup> Moreover, the intelligence division should be making use of conventional law enforcement tools such as witness interviews, surveillance, and informant information to identify money laundering activity.

I also believe that the intelligence division should have primary responsibility for the development of tactical information-sharing initiatives with public and private sector entities within the province. While I appreciate that there are a number of challenging legal issues that arise in this context, I believe that the development of tactical information-sharing partnerships is a critical step in addressing the money laundering threat. I also believe it is essential that the intelligence division continue to explore new ways of sharing tactical information with stakeholders in the public and private sector.

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<sup>15</sup> Exhibit 60, FIIU Draft Proposal, pp 20–22.

<sup>16</sup> Ibid.

<sup>17</sup> I would add that there are emerging resources that should prove valuable, such as the provincial Land Owner Transparency Registry and the new pan-Canadian corporate beneficial ownership registry discussed in Chapter 24.

In making these comments, it strikes me that the legal issues associated with tactical information sharing are highly contextual. For example, the issues that arise in the gaming sector may be very different from the issues that arise in the real estate sector. Likewise, the issues that arise with public sector entities may be very different from the issues that arise in the private sector.

With that in mind, it may be advisable for the new unit to take a sector-specific approach and explore independent information-sharing agreements and initiatives that respond to the specific issues that arise in each sector of the economy. The approach taken in the early days of Project Athena may be a useful way of approaching the *Charter* issues that arise in this context.<sup>18</sup>

As I understand that approach, law enforcement entities would provide tactical information, such as the name of a potential target, to stakeholders in the public and private sector (such as financial institutions). If those stakeholders had relevant information to provide, they would respond by filing reports with FINTRAC, referencing Project Athena. FINTRAC would analyze that information and disclose it to law enforcement if it was satisfied that there were reasonable grounds to suspect the information would be relevant to the investigation or prosecution of a money laundering or terrorist financing offence.

## Investigation Division

At the heart of the new unit is an investigation division capable of taking on complex money laundering investigations. The FIIU proposal recommends the creation of an investigation unit supported by a surveillance support team, a proceeds-of-crime support team, a civil forfeiture support team, and an international support team.<sup>19</sup> The proposed investigation team is comprised of various investigators, criminal analysts, and disclosure facilitators who would perform some or all of the following duties:

- arresting suspects;
- handling the seizure of exhibits;
- providing witness security and management;
- preparing and executing judicial applications;
- conducting structured interviews and interrogations; and
- preparing Reports to Crown Counsel and supporting prosecutions, including by giving evidence in the Provincial and Supreme Court of British Columbia.<sup>20</sup>

<sup>18</sup> A full discussion of Project Athena can be found in Chapter 39.

<sup>19</sup> The FIIU proposal contemplates that 15 of the 29 officers would be seconded by OCABC, with nine officers being seconded from the RCMP and five officers being seconded by municipal police departments: Exhibit 60, FIIU Draft Proposal, p 23.

<sup>20</sup> Ibid, p 24. The FIIU proposal also contemplates that most, if not all, of these investigations would be conducted in accordance with major case management principles.

In terms of staffing, the numbers identified in the FIIU proposal are the minimum that will be required to mount a robust response to the money laundering problem facing the province. Moreover, it is essential that the new unit make efforts to hire *and retain* police officers and civilian staff with the requisite knowledge, skills, and abilities to conduct effective money laundering investigations. Professor Leuprecht testified that the investigation of sophisticated money laundering activity is “not something a regular investigator in a law enforcement agency or your regular sort of prosecutor can pick up. It requires very particular skill sets.”<sup>21</sup> Likewise, Mr. Clement emphasized the need for investigators with the proper skill set who are going to be there for the long term:

Setting this up and going about it, I think there has to be right at the start recognition that this requires specialized skills and we’ve got to get away – and this is a fundamental problem within law enforcement that they are still designed under paramilitary frameworks and resulting in promotion versus paid for skill. *So if you’re going to get a unit and invest all that time and money, you want to have people that have longevity and the proper skill set going in. You need to have these people that are as I said going to be there for a long term. And then what you want to have is an allocation of positions or full-time equivalents that are, as I said, concentrated in this and are allowed to expand their abilities through training, et cetera.* [Emphasis added.]<sup>22</sup>

I expect that most of the investigations undertaken by the new unit will be complex, resource-intensive investigations requiring the implementation of major case management principles. It is therefore essential that the new unit have the infrastructure and technology in place to prepare disclosure packages and otherwise ready cases for trial before the information is sworn and the *Jordan* clock starts.

I would also highlight Professor Sharman’s evidence with respect to the “pattern of incentives” faced by many law enforcement officials.<sup>23</sup> Based on confidential interviews with law enforcement officials in the United Kingdom and Australia, he concluded that law enforcement careers are often hurt more by investigations that fail than ones that succeed. In this sense, the career incentive is to avoid investigating crime or to take on simple cases that can be concluded quickly, rather than the time-consuming, complicated investigations needed to effectively address financial crime.<sup>24</sup> If the new unit is to make a meaningful difference in the fight against money laundering it must be innovative in its approach and create a culture where law enforcement officials are incentivized to take on challenging investigations and bring forward new initiatives.

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21 Evidence of C. Leuprecht, Transcript, April 9, 2021, pp 97–98.

22 Evidence of G. Clement, Transcript, April 9, 2021, p 110. See also Evidence of J. Simser, Transcript, April 9, 2021, pp 126–27. As set out above, the placement of the new unit within CFSEU will help to ensure that it can hire and retain officers with the requisite training and expertise. To attract and retain individuals with specialized expertise in financial crime and money laundering (forensic accountants, lawyers, etc.) it may also be necessary to pay a premium to compete with the private sector (see below).

23 Exhibit 959, Jason Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia – A Comparative International Policy Assessment*, pp 7–8.

24 Ibid.

## Other Necessary Elements

While the intelligence and investigative divisions are at the heart of the new provincial unit, there are a number of additional components that must be in place for it to be successful in the investigation of money laundering / proceeds of crime offences.

First, it is essential that the new unit have access to prompt, ongoing legal advice with respect to investigations undertaken by investigators.

While various models have been proposed for the provision of that advice, I tend to prefer the WorkSafeBC model, which involves the creation of a stable of prosecutors with the knowledge and expertise to give advice to investigators and prosecute money laundering / proceeds of crime offences where the evidence is sufficient to support those charges.<sup>25</sup>

I would therefore encourage the new unit to work with the BC Prosecution Service and the Public Prosecution Service of Canada to identify prosecutors with training and expertise in this area, who are available to provide prompt legal advice.

In order for the WorkSafeBC model to be successful, the BC Prosecution Service (and, if applicable, the Public Prosecution Service of Canada) will need to develop training programs to ensure that prosecutors assigned to these groups have the requisite knowledge and expertise to provide informed advice on money laundering / proceeds of crime issues. These programs should include substantive training on money laundering risks, vulnerabilities, and typologies. They should also include training on the investigative techniques needed to conduct a thorough investigation into such activity, as the legal advice sought by investigators may relate more to these techniques than money laundering risks, vulnerabilities, and typologies.

Second, it is essential for the new unit to develop and maintain a team or “cadre” of money laundering and financial crime experts who can help investigators understand the evidence and give expert evidence in court. One need only review Simon Lord’s description of the UK’s expert evidence cadre to appreciate the value of this expertise:

In around about ... 2008, 2010, when we started dealing more with some of the more complicated types of money laundering, there was a situation [that] arose where cases were failing because people didn’t understand them essentially. The people who were presenting the case in court, so the investigators and sometimes the prosecutors themselves, didn’t understand it. The judge didn’t necessarily have much experience in dealing with this type of activity. And when you’re in that type of situation, the jury aren’t going to get it either.

So the NCA [National Crime Agency] already had at this point in time an expert cadre in respect of drug trafficking. So people who could go

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<sup>25</sup> A full discussion of the WorkSafeBC model can be found in Chapter 39.

into court and to explain the sort of evidence that you typically get in a drug trafficking investigation – so things like ledgers and drug prices and cutting agents and various different things like that. And so ... it was thought a sensible idea to see whether we could end up with a bunch of individuals, a cadre of individuals who were subject matter experts in their own right, who could demystify money laundering to a jury to enable them to understand the evidence properly and to make the appropriate decisions based on the evidence in front of them.

...

What we can also do is, if we are approached by a law enforcement body, and they might say to us, okay, well, we're doing a drug trafficking investigation and maybe a money laundering investigation, and there's a guy in this investigation who's one of our suspects and he runs an MSB, money service business. We haven't got a clue what we need to ask this guy because we don't understand how MSBs work.

And in a situation like that, what one of us might do is say, okay, we will provide advice to your investigation, and it might be the situation that ... we will sit down with you and help to plan in interview strategy for the MSB owner when he's arrested and what have you.<sup>26</sup>

While the primary role of these experts should be to support the work of the specialized anti-money laundering unit, they may also be valuable source of information and evidence for other investigators conducting money laundering investigations.<sup>27</sup>

Third, I am satisfied there is a pressing need to create more surveillance capacity within CFSEU to support the activities of the new unit. At the time of writing, there are four surveillance teams within CFSEU, which are shared among the various units and may also be used to assist external units such as the Integrated Homicide Investigation Team. Because these resources are, quite properly, allocated to investigations where there are public safety concerns, there are often no surveillance resources available to assist other units such as those investigating financial crime.<sup>28</sup>

The LePard Report notes that “[t]he only way to address this resource gap is to create a surveillance team that prioritizes JIGIT’s needs” and asserts there is precedent for such an initiative.<sup>29</sup> While I appreciate the significant cost associated with the creation of a new surveillance unit, I am satisfied that the ability to conduct proper surveillance is critical

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26 Evidence of S. Lord, Transcript, May 28, 2020, pp. 35–36, 40. For greater certainty, the expert cadre can be staffed by members of the new unit as long as they develop the requisite knowledge and expertise to give expert evidence in court proceedings. These experts may also be able to assist front-line investigators in other units who are conducting money laundering / proceeds of crime investigations.

27 They may also be able to support the work of the Civil Forfeiture Office.

28 Exhibit 803, LePard Report, pp 61–62.

29 Ibid, p 62.

to the success of the new unit, and confident that the associated cost will be offset by new asset forfeiture opportunities. I therefore recommend that the Province ensure that there is sufficient surveillance capacity within CFSEU to support the work of the new unit.

I anticipate that this will require additional funding and a direction that at least one surveillance team prioritize the work of the new unit.

**Recommendation 94:** I recommend that the Province ensure that there is sufficient surveillance capacity within the Combined Forces Special Enforcement Unit to support the work of the new dedicated provincial money laundering intelligence and investigation unit.

Fourth, it is essential that the new unit incorporate or otherwise have access to individuals with expertise in a wide range of disciplines. While legal experts and forensic accountants are usually cited as the professions that could provide the most assistance, there is also a very real need for computer experts, including those with expertise in blockchain technology.

For these reasons, the new unit must be given the flexibility to hire or retain new experts in order to respond to new and emerging typologies.<sup>30</sup> It is also important that the new unit have the flexibility to consult with experts from the private sector where it would be of assistance to investigators.

I appreciate that these measures will add to the size and cost of the new unit, but I strongly believe they are essential to its success and strongly recommend that the provincial government ensure they are incorporated into the new unit.

## Performance Metrics and Reporting

In order to ensure that the new unit is properly resourced, and effective in fulfilling its mandate, it is essential that the Province track its performance.

I believe the following metrics are of critical importance in tracking the performance of the new unit (though there may well be other important metrics):

- number of sworn members assigned to the new unit, including the intelligence and investigation divisions;
- number of civilian members assigned to the new unit, including the roles and responsibilities of these members;

<sup>30</sup> In some cases, it may also be necessary for the new unit to invest in the technology that would allow these experts to identify, detect, and disrupt money laundering activity. For example, the use of after-market software tools such as Chainalysis and CipherTrace are of considerable importance in addressing money laundering activity involving cryptocurrency.

- number of money laundering referrals received from regulators and private sector entities;
- number of money laundering and proceeds of crime investigations commenced by the new unit;
- number of arrests made;
- number of money laundering and proceeds of crime investigations that resulted in charges being recommended;
- number of money laundering and proceeds of crime investigations that resulted in charges being approved;
- number of money laundering and proceeds of crime investigations resulting in guilty pleas / convictions;
- number of referrals to other provincial or federal units;
- number of outside files in respect of which assistance was provided;
- number and value of assets seized and/or forfeited in connection with criminal proceedings; and
- number of cases referred to civil forfeiture.

While I appreciate that these metrics are not the sole measure of success,<sup>31</sup> they provide a good starting point for evaluating the performance of the new unit and should be reported to the CFSEU board of governance and the Policing and Security Branch regularly. The AML Commissioner should also be given access to these statistics in order to fulfill his or her mandate.

While the AML Commissioner should be at liberty to report on the performance of the new unit as he or she sees fit, it is important to continually assess the performance of the new unit, and I recommend that the AML Commissioner undertake a comprehensive review every five years to ensure it remains relevant and effective.

**Recommendation 95:** I recommend that the AML Commissioner conduct a comprehensive review of the provincial money laundering intelligence and investigation unit every five years to ensure it remains relevant and effective.

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<sup>31</sup> For example, it may be preferable for the new unit to focus on a small number of major investigations with significant disruption potential, as opposed to a large number of less serious investigations.

## Relationship with Regulators

Finally, it is important that the new unit develop a good working relationship with provincial regulators such as the BC Financial Services Authority and the Law Society of British Columbia. At present, there is a perception among regulators that law enforcement is not interested in information about potential money laundering activity. The new provincial unit must work to make its genuine interest in receiving investigative leads known to regulators. It should also ensure that it brings relevant information to the attention of regulators where it comes across instances of misconduct, even if the evidence is insufficient to pursue a criminal investigation.

In many cases, regulators have significant investigative powers including, in the case of the Law Society, the power to review information that would otherwise be subject to privilege. These powers can be deployed much more effectively if law enforcement agencies bring relevant information to their attention.

## Conclusion

The investigation and prosecution of money laundering / proceeds of crime offences is one of the cornerstones of an effective anti-money laundering regime. Not only does it have a significant deterrent effect on organized crime activity, but it also allows for the identification of assets for seizure through the criminal or civil forfeiture process (see Chapters 42 and 43). In recent years, however, law enforcement agencies have failed to respond to the explosive growth of money laundering in this province, allowing those involved in such activity to operate with relative impunity. I am particularly troubled by the apparent disconnect between federal law enforcement priorities and the situation on the ground in British Columbia (where hundreds of millions, if not billions of dollars are being laundered through the BC economy).

While the failure to respond to the money laundering threat has various causes, I believe the RCMP's decision to disband Integrated Proceeds of Crime units, without putting in place the necessary infrastructure or resources to address the ever-increasing volume of illicit funds being laundered through the BC economy, is one of the primary causes of the poor law enforcement results in this province. If the province truly wishes to address the money laundering problem, it must take matters into its own hands and invest in the creation of a specialized money laundering intelligence and investigation unit to lead the law enforcement response in this province. It is also essential that law enforcement units charged with the investigation of profit-oriented criminal offences consider money laundering / proceeds of crime charges at the outset of their investigations and conduct a financial investigation with a view to pursuing these charges and identifying assets for seizure and forfeiture.

While the investigation and prosecution of money laundering offences has many challenges and complexities, it is my sincere belief that meaningful progress can be made on this issue through sustained effort by law enforcement bodies.

## Part XII

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# Asset Forfeiture

Asset forfeiture is widely regarded as one of the most effective ways of stifling and disrupting organized crime groups. Not only does it deprive these groups of the profits of their unlawful activity (thereby taking the profit out of crime), it also prevents those funds from being reinvested in the criminal enterprise where they can be used to purchase drugs, weapons, vehicles, and other products necessary to support their unlawful activities. Unfortunately, however, the number and value of assets seized through the asset forfeiture system in British Columbia is shockingly low. I view the failure to vigorously pursue these assets as a missed opportunity to disrupt and deter the activities of organized crime groups and others involved in serious criminality.

In what follows, I review the two primary forms of asset forfeiture in this province: criminal asset forfeiture and civil asset forfeiture. In Chapter 42, I review the criminal asset forfeiture regime in Canada and recommend that law enforcement bodies make better efforts to identify and pursue unlawfully obtained assets for seizure and forfeiture under that regime. I also recommend that law enforcement bodies and prosecutors receive training on the tools available within the criminal asset forfeiture regime.

In Chapter 43, I review the civil asset forfeiture regime in British Columbia as well as five other common law jurisdictions: the United States, the United Kingdom, the Republic of Ireland, Australia, and Manitoba. I also make a number of recommendations aimed at strengthening the investigative capacity of the BC Civil Forfeiture Office and recommend the introduction of unexplained wealth orders to give the Civil Forfeiture Office an additional tool to deprive offenders of the profits of their unlawful activity.

## Chapter 42

# Criminal Asset Forfeiture

Criminal asset forfeiture (sometimes referred to as “conviction-based forfeiture”) is generally understood as the forfeiture of proceeds of crime or offence-related property in connection with a criminal prosecution. *Criminal* asset forfeiture can be contrasted with civil asset forfeiture (sometimes referred to as “non-conviction-based forfeiture”), which is generally understood as the forfeiture of proceeds of crime or offence-related property through the use of civil forfeiture legislation such as the *Civil Forfeiture Act*, SBC 2005, c 29. Over the past 20 years, there has been a significant decrease in the use of the criminal asset forfeiture regime, in part, because of the proliferation of civil asset forfeiture legislation. However, the legislative tools are still in place, and there are cases in which it is advantageous to pursue the remedies available under that regime.

In what follows, I review the forfeiture provisions of the *Criminal Code*, RSC 1985, c C-46, and emphasize the need for law enforcement agencies to make better efforts to identify and pursue unlawfully obtained assets for seizure and/or forfeiture under those provisions.

### Criminal Asset Forfeiture Provisions

While federal legislation has long contemplated the forfeiture of property obtained through the commission of a criminal offence, these provisions underwent substantial amendments in 1989 in order to fulfill Canada’s commitments under the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.<sup>1</sup>

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<sup>1</sup> 1583 UNTS 3; CTS 1990/42. See also Robert Hubbard et al, *Money Laundering and Proceeds of Crime* (Toronto: Irwin Law, 2004), p 79. While a number of these provisions are contained in the *Criminal Code*, there are many other federal statutes that allow for the forfeiture of proceeds of crime and offence related property, including the *Controlled Drugs and Substances Act*, SC 1996, c 19; the *Excise Act*, RSC 1985, c E-14; the *Customs Act*, RSC 1985, c 1 (2nd Supp); and the *Immigration and Refugee Protection Act*, SC 2001, c 27.

In *R v Lavigne*, Madam Justice Deschamps described the history and purpose of those amendments as follows:

In 1989, Canada honoured the commitment it had made when it signed the *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Can. T.S. 1990 No. 42, by amending the *Criminal Code* to add Part XII.2 (Proceeds of Crime): R.S.C. 1985, c. 42 (4th Supp.) (formerly S.C. 1988, c. 51), s. 2. The new provisions allowed the prosecution to use unprecedented investigative methods (s. 462.32), created new offences (s. 462.31(1)) and established special rules for sentencing (ss. 462.31(2) and 462.37).

...

Great importance is ... attached to the proceeds of crime, and one of the stated goals is to neutralize criminal organizations by depriving them of the profits of their activities. The Honourable Ray Hnatyshyn, who was the Minister of Justice when the bill was introduced, said that traffickers had been insufficiently deterred by traditional sentencing methods. Canada therefore had to adopt methods by which it could deprive offenders of the profits of their crimes and take away any motivation to pursue their criminal activities. Of all the methods chosen, the primary one is forfeiture (House of Commons, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61*, Issue No. 1, November 5, 1987, at p. 1:8). The effectiveness of the adopted methods depends largely on the severity of the new provisions and on their deterrent effect (*Quebec (Attorney General) v. Laroche*, [2002] 3 S.C.R. 708, 2002 SCC 72, at para. 25).<sup>2</sup>

One of the key amendments introduced by Parliament was the ability to apply for pre-trial seizure or restraint of assets where there are reasonable grounds to believe that a forfeiture order could be made in respect of that property.<sup>3</sup> Section 462.32(1) allows a judge, on application by the Attorney General, to issue a special search warrant authorizing a peace officer to search a building, receptacle, or other place for property in respect of which a forfeiture order may be made, and seize any property that could be subject to a forfeiture order.<sup>4</sup> Similarly, section 462.33 allows the Attorney General to apply for a “restraint order” prohibiting the owner of property (usually real estate) from selling or otherwise dealing with an interest in property except as specified in the order.<sup>5</sup>

Another key provision is section 462.37, which allows for the forfeiture of unlawfully obtained property in a broad range of circumstances. Section 462.37(1) provides that

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2 *R v Lavigne*, 2006 SCC 10, paras 9–10.

3 In basic terms, seizure refers to the confiscation of property, whereas a restraint order allows a person to remain in possession of property (usually land) but prevents him or her from selling or otherwise disposing of it.

4 *Criminal Code*, s 462.32(1).

5 *Ibid*, s 462.33.

where an offender is convicted of a designated offence<sup>6</sup> and the court is satisfied, *on a balance of probabilities* (in other words, it is more likely than not), that the property sought to be forfeited was obtained through the commission of that offence, it must make an order that the property be forfeited to the state and disposed of in accordance with the law.<sup>7</sup>

For the purpose of these provisions, the court may infer that property was obtained or derived as a result of the commission of a designated offence where:

- (a) the evidence establishes that the value of all the property of the person alleged to have committed the offence exceeds the value of all the property of that person before the commission of that offence; and
- (b) the court is satisfied that the income of that person from sources unrelated to criminal activity cannot reasonably account for such an increase.<sup>8</sup>

Section 462.37(2) deals with a circumstance where the court is not satisfied that the property was obtained through the commission of the designated offence of which the offender was convicted but is satisfied that the property is proceeds of crime (i.e., that it was obtained or derived through the commission of a designated offence other than the one before the court). In such circumstances, the court can make a forfeiture order only if it is satisfied, *beyond a reasonable doubt*, that the property is proceeds of crime.<sup>9</sup>

Section 462.37(2.01) gives the court significant powers to order forfeiture where the offender has been convicted of a criminal organization offence punishable by five or more years of imprisonment; an offence under sections 5, 6, or 7 of the *Controlled Drugs and Substances Act*, SC 2018, c 16 (which include trafficking in a controlled substance, importing or exporting a controlled substance, and production of a controlled substance); an offence under certain provisions of the *Cannabis Act*, SC 2018, c 16; or human trafficking offences under sections 279.01 to section 279.03 of the *Criminal Code*. In such circumstances, the court can order that *any* property of the offender be forfeited if it is satisfied, *on a balance of probabilities*, that:

- in the ten-year period before criminal proceedings were commenced, the offender engaged in a pattern of criminal activity for the purpose of directly or indirectly receiving a material benefit, including a financial benefit; or

<sup>6</sup> The proceeds of crime provisions of the *Criminal Code* focus on “designated offences,” which are defined as (a) any offence that may be prosecuted as an indictable offence under the *Criminal Code* or any other Act of Parliament, other than an indictable offence prescribed by regulation, or (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to an offence referred to in paragraph (a). Examples include drug trafficking, human smuggling, counterfeiting, illegal gaming, and certain types of fraud: *Criminal Code*, s 462.3(1).

<sup>7</sup> *Criminal Code*, s 462.37(1).

<sup>8</sup> *Ibid*, s 462.39.

<sup>9</sup> *Ibid*, s 462.37(2).

- the income of the offender from sources unrelated to designated offences cannot reasonably account for the value of all of the offender’s property.<sup>10</sup>

In determining whether the offender has engaged in a pattern of criminal activity for the purpose of that provision, the court must consider:

- the circumstances of the offence for which the offender is being sentenced;
- any act or omission — other than an act or omission that constitutes the offence for which the offender is being sentenced — that the court is satisfied, on a balance of probabilities, was committed by the offender and constitutes an offence punishable by indictment under any Act of Parliament;
- any act or omission that the court is satisfied, on a balance of probabilities, was committed by the offender and is an offence in the place where it was committed and, if committed in Canada, would constitute an offence punishable by indictment under any Act of Parliament; and
- any other factor that the court considers relevant.<sup>11</sup>

If an offender is found to have engaged in a pattern of criminal activity, it is always open to the offender to prove that the subject property was not obtained from a designated offence, in which case the court is prohibited from making a forfeiture order.<sup>12</sup>

I pause here to note that these provisions give the state a number of significant powers to pursue unlawfully obtained assets. First, the use of the disjunctive “or” in section 462.37(2.01) suggests that *either* a pattern of serious criminal activity *or* a lack of income from other sources is sufficient for the court to make a forfeiture order. In this respect, section 462.37(2.01) can operate in a manner similar to an unexplained wealth order (see Chapter 43). Where the offender has been convicted of an offence listed in section 462.37(2.01), the prosecution can seek forfeiture of *any* property of the offender on the basis that the income of the offender from sources unrelated to those offences cannot reasonably account for the value of all of the offender’s property.

Second, the provision seems to allow for the forfeiture of property that was acquired *before* the conduct forming the basis of the criminal proceedings (provided that the other requirements of that provision are satisfied). In *R v Saikaley*, for example, the court found that property purchased by the accused before the timeframe covered by

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<sup>10</sup> Ibid, s 462.37(2.01).

<sup>11</sup> Ibid, s 462.37(2.04).

<sup>12</sup> Ibid, s 462.37(2.03).

the indictment was, in theory, subject to a forfeiture order under section 462.37(2.01).<sup>13</sup> The court stated:

[82] Like the Mercedes Benz, two of the Mr. Saikaley's homes were purchased before the timeframe of the Indictment. 144 Kerry Hill Crescent was purchased in June, 2006, and a down payment for 168 Ingersoll Crescent was made in 2008 (with the purchase actually completed in 2011). Since s. 467.32(1) requires that the property being sought to be forfeited be directly linked to the offences before the Court, the Crown cannot resort to this section in support of its application for the forfeiture of these properties.

[83] Similar to its claim with respect to the Mercedes Benz, the Crown will have to resort to s. 467.32(2.01) to substantiate its claim against the Respondent's property.

Section 462.37(3) is another important provision that allows the court to impose a fine in lieu of forfeiture where it would be impracticable to make a forfeiture order under section 462.37(1) or 462.37(2.01). It provides, in relevant part:

(3) If a court is satisfied that an order of forfeiture under subsection (1) or (2.01) should be made in respect of any property of an offender but that the property or any part of or interest in the property cannot be made subject to an order, the court may, *instead of* ordering the property or any part of or interest in the property to be *forfeited*, order the offender to *pay a fine* in an amount equal to the value of the property or the part of or interest in the property. In particular, a court may order the offender to pay a fine if the property or any part of or interest in the property

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party;
- (c) is located outside Canada;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty. [Emphasis added.]<sup>14</sup>

Where the court imposes a fine in lieu of forfeiture, it must also impose a term of imprisonment to be served if the fine is not paid within the time established by the court.<sup>15</sup> Table 42.1 (below) sets out the maximum and minimum terms of imprisonment (which vary depending on the amount of the fine).

<sup>13</sup> *R v Saikaley*, 2013 ONSC 4349 [*Saikaley*], para 25.

<sup>14</sup> For commentary with respect to the purpose of this provision in the criminal forfeiture scheme see *R v Vallières*, 2022 SCC 10, paras 24–37.

<sup>15</sup> *Criminal Code*, s 462.37(4). For a discussion of the constitutionality of these provisions see *R v Chung*, 2021 ONCA 188, paras 98–144.

**Table 42.1: Minimum and Maximum Terms of Imprisonment Under Section 462.37(4)**

<b>Section</b>	<b>Fine Amount</b>	<b>Term of Imprisonment</b>
462.37(4)(a)(i)	0 to \$10,000	0 to 6 months
462.37(4)(a)(ii)	\$10,001 to \$20,000	6 to 12 months
462.37(4)(a)(iii)	\$20,001 to \$50,000	12 to 18 months
462.37(4)(a)(iv)	\$50,001 to \$100,000	18 to 24 months
462.37(4)(a)(v)	\$100,001 to \$250,000	2 to 3 years
462.37(4)(a)(vi)	\$250,001 to \$1,000,000	3 to 5 years
462.37(4)(a)(vii)	\$1,000,001 or more	5 to 10 years

Source: Compiled by the Commission.

Any term of imprisonment imposed under those provisions must be consecutive<sup>16</sup> to any other term of imprisonment, and cannot be considered as part of the global sentence imposed on the accused. Moreover, the court cannot take into account the rehabilitation of the offender or the offender’s ability to pay in considering these issues.

When used to full effect, this provision can provide a powerful response to profit-oriented crime. In *R v Vallières*, for example, the Supreme Court of Canada upheld a fine of more than \$9 million representing the *gross* profits earned by the offender through a large-scale maple syrup theft, even though the offender made a personal profit of only \$1 million. In reaching that conclusion, the court repeatedly emphasized the intent of these provisions – namely, to send a clear message that crime does not pay and to discourage individuals from committing profit-oriented crimes:

Lastly, limiting a fine in lieu to the profit made by an offender from their criminal activities undermines and disregards what Parliament intended ... As this Court stated in *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, [2002] 3 S.C.R. 708, “[t]he legislative objective of Part XII.2 plainly goes beyond mere punishment of crime” ... A fine in lieu is not part of the global sentence imposed on an offender for the commission of a designated offence ... It follows that the amount of the fine does not vary based on an offender’s degree of moral blameworthiness or the circumstances of the offence. Rather, the dual objective of the fine is to deprive an offender of the proceeds of their crime and to deter them from reoffending. But the objective of deterrence is not focused only on the actual offender: it also applies to potential accomplices and criminal organizations ...

Through the severity of the proceeds of crime provisions, Parliament is sending a clear message that “crime does not pay” and is thus attempting to

<sup>16</sup> A consecutive sentence means that the offender cannot serve two sentences at the same time; rather, the offender must serve both sentences one after another.

discourage individuals from organizing themselves and committing profit-driven crimes. In *Lavigne*, Deschamps J. noted that “[t]he effectiveness of the adopted methods depends largely on the severity of the new provisions and on their deterrent effect” (para. 9). Parliament’s decision that the fine must correspond to the value of the property is therefore deliberately harsh. Reducing a fine to the profit made by an offender from their criminal activities would clearly be contrary to this objective. [Emphasis added.]<sup>17</sup>

Another example can be found in the *Saikaley* decision, where the court made effective use of section 462.37(3) in circumstances where a forfeiture order would have been impracticable. For example, the court imposed a fine in lieu of forfeiture in respect of unlawfully obtained funds that could not be recovered because they had been used to discharge a mortgage. It also imposed a fine in lieu of forfeiture in respect of “unexplained” funds that passed through a company bank account controlled by the offender.<sup>18</sup> Without the ability to impose a fine in lieu of forfeiture, the state would not have been in a position to recover those funds.

I consider section 462.37(3) to be an extraordinarily powerful tool that has the potential to significantly disrupt the activities of criminal organizations and others involved in serious criminal activity. It is also something that differentiates the criminal asset forfeiture regime from the civil asset forfeiture regime, which contemplates *in rem* proceedings against property and does not allow the court to impose a fine in lieu of forfeiture.

It is therefore essential that law enforcement agencies understand the use that can be made of this provision and develop the evidence needed to pursue such an order.

In addition to section 462.37, there are other provisions of the *Criminal Code* that allow for a forfeiture order in specific circumstances. For example, section 462.38 allows the Attorney General to apply for a forfeiture order where the owner of that property has died or absconded, and section 462.43 gives the court the discretion to make a forfeiture order in various circumstances where property is seized pursuant to a warrant under section 462.32.

The *Criminal Code* also contains provisions for the seizure and forfeiture of offence-related property such as the vehicle used to transport illicit drugs and weapons to the point of sale. Section 490.1 is triggered whenever the accused is convicted of an indictable offence and the Crown need only prove that the property was used in connection with the commission of such an offence on a balance of probabilities.

Where the criminal prosecution was commenced at the instance of the provincial government and conducted by or on behalf of that government, the property will be forfeited to the provincial government to be disposed of or otherwise dealt with by the attorney general or the solicitor general of that province.<sup>19</sup> In *R v Trac*, 2013 ONCA 246,

<sup>17</sup> *R v Vallières*, 2022 SCC 10, para 34.

<sup>18</sup> *Saikaley*, paras 114, 116–17, 128, 130–33.

<sup>19</sup> *Criminal Code*, s 490.1(1).

Doherty J.A. explained that where the Crown seeks forfeiture of offence-related property in connection with a money laundering prosecution, the forfeiture inquiry does not involve tracing the assets back to money generated by criminal activity. Rather, the focus is on the “means” used by the offender to carry out the money laundering scheme with the result that any bank accounts, shell companies, or real estate holdings used in connection with that scheme could be subject to seizure and forfeiture under section 490.1. He wrote:

[88] The Crown led substantial evidence of the kind of activity associated with the use of bank accounts for money laundering. The Crown expert gave detailed evidence that many of the respondent’s accounts displayed several of those *indicia*. That evidence, combined with the respondent’s admission as to the nature of his money laundering operation, had to be considered in determining whether any particular asset the Crown sought forfeited was either the “means” by which the money laundering offence was committed, or was “used in any manner in connection with” the money laundering. If the asset fell within either definition, it was “offence-related property” and subject to forfeiture under s. 490.1, regardless of whether the credit in the account when it was ordered frozen could be traced to cash generated by the respondent’s drug business.

[89] *The proper application of the definition of “offence-related property” to the bank accounts in the context of the money laundering offence does away with the need to attempt to segregate legitimate funds in an account from drug money. Instead, forfeiture depends on whether the evidence shows that the accounts were used to further the money laundering scheme. If an account was used in any way to further the respondent’s money laundering scheme, that account, and more precisely the property in the account at the time of seizure (the credit owed to the account holder by the bank), is offence-related property regardless of the origins of the deposits reflected in the credit in the account.*<sup>20</sup> [Emphasis added.]

Applying the reasoning of Justice Doherty, it seems that the use of section 490.1 to seize bank accounts, shell companies, real estate, and other assets used in most complex money laundering schemes would be a particularly useful tool in targeting sophisticated money laundering operations. I would therefore encourage the dedicated money laundering intelligence and investigation unit recommended in Chapter 41 to consider the potential use of section 490.1 in investigations into serious money laundering activity.

I would also note that Justice Doherty’s reasoning would seem to be applicable in the civil forfeiture context, and I encourage the BC Civil Forfeiture Office to consider the use of the “instrument of unlawful activity” provisions in the *Civil Forfeiture Act* to pursue the “tools” used by professional money laundering organizations and others.

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<sup>20</sup> *R v Trac*, 2013 ONCA 246, paras 81, 88–91.

## Distribution of Proceeds

Where property is seized under certain provisions of federal statutes, including the *Criminal Code*, the *Seized Property Management Act*, SC 1993, c 37, governs the custody and management of that property. Section 9(b) allows the minister of public works and government services to manage that property in any manner that he or she considers appropriate, and section 9(c) allows him or her to dispose of any property that is forfeited to the federal government under a federal statute.<sup>21</sup>

Section 10 requires the federal government to share the proceeds of these forfeitures with the government of a province that has participated in the investigation leading to the forfeiture, in accordance with the *Forfeited Property Sharing Regulations*, SOR/95-76.

In basic terms, these regulations require the Attorney General of Canada to assess the contribution of the federal government and each province that participated in the investigation, on the basis of the following:

- (a) the nature of information provided by the agencies of the Government of Canada and each jurisdiction, and the importance of that information; and
- (b) the participation by the agencies of the Government of Canada and each jurisdiction in the investigation and prosecution that lead to forfeiture or the imposition of a fine.<sup>22</sup>

For the purpose of that assessment, the provincial contribution includes contributions made by a law enforcement agency operating under provincial legislation or the Royal Canadian Mounted Police acting under contract in that province.

Once that assessment is complete, the Attorney General of Canada must assign a percentage “representing the contribution of the Government of Canada and of each relevant jurisdiction, as compared with the contribution of another jurisdiction or group of jurisdictions” to be determined as follows:

- (a) where the contribution of the Government of Canada or a jurisdiction constitutes the predominant portion of the total contribution, it shall be considered to be 90 percent;
- (b) where the contribution of the Government of Canada or a jurisdiction constitutes a significant portion of the total contribution, it shall be considered to be 50 percent; and
- (c) where the contribution of the Government of Canada or a jurisdiction constitutes a minimal portion of the total contribution, it shall be considered to be 10 percent.

Over the past 10 years, the value of assets seized by law enforcement bodies in British Columbia and managed by the Seized Property Management Directorate has decreased

<sup>21</sup> *Seized Property Management Act*, s 9. I understand that the Seized Property Management Directorate manages assets seized or restrained under this legislation.

<sup>22</sup> *Forfeited Property Sharing Regulations*, s 7.

significantly from a high of roughly \$19.6 million in 2010–11 to a low of \$2.9 million in 2018–19 (excluding seizures made in accordance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*)).<sup>23</sup> Table 42.2 sets out the value of these seizures from 2009 to 2019.

**Table 42.2: Value of Non-PCMLTFA Seizures in BC, 2009–2019**

<b>Fiscal Year</b>	<b>Case Count</b>	<b>Asset Count</b>	<b>Asset Value</b>
2009–10	1,271	1,900	\$17,006,522
2010–11	1,295	1,900	\$19,625,592
2011–12	1,176	1,647	\$10,267,218
2012–13	868	1,234	\$10,658,433
2013–14	611	820	\$5,441,117
2014–15	699	940	\$3,042,950
2015–16	621	950	\$10,822,314
2016–17	539	802	\$4,818,928
2017–18	327	465	\$3,014,679
2018–19	207	253	\$2,910,508

Source: Exhibit 373, Overview Report: Asset Forfeiture in British Columbia, p 16.

Likewise, the value of assets *forfeited* to the federal government has decreased from 2000 to 2019. Table 42.3 sets out the value of those forfeitures.

**Table 42.3: Value of Assets Forfeited to the Federal Government from Non-PCMLTFA Seizures in BC, 2009–2019**

<b>Fiscal Year</b>	<b>Case Count</b>	<b>Asset Count</b>	<b>Asset Value</b>
2009–10	648	1,098	\$11,868,688
2010–11	753	1,232	\$12,124,034
2011–12	696	1,095	\$8,755,758
2012–13	720	1,101	\$8,763,999
2013–14	703	1,051	\$6,241,404
2014–15	467	766	\$10,915,887
2015–16	353	586	\$3,254,889
2016–17	360	640	\$6,123,578
2017–18	328	525	\$3,905,040
2018–19	233	383	\$4,477,959

Source: Exhibit 373, Overview Report: Asset Forfeiture in British Columbia, p 16.

<sup>23</sup> Seized assets are assets that have been seized by law enforcement but have not yet been forfeited to the state pursuant to a forfeiture order. Note, however, that assets are often seized in one year and forfeited in another year, which can lead to situations where the value of assets forfeited in a particular year can exceed the value of assets seized in that year.

These numbers are very small. In 2018–19, for example, law enforcement bodies in this province seized only 253 assets with an approximate value of \$2.9 million. By contrast, the police-run asset recovery unit in New Zealand seized or restrained approximately NZ\$428 million (Can\$358 million) in illicit assets between July 2017 and October 2020, with the top three offences used as a basis for the restraining orders being money laundering (56%), drug crime (26%) and fraud (12%). New Zealand's population, gross domestic product, government structure, and legal system are similar to British Columbia's, which make it a useful point of reference in examining the potential benefits arising from a robust asset forfeiture regime.

I strongly believe that law enforcement bodies in this province must make better use of the criminal asset forfeiture regime, and I turn to this matter below.

## When Should Criminal Asset Forfeiture Be Pursued?

After reviewing the criminal asset forfeiture regime, I am persuaded that it contains a number of powerful but underutilized tools that have the potential to disrupt and deter organized crime groups and others involved in serious criminal activity. In many cases, these tools may allow for the seizure and forfeiture of property that could not be the subject of a civil forfeiture action. Moreover, there will be cases where it is more efficient to pursue a forfeiture order in conjunction with the criminal prosecution.

Stefan Cassella, a former US prosecutor with significant experience in the prosecution of money laundering offences, explained that these efficiencies are one reason that US prosecutors often pursue criminal asset forfeiture over civil asset forfeiture despite the lower burden of proof that arises in the civil forfeiture context:

If you're going to prosecute the defendant anyway, it's a whole lot easier to get the forfeiture judgment as part of his sentence than it is to commence an entirely new case – an entirely new *in rem*<sup>24</sup> case against him – and prove everything again. It's one-stop shopping. It's easier to just get the forfeiture as part of the criminal case.<sup>25</sup>

While decisions about whether to pursue criminal asset forfeiture must be made on a case-by-case basis, it is essential that law enforcement bodies understand and give serious consideration to the criminal asset forfeiture provisions in every investigation into profit-oriented criminal activity. It is also essential that law enforcement bodies develop the evidentiary basis needed to bring successful forfeiture applications.

Where, for example, the target of the investigation has engaged in a pattern of criminal activity within the meaning of section 462.37(2.01), investigators should ensure that they include all relevant information concerning that conduct in their Report to

<sup>24</sup> *In rem* is Latin for “against a thing” and can be contrasted with *in personam*, which means “against a person.” In other words, *in rem* proceedings relate to an object rather than a person.

<sup>25</sup> Evidence of S. Cassella, Transcript, May 10, 2021, p 64.

Crown Counsel. Likewise, where there is an opportunity to pursue a fine in lieu of forfeiture, it is essential that investigators develop the evidence necessary to support such an application.

I therefore recommend that law enforcement bodies implement a policy requiring that all investigators conducting investigations into profit-oriented crime consider the criminal asset forfeiture provisions and, where feasible, develop the evidentiary basis necessary to support a forfeiture application.

**Recommendation 96:** I recommend that law enforcement bodies implement a policy requiring that all investigators conducting investigations into profit-oriented crime consider the criminal asset forfeiture provisions and, where feasible, develop the evidentiary basis necessary to support a forfeiture application.

I also recommend that law enforcement bodies implement a policy requiring that all investigators conducting investigations into profit-oriented crime include, in their Report to Crown Counsel, information concerning the assets owned or controlled by the target of the investigation (and their associates) along with recommendations concerning possible forfeiture applications.<sup>26</sup> The inclusion of information concerning the associates of the target is important. In many cases, a police investigation may uncover information about illicit assets held not only by the target of the investigation, but by their family members or associates.

**Recommendation 97:** I recommend that law enforcement bodies implement a policy requiring that all investigators conducting investigations into profit-oriented crime include, in their Report to Crown Counsel, information concerning the assets owned or controlled by the target of the investigation (and their associates) along with recommendations concerning possible forfeiture applications.

In order to ensure that law enforcement agencies and prosecutors understand and make effective use of these provisions, it is essential that they receive appropriate training on the importance of asset forfeiture in combatting organized crime and the use of the criminal asset forfeiture provisions in depriving offenders of the fruits of their unlawful conduct. I therefore recommend that the Province ensure that all investigators and prosecutors addressing profit-oriented criminal activity receive training on the importance and use of the criminal forfeiture provisions.

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<sup>26</sup> If, however, there is a risk that the assets will be sold or removed from the jurisdiction, it may be necessary to consult with Crown counsel at an earlier stage of the investigation to allow it to apply for a seizure or restraint order under ss 462.32 and/or 462.33.

**Recommendation 98:** I recommend that the Province ensure that all investigators and prosecutors addressing profit-oriented criminal activity receive training on the importance and use of the criminal forfeiture provisions.

I see these recommendations working hand-in-hand with the recommendation made in Chapter 39 that all provincial law enforcement bodies engaged in the investigation of profit-oriented criminal activity implement a standard practice requiring that all investigators consider money laundering / proceeds of crime issues at the outset of the investigation, and conduct a financial investigation with a view to pursuing money laundering / proceeds of crime charges and identifying assets for forfeiture.

Of course, there will be cases where unlawfully obtained assets are more appropriately pursued through the civil asset forfeiture regime.

I turn now to a discussion of the civil asset forfeiture regime in this province.

## Chapter 43

# Civil Asset Forfeiture and Unexplained Wealth Orders

Civil asset forfeiture (sometimes referred to as “non-conviction-based forfeiture”) is generally understood as the forfeiture of proceeds of crime or offence-related property through the use of civil forfeiture legislation such as the *Civil Forfeiture Act*, SBC 2005, c 29. The policy rationale for these statutes is similar to the criminal asset forfeiture provisions (i.e., to ensure that the profits of unlawful activity do not accrue and accumulate in the hands of those who carry out such activity and to deter present and would-be perpetrators of unlawful activity). However, civil forfeiture legislation does not create offences, prohibit any conduct, or impose any penalty, fine, or term of imprisonment on any individual.<sup>1</sup> Rather, the state brings *in rem* proceedings against *property* alleged to be proceeds of crime or an instrument of crime, and any person asserting an interest in the property may defend the forfeiture claim.

Like the criminal asset forfeiture regime, the BC civil forfeiture regime contains powerful tools that can be used to disgorge unlawfully obtained assets and criminal instruments from organized crime groups and other criminal actors. Unfortunately, however, the value of assets seized through this regime in British Columbia is not commensurate with the volume of illicit funds generated each year. In what follows, I review the asset forfeiture regimes in place in five common law jurisdictions: the United States, the United Kingdom, the Republic of Ireland, Australia, and Manitoba (which has recently enacted an unexplained wealth order regime).<sup>2</sup> I then review the key provisions of the British Columbia legislation and make a number of recommendations aimed at strengthening the civil forfeiture regime in this province.

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1 Exhibit 378, Civil Asset Forfeiture in Canada, pp 4–5. For a discussion of the policy rationale for civil forfeiture legislation see *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19, paras 3, 23.

2 While it is important to use caution in looking at other jurisdictions, a number of useful lessons can be drawn from their experiences.

## The United States

The United States was one of the first countries to use asset forfeiture as a law enforcement tool. In 1789, the First Congress enacted statutes authorizing the seizure and forfeiture of ships and cargos involved in customs offences, and later statutes authorized the forfeiture of ships engaged in piracy and slave trafficking.<sup>3</sup> The challenge was that the ship or its cargo might be found within the jurisdiction of the United States but the property owner either remained abroad or could not be found at all.

Allowing the government to file a lawsuit against the ship (as opposed to the property owner) allowed the government to prevent the property from being used to commit another offence, or in the case of a customs offence, to recover the duties that were owed on the imported goods. It also meant that it was unnecessary to prove that the ship's owner had any role in the offence.<sup>4</sup>

Today, American authorities pursue asset forfeiture in a wide variety of cases, including drug and money laundering cases. There is no single US asset forfeiture statute but, rather, a collection of disparate federal statutes that address different aspects of asset forfeiture. Mr. Cassella states:

We have the exact opposite of one comprehensive statute. We have the result of different committees of Congress over a period of more than 200 years deciding when and how to enact asset forfeiture statutes, and you get exactly what you would expect from that process.<sup>5</sup>

One of the unique features of the US system is that there is no separate civil forfeiture agency responsible for bringing civil forfeiture proceedings. Rather, the prosecutor assigned to the criminal case can choose whether to pursue forfeiture as part of the defendant's sentence or bring a separate civil forfeiture action.<sup>6</sup>

Mr. Cassella explained that, in his experience, it has always seemed sensible to have the investigation done by the same agency and make a judgment at the appropriate time as to whether to pursue criminal asset forfeiture or civil asset forfeiture:

It's always seemed to me based on my experience that it was much more sensible to treat these as two different tools to be used to achieve the same objective. Forfeiture is a law enforcement tool and it has purposes. Punishment, deterrence, incapacitation, recovery of money for victims,

<sup>3</sup> Exhibit 378, *Civil Asset Forfeiture in Canada*, p 6; Stefan Cassella, "An Overview of Asset Forfeiture in the United States" in Simon Young (ed), *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime* (Edward Elgar Publishing, 2009), p 24.

<sup>4</sup> S. Cassella, "An Overview of Asset Forfeiture in the United States," p 25. See also *Harmony v United States*, 43 U.S. (2 How.) 210 (1844), pp 233–34 ("[t]he vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner" and *The Palmyra*, 25 US (12 Wheat.) 1 (1827), p 14 ("the thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing").

<sup>5</sup> Evidence of S. Cassella, Transcript, May 10, 2021, p 21.

<sup>6</sup> *Ibid*, pp 24–25.

all of the purposes for which asset forfeiture is pursued. And there are times when it makes sense to do it as part of a criminal prosecution and times when not possible or advisable to do so.

And so, it seemed to us and it has always seemed to me to be sensible to have the investigation done by the same people. The objectives are the same, the facts you have to collect and the things you have to prove are very much the same. And then you make a judgment at the appropriate time as to whether to pursue the case criminally because you have a criminal prosecution or not because you don't or you think it's not appropriate to do is.<sup>7</sup>

In the United States, *criminal* asset forfeiture is seen as part of the offender's sentence and requires the government to establish, beyond a reasonable doubt, that the offender has committed a criminal offence before the court can make a forfeiture order.<sup>8</sup>

By contrast, the *civil* asset forfeiture requires the government to prove, on the civil standard (expressed in the United States as the preponderance of the evidence), that a crime was committed and that the property subject to the forfeiture order was derived from or used to commit that crime:

Aside from the form of the action, what distinguishes civil forfeiture from criminal forfeiture is that it does not require a conviction or even a criminal case; the forfeiture action may be commenced before a related criminal case is filed, while one is pending, after one is concluded, or if there is no related criminal case at all [citations omitted]. But the Government nevertheless must prove two things: that a crime was committed, and that the property was derived from or used to commit that crime.

As in a criminal forfeiture case, the Government must establish the second element – the nexus between the property and the offense – by a preponderance of the evidence. But in contrast to a criminal case, it need only establish the first element – that a criminal offense was committed – by a preponderance of the evidence as well, not beyond a reasonable doubt.

For example, if the Government brings a forfeiture action against real property in New York, alleging that it was purchased with the proceeds of a foreign criminal offense, it would have to prove, by a preponderance of the evidence, that the foreign offense occurred and the real property was traceable to the proceeds of that offense.<sup>9</sup>

While the lower standard of proof in civil forfeiture proceedings sometimes provides a reason to pursue civil asset forfeiture over criminal asset forfeiture,

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7 Ibid, p 33. Mr. Cassella's evidence concerning the investigation of civil forfeiture matters is important in considering whether to expand the investigative powers of the BC Civil Forfeiture Office. I return to this issue later in this chapter.

8 Exhibit 969, Report for the Cullen Commission by Stefan Cassella, p 37.

9 Ibid.

Mr. Cassella gave evidence that civil forfeiture is a “much more limited tool” (in part, because of the inability to pursue a “value-based” money judgment)<sup>10</sup> and that US prosecutors generally reserve civil forfeiture for cases where a criminal prosecution is not possible or appropriate. Examples include cases where the wrongdoer is dead or incompetent to stand trial, where the defendant is a fugitive or a foreign national beyond the jurisdiction of the United States, where the limitation period for bringing a criminal prosecution has expired, where the government has recovered property that is demonstrably connected to a criminal offence but does not know who committed the crime, and where the evidence is insufficient to prove to the criminal standard (beyond a reasonable doubt) that the crime was committed by a particular defendant.<sup>11</sup>

The US also maintains an administrative forfeiture regime for property that is seized in connection with a law enforcement investigation. Once the property has been seized, the government commences the administrative forfeiture proceeding by sending a notice of intended forfeiture to anyone with a potential interest in contesting the action.

If nobody contests the forfeiture within a prescribed period of time, the property will be forfeited to the state. If, on the other hand, someone contests the forfeiture, the government must proceed under the criminal or civil asset forfeiture regime.<sup>12</sup>

The US Department of Justice publishes annual statistics regarding the value of assets recovered through the criminal and civil asset forfeiture process. Table 43.1 shows the total amount deposited into the Asset Forfeiture Fund from 2017 to 2021.<sup>13</sup>

**Table 43.1: Amounts Deposited into the US Asset Forfeiture Fund, 2017–2021**

<b>Fiscal Year</b>	<b>Amount Deposited (US\$)</b>
2017	\$1.622 billion
2018	\$1.327 billion
2019	\$2.215 billion
2020	\$1.747 billion
2021	\$1.443 billion

Source: <https://www.justice.gov/afp>.

<sup>10</sup> As I understand it, these judgments allow the government to seek an order requiring the offender to pay to the government the value of an asset that cannot be located or is no longer available for forfeiture.

<sup>11</sup> Exhibit 969, Report for the Cullen Commission by Stefan Cassella, pp 40–51; Evidence of S. Cassella, Transcript, May 10, 2021, pp 64–65. In order to ensure that prosecutors have the knowledge and skills to pursue these matters, money laundering and asset forfeiture issues form part of the basic training that all prosecutors receive when they are hired. Moreover, there are specialized money laundering and asset forfeiture courses available for those with a greater interest and a number of specialized money laundering and asset forfeiture prosecutors who and act as a resource for other prosecutors who may not have the same level of expertise: Evidence of S. Cassella, Transcript, May 10, 2021, pp 53–54.

<sup>12</sup> Exhibit 969, Report for the Cullen Commission by Stefan Cassella, pp 52–53.

<sup>13</sup> US Department of Justice, Asset Forfeiture Program, “Total Deposits & Expenses,” online: <https://www.justice.gov/afp>.

The Department of Homeland Security and the Department of the Treasury also maintain a smaller fund that collects receipts from cases handled by those departments. As I understand it, the amount deposited into these funds annually is roughly one-third of the amount deposited into the Department of Justice’s Asset Forfeiture Fund, which brings the total amount recovered through the criminal and civil asset forfeiture process at the federal level above \$2 billion in each of the past five years.<sup>14</sup>

## The United Kingdom

The United Kingdom has a comprehensive asset forfeiture regime that contains four key mechanisms for the seizure and forfeiture of unlawfully obtained assets: criminal asset forfeiture (known in the UK as confiscation proceedings); non-conviction based asset forfeiture (known in the UK as civil recovery); cash seizure and forfeiture; and taxation of unlawfully obtained profits.<sup>15</sup> It has also introduced amendments to the *Proceeds of Crime Act 2002* authorizing the High Court to make an unexplained wealth order (or UWO) if certain conditions are satisfied.<sup>16</sup>

### Criminal Confiscation

A criminal confiscation order can be made where the accused has been convicted of a criminal offence and has benefited from the criminal conduct forming the basis of that conviction. Prior to making a forfeiture order, the court must determine whether the defendant has been living a “criminal lifestyle.” If so, a “general criminal lifestyle confiscation” takes place and the court is entitled to assume that any property acquired by the accused within six years of the start of the criminal proceedings was obtained as a result of criminal conduct. If not, the court can only make a forfeiture order where it is satisfied that the defendant has received a benefit from the offence before the court.<sup>17</sup>

### Civil Recovery

Civil asset recovery is governed by Part 5 of the *Proceeds of Crime Act 2002*, which allows for the recovery of property obtained through “unlawful conduct” committed in England, Northern Ireland, Scotland, or Wales. Helena Wood, an Associate Fellow of the Royal United Services Institute and an expert on civil forfeiture, characterized

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14 Exhibit 969, Report for the Cullen Commission by Stefan Cassella, p 64.

15 Exhibit 374, Overview Report: Reports Related to Asset Forfeiture and Unexplained Wealth Legislation in Jurisdictions Outside of Canada, Appendix A, p 12. The genesis of this regime can be traced back to an influential report from former Prime Minister Tony Blair’s Performance and Innovation Unit in 2000, which stated that there is “much to be gained from an approach to law enforcement that focuses on treating criminal organizations as profit-making businesses” (ibid, Appendix C, p 8).

16 *Proceeds of Crime Act 2002*, c 29.

17 Exhibit 374, Overview Report: Reports Related to Asset Forfeiture and Unexplained Wealth Legislation in Jurisdictions Outside of Canada, Appendix A, p 13; *Proceeds of Crime Act 2002*, s 6.

this regime as a “basic civil [forfeiture] regime which reduces the burden of proof on the authorities trying to ... go against these assets.”<sup>18</sup> However, she went on to describe the “slightly checkered” history of the Assets Recovery Agency, which was set up to administer the civil and criminal asset recovery process under the new legislation.<sup>19</sup>

The Assets Recovery Agency had been set up with a mandate to be self-funding within five years. However, it failed to anticipate the extent to which the *Proceeds of Crime Act* would be challenged in court and the cost burden associated with that litigation.<sup>20</sup> Moreover, the new agency was entirely reliant on referrals from other law enforcement agencies, which limited the types of cases it could take:

One of the failures one might point to is around this slightly naive setting of a self-funding target by the then heads of the agency, which was ultimately doomed to failure, and again, it goes back to that point of not anticipating the litigious nature of those powers. People were perhaps always going to challenge them in the court because they could and they were so new and so novel. So that perhaps led to the downfall of the agency in that way.

...

The other thing I perhaps point to finally is around the model that was established for the Assets Recovery Agency. They were unable to initiate their own cases at the time. They were entirely relying on referrals from other law enforcement agencies, which limited the kind of cases they could take on. And often they were handed cases that perhaps law enforcement didn't want to deal with within their own law enforcement agencies which were perhaps of a lower level than were anticipated.<sup>21</sup>

In or around 2008, the Assets Recovery Agency was disbanded and the functions of that agency were transferred to a wider constituency of agencies including the Serious Organized Crime Agency (now the National Crime Agency), the Crown Prosecution Service, and the Revenue and Customs Protection Office (which has since been disbanded).<sup>22</sup> While the types of cases that can be generated by these agencies is much different from those referred to the Assets Recovery Agency before it was disbanded, Ms. Wood testified that “non-conviction based asset forfeiture in the UK [has] never really achieved the scale that was intended” and that the law enforcement agencies who received these asset forfeiture powers have never used them to the scale that was anticipated after the disbandment of the Assets Recovery Agency.<sup>23</sup>

18 Evidence of H. Wood, Transcript, December 15, 2020, p 24.

19 Ibid.

20 Ibid, pp 24–25.

21 Ibid, pp 30–31.

22 Ibid, p 25.

23 Ibid, pp 24–26.

## Cash Seizure and Forfeiture

The *Proceeds of Crime Act 2002* also contains a regime for the seizure of cash suspected to be proceeds of crime or intended for use in unlawful conduct (such as cash seized before it is used to make a drug purchase).<sup>24</sup>

Cash forfeiture proceedings are civil proceedings, and the civil standard of proof (balance of probabilities) applies to proceedings brought under those provisions.<sup>25</sup>

## Taxation Powers

One of the more interesting elements of the *Proceeds of Crime Act 2002* is the use of tax enforcement laws as a means of deterring and punishing criminals. These provisions arose from the realization that criminal organizations generate billions in untaxed revenue, and that the usual tools used by the UK tax authority (known as Inland Revenue) to raise assessments against those shown to have undeclared income are of little utility when dealing with those involved in sophisticated criminal activity.<sup>26</sup>

The *Proceeds of Crime Act 2002* allows the National Crime Agency to take over the functions of the UK tax authority and carry out tax investigations where there are reasonable grounds to suspect that income or a gain accruing to a person arises, in whole or in part, as a result of that person or another person's criminal conduct.<sup>27</sup>

## Unexplained Wealth Orders

On January 31, 2018, the *Proceeds of Crime Act 2002* was amended to introduce unexplained wealth orders as an additional tool to combat organized crime and other forms of criminality.<sup>28</sup> The introduction of unexplained wealth orders was prompted by concerns about high-end money laundering in the United Kingdom, especially from jurisdictions afflicted by widespread corruption. Ms. Wood explained:

The UK's got a very active civil society contingent. Some organizations you'll be familiar with from Canada, such as Transparency International. The UK chapter is very, very active. And others like Global Witness, Spotlight on Corruption and other corruption bodies. There'd been a growing disquiet generally about growing evidence of grand corruption wealth landing primarily in London but also in the wider UK, particularly real estate market and growing kind of levels of investigative journalistic material coming out about London as a kind of centre for the proceeds of

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24 Exhibit 374, Overview Report: Reports Related to Asset Forfeiture and Unexplained Wealth Legislation in Jurisdictions Outside of Canada, Appendix A, p 14.

25 Ibid, p 73.

26 Ibid, p 15.

27 Ibid.

28 Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC (October 2020), p 5.

crime or money laundering and criminality more generally. And I think that led to this groundswell of disquiet.<sup>29</sup>

In the United Kingdom, unexplained wealth orders are primarily an investigative tool that allow an enforcement authority (defined as the National Crime Agency, Her Majesty’s Revenue and Customs, the Serious Fraud Office, and various other law enforcement agencies) to apply for an order requiring a person to provide information concerning the nature and extent of that person’s ownership interest in a particular property and how they were able to purchase that property.<sup>30</sup> Section 362A provides:

**362A Unexplained wealth orders**

(1) The High Court may, on an application made by an enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

...

(3) An unexplained wealth order is an order requiring the respondent to provide a statement—

- (a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made,
- (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),
- (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and
- (d) setting out such other information in connection with the property as may be so specified.

Section 362B sets out the criteria that must be satisfied before the court can make an unexplained wealth order. In basic terms, the court must be satisfied that:

- there is reasonable cause to believe that the respondent “holds” the property and that the value of the property is greater than £50,000;

<sup>29</sup> Evidence of H. Wood, Transcript, December 15, 2020, pp 37–38. See also Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 7–8.

<sup>30</sup> Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, p 6. For the proposition that unexplained wealth orders are an investigative tool see Evidence of H. Wood, Transcript, December 20, 2020, p 11 (“... speaking in the UK context, the unexplained wealth order is purely an investigative tool. It sits under part 8 of the *Proceeds of Crime Act 2002* with a range of other investigative tools that you may be familiar with from your domestic legislation, such as production orders, disclosure orders, account monitoring orders. So it should absolutely in the UK context be seen as an investigative tool to be used to gather information and evidence to support a wider investigation”).

- there are reasonable grounds to suspect that the known sources of the respondent's lawfully obtained income would have been insufficient to allow the person to obtain the property; and
- the respondent is a politically exposed person or there are reasonable grounds to suspect that (a) the respondent is, or has been, involved in serious crime, or (b) a person connected with the respondent is, or has been, involved in serious crime.

Where the recipient of an unexplained wealth order fails, without reasonable excuse, to comply with the requirements of that order, a presumption arises that the property was obtained through unlawful conduct, and the state can bring civil recovery proceedings under Part 5 of the *Proceeds of Crime Act 2002*.<sup>31</sup> Note, however, that the presumption arising under that provision is rebuttable, meaning that the recipient of the unexplained wealth order is still able to rebut (or disprove) the presumption by tendering evidence that tends to show that the property was not obtained through unlawful conduct.<sup>32</sup> Ms. Wood explained the operation of these provisions as follows:

Then if we move on to 362C ... In subsection 2, what we see is the real sanction for non-compliance with the unexplained wealth order. Sub-section (1) details what non-compliance is, and it says that if the respondent fails without reasonable excuse to comply with the requirements imposed by an unexplained wealth order, then the sanction envisaged in subsection (2) kicks in, and that is that the property is to be presumed to be recoverable property for the purposes of part 5, *Proceeds of Crime Act*. And that is the civil forfeiture legal framework ... So in other words, the property that you have not explained, if you have not responded to an unexplained wealth order in relation to property, that property is deemed to be ... the proceeds of crime.

It is then subject to further civil forfeiture process, and it is a rebuttable presumption, so it would be possible in further civil forfeiture process to bring further evidence that shows that the property is not in fact the proceeds of crime. But the presumption is triggered by non-compliance with the unexplained wealth order.<sup>33</sup>

Where the recipient of an unexplained wealth order *does* respond within the timeframe set out in the order, the information provided by the recipient can be used in civil recovery proceedings (though it is unlikely that the state would proceed with such proceedings if the recipient can show that the property was purchased with legitimate funds). It is also important to note that, with certain exceptions, the information provided by the recipient cannot be used in criminal proceedings against that person.<sup>34</sup>

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31 Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, p 5.

32 *Proceeds of Crime Act 2002*, s 362C(2).

33 Evidence of H. Wood, Transcript, December 15, 2020, pp 54–55.

34 *Ibid*, p 58.

Unexplained wealth orders are almost invariably accompanied by an interim freezing order that prevents the property owner from transferring the property. Both orders can be sought on an *ex parte* basis, meaning that notice is not generally given to the recipient. Where an interim freezing order has issued, the state has 60 days from receipt of a response to determine whether to commence civil recovery proceedings.<sup>35</sup>

When unexplained wealth orders were first introduced, the expectation was that approximately 40 such orders would be issued per year. However, there are only four cases in which unexplained wealth orders are known to have issued, and concerns have been raised about the “long and winding route to the actual reversal of the burden of proof.”<sup>36</sup> Anton Moiseienko, a research fellow at the Royal United Services Institute and an expert on financial crime, expressed this point as follows:

I don't want to foreshadow too much by way of discussion what other countries are doing, but [you may] come to the conclusion that in some cases it is okay to reverse the burden of proof – for example when there's an overwhelming public interest in making sure that public officials can account for their wealth. Or perhaps there are other safeguards in place; for instance, [if] you have to justify your belief that someone is involved in serious and organized crime and you provide evidence to court of that, then maybe that is enough of a triggering event in order to have the reversed burden of proof. It's not entirely clear why the UK has chosen such a difficult and complicated approach to that. And I think that might be in the end one of the reasons why unexplained wealth orders will not lead to significant confiscations of criminal wealth.<sup>37</sup>

It strikes me that these are largely design issues and that there are a number of demonstrable benefits associated with the use of unexplained wealth orders. These include the ability to get behind complex ownership structures and the potential deterrent effect on those who are considering the investment of dirty money in a jurisdiction. Mr. Moiseienko referred to news reports suggesting that some people are reconsidering the investment of dirty money in the UK and suggested that “clients from certain high-risk jurisdictions [are] coming to their lawyers in London and asking [whether they are] going to be hit with an unexplained wealth order.”<sup>38</sup>

While I appreciate that reports referred to by Mr. Moiseienko are anecdotal and that there is no empirical evidence with respect to the impact of unexplained wealth orders

35 Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 5–6.

36 Evidence of A. Moiseienko, Transcript, December 15, 2020, p 82. For the number of unexplained wealth orders that have issued, see Evidence of H. Wood, Transcript, December 15, 2020, p 62; Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 14–15. Note, however, that this evidence is based on publicly available information and it may be that other unexplained wealth orders have issued.

37 Ibid, pp 82–83. Concerns were also raised about the difficulty in determining what constitutes non-compliance with an unexplained wealth order: see Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 11–12.

38 Evidence of A. Moiseienko, Transcript, December 15, 2020, p 84.

on the investment of illicit funds in the UK (or any other country), there is evidence that those involved in money laundering activity often change their behaviour in response to changing legal and regulatory requirements.<sup>39</sup> I expect that the introduction of unexplained wealth orders in the UK likely did have the effect of deterring some organized crime groups from investing money in that jurisdiction. I return to this subject below.

## The Republic of Ireland

The Republic of Ireland is widely regarded as a model asset forfeiture jurisdiction because of the structure, organization, and operation of its asset forfeiture agency (known as the Criminal Assets Bureau).<sup>40</sup> The Criminal Assets Bureau was established in the wake of two high-profile murders including the death of investigative journalist Veronica Guerin, who had been reporting on the activities of a notorious organized crime figure and who was murdered on her way home from traffic court. There was also a high level of public concern about the accumulation of wealth by certain criminals who were living in impressive properties and claiming social welfare payments from the state.<sup>41</sup> Ms. Wood testified that these events led to a high level of public criticism and a “groundswell of ... cross-party political public support” that has protected the bureau from funding cuts and led to a much better resourced system:

[O]ne of the strengths that really backs up the Irish system is just the groundswell of kind of cross-party political public support for their action. And that could be seen in the kind of background and context in which their non-conviction based forfeiture system was implemented in the first place, being on the back of a very high-profile murder of a journalist in Ireland by serious and organized criminals which led to a level of public opprobrium that meant that political action against the issue was perhaps inevitable ...

And I mention that because I think it’s protected the Criminal Assets Bureau. That kind of level of political and public support has protected them through ... various levels of public austerity over the past years that we’ve seen globally. That budget has been protected, and I think that’s a really key factor when we compare it perhaps to the UK system more broadly. The UK system has broadly been under-resourced and it’s left it open to challenge by high-profile cases where the UK system has been outgunned legally in resourced terms. The same can’t be said in Ireland where they have a much better resourced system that’s predicated on this kind of groundswell of public support for what they do.<sup>42</sup>

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39 See, for example, the discussion of geographic targeting orders in Chapter 18.

40 Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 22–23.

41 Evidence of C. King, Transcript, December 16, 2020, pp 15–17.

42 Evidence of H. Wood, Transcript, December 15, 2020, pp 92–93.

The Criminal Assets Bureau is an independent statutory body with the power to hold and dispose of land (or an interest in land) and to acquire, hold, and dispose of any other property. Importantly, it is also a multi-agency body made up of investigators from the national police force (An Garda Síochána), the customs service, the social welfare agency, and the tax authority. Kevin McMeel, the current legal officer of the Criminal Assets Bureau, described the multi-agency structure of the bureau as follows:

The Criminal Assets Bureau as a structure -- and this is something that we cherish and champion over here -- is a multi-agency body. It comprises ... the police force in Ireland, the An Garda Síochána, ... the customs service, which is part of the revenue ... the ... Irish Department of Social Protection, which is our social welfare agency [and] ... our tax revenue body.

And they all essentially come together to make the Criminal Assets Bureau, but the bureau itself is a separate independent statutory body.<sup>43</sup>

One of the benefits of that model is that it allows for immediate and real-time information sharing among the representatives of the four member agencies and allows for a multifaceted response to organized crime:

[Y]ou can imagine [that] somebody is on social welfare and they have declared no tax in the previous years and, to use a very far side example, they're driving a Range Rover. And they can be asked by those three individuals at interview ... how do they afford the Range Rover. Now, they could turn around and they could say, I'm not telling you. And the fact that they have refused to answer that question can be ... stated in an affidavit in our civil proceedings ...

But let's say they say they turn around and they say well, actually I've been washing windows for the last 10 years. Well, that would immediately cause a concern for the revenue inspector who's saying ... well, if you've been washing windows for the last 10 years, well, then ... you haven't paid any income tax in relation to that. And then that would generate an income tax bill or may generate an income tax bill with considerable interest and penalties. They might have been better off saying nothing. And similarly, if they say either of those two answers, it might have implications from a social welfare perspective if they've been [claiming social welfare payments] at the same time.

So I think that in essence it's kind of a three-pronged approach, but it works because it means that the individual has, in essence, nowhere to hide.<sup>44</sup>

43 Evidence of K. McMeel, Transcript, December 16, 2020, pp 25–26.

44 Ibid, pp 33–34.

All of the police officers assigned to the Criminal Assets Bureau retain their powers of arrest and can conduct criminal investigations based on the information they receive through their involvement with the bureau. Likewise, the tax commissioners assigned to the bureau ensure that the income generated by organized crime groups is properly taxed, and the social welfare representatives ensure that members of these groups are not unlawfully claiming social welfare payments. However, the focus of the bureau is to “deny and deprive” organized crime groups of the profits of their unlawful activity.<sup>45</sup>

In order to carry out that mandate, the bureau has extensive investigative powers, including the power to apply for search warrants and production orders. Mr. McMeel testified that the investigative capacity given to the Criminal Assets Bureau is something that sets it apart from other jurisdictions, such as British Columbia, where the Civil Forfeiture Office is largely reliant on referrals from law enforcement and has limited powers to conduct its own investigations.<sup>46</sup> He also testified that the bureau has a roster of 474 divisional asset profilers, who assist with the identification of targets for investigation.<sup>47</sup> Most of these profilers are local police officers who have a “strong sense of what’s going on ... in the community” and are “out and about policing, searching, [and] investigating.”<sup>48</sup> They receive training from the bureau as well as access to some of its databases, which they can use to conduct local investigation into unlawfully obtained assets. Where they uncover something significant, a referral is made to the bureau.<sup>49</sup>

When the bureau believes that a particular asset was obtained or received as a result of a criminal offence, it can apply for forfeiture of that asset under the *Proceeds of Crime Act 1996*. In broad terms, there are three stages in a civil forfeiture action brought pursuant to that statute. At the first stage, the bureau can apply for an interim order prohibiting any person from disposing or otherwise dealing with the property for a period of 21 days. The application is normally brought *ex parte*, and the order can contain “such provisions conditions and restrictions as the court considers necessary or expedient.”<sup>50</sup> If the bureau brings an application for an interlocutory order within 21 days of the issuance of that order (see below), the order remains in effect until the final determination of that application. If no such application is brought, the order will expire.

At the second stage of the process, the bureau can apply for an “interlocutory order” declaring that the property constitutes proceeds of crime or was acquired, in whole or in part, using proceeds of crime. Mr. McMeel testified that the term “interlocutory” is somewhat misleading and that this is the main hearing of the action. Moreover, the statute contains a reverse-onus provision that shifts the burden to the property owner

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45 Ibid, pp 30–31, 46, 134, 143–44.

46 Ibid, pp 143–44.

47 Ibid, p 70.

48 Ibid, p 71.

49 Ibid, p 71. While these profilers assist with the identification of local targets, the bureau also makes use of other sources. For example, it relies on information provided by the national intelligence service to identify high-end targets.

50 *Proceeds of Crime Act 1996*, s 2(a).

where it “appears to the court” that the property constitutes proceeds of crime or was purchased using proceeds of crime.<sup>51</sup> Mr. McMeel testified that “belief” evidence from the Chief Bureau Officer indicating that the property is proceeds of crime, or was purchased using proceeds of crime, is sufficient to shift the onus to the property owner even where the belief expressed by the Chief Bureau Officer is based on hearsay:

[P]ursuant to section 8 of the Proceeds of Crime Act there is – belief evidence led. And ... it’s exclusively the Chief Bureau Officer who ... provides belief evidence, although I know the Act provides for a senior revenue officer as well to provide that. But in all of the cases that have been taken by the bureau since its inception, it’s been the Chief Bureau Officer who provides that belief.

Now, the belief evidence is very narrow. If the Chief Bureau Officer believes something to be the proceeds of crime and the value is not below the threshold amount ... that constitutes evidence of the fact, but it’s open to rebuttal. And it must be reasonably grounded, but that belief evidence can be grounded in hearsay evidence. And that is crucial to our success as well ...

Once the belief evidence is accepted, and that’s a big ... step, but once that is accepted as being reason to be grounded, the onus then shifts on the respondent to show why it’s not the proceeds of crime. Now, some people think that there’s a reversal of the burden of proof. That’s not the case, but there is a shifting of the burden of proof once we establish on a *prima facie* basis that the belief evidence is reasonably grounded.<sup>52</sup>

A number of academic commentators – including Colin King, director of postgraduate research studies at the Institute of Advanced Legal Studies at the University of London and an expert in non-conviction based asset forfeiture – have criticized the admissibility of belief evidence on the basis that it is “impossible to effectively challenge belief evidence under cross-examination” and that the courts have been “overly acquiescent” in accepting such evidence.<sup>53</sup> These concerns are particularly acute where the belief evidence is based on evidence given by secret and unidentified informants (which seems to be relatively common). While recognizing the validity of these concerns, Mr. McMeel testified that it is rare for the Criminal Assets Bureau to proceed only on the basis of belief evidence and that most civil forfeiture cases proceed in the same manner as any other civil action:

In reality I’ve never – and I’ve been practicing this for eight and a half years and I have been involved ... in one capacity or another in every case that the bureau has prosecuted during that time. So we’re talking about hundreds of

51 Ibid, s 3(1).

52 Evidence of K. McMeel, Transcript, December 16, 2020, pp 48–49.

53 Evidence of C. King, Transcript, December 16, 2020, p 104.

cases. And I've never seen a case which was prosecuted solely on the basis of belief evidence. And even when we do incorporate hearsay evidence or intelligence in the belief evidence, there is always other evidence which would support that contention. And the kind of things that would inform the belief of a Chief Bureau Officer would be the obvious things, the kind of things that would be admissible in court anyway. For example, there's, as we've had before, 1.2 million euros in cash found in the back of the truck. That is self-evidently suspicious. And the fact that the person that has that in the back of their truck is not in any gainful employment, and that is something that would inform the chief's belief that that is the proceeds of crime. The fact that that person has been claiming the dole over that period and the fact that that person may have known criminal associates – and this is where we're getting into the hearsay element or the intelligence element aspect of it – all of those factors would combine to ground the belief of the chief bureau officer.

Now, the effect of that is – in an ordinary hearing is very straightforward. The hearing is heard like any civil action. The Criminal Assets Bureau provides its evidence. And the court will invariably reserve judgment if ... there is a case put up by the defence. And in that judgment it will say that it found that the belief was well grounded or not. But during the course of the hearing, the bureau just puts forward all its evidence, and the respondent then puts forward all its evidence. And invariably in my experience ... the practicalities of the case are very much the same as any civil case.<sup>54</sup>

Mr. McMeel also defended the provision on the basis that “the person who is in ... possession, power and control of a particular asset is uniquely well placed to evidence the provenance of that asset” and that “[t]he vast majority of people, if not everybody, that own assets legitimately are able to evidence the source of those assets.”<sup>55</sup>

At the third stage of the process, the bureau must wait seven years to allow any person with an interest in the property to assert a claim. If no such claim is received within that time, the bureau can apply for a final disposal order allowing the property to be sold.<sup>56</sup>

All funds recovered through the sale of that property are sent to a central revenue fund, something that differentiates the Irish system from other jurisdictions, such as British Columbia, where the funds recovered through the sale of unlawfully obtained assets are distributed by the Civil Forfeiture Office and used to defray its operating costs. Mr. King testified that this is one area where there was complete unanimity:

In Ireland all the money that is recovered is sent back to the central fund.  
... [The Criminal Assets Bureau] does not get any share of recovered

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54 Evidence of K. McMeel, Transcript, December 16, 2020, pp 98–100.

55 Ibid, pp 119–20.

56 *Proceeds of Crime Act 1996*, s 4(1); Evidence of K. McMeel, Transcript, December 16, 2020, p 53.

money. It has been stressed that how recovered money is spent is a political decision, and [the bureau] is not a political group or a political unit – it is composed of police, revenue, social welfare officials, et cetera – and that they should not have any involvement in deciding how money is spent.

When I spoke to participants in Ireland, this was the one area where there was almost complete unanimity. Everyone that I spoke to who expressed an opinion on this; only one person did not express an opinion. Everyone else agreed with the current approach in Ireland that when money is seized and there is the final court order, that the money should be sent back to the minister to the central fund, and whatever happens after that is none of [the Criminal Asset Bureau’s] business. And that viewpoint was aired by officials in [the bureau] and defence solicitors, barristers who work on both sides.<sup>57</sup>

Moreover, Ms. Wood testified that the Irish funding model changes the focus of the Criminal Asset Bureau and allows it to focus on cases that have the greatest *community impact* as opposed to the cases that are the most “commercially viable”:

The whole discussion in Ireland isn’t around whether “POCA [*Proceeds of Crime Act*] pays for POCA,” which has become a bit of a term in the UK. It’s ... taking it where the asset has a wider community benefit. So in their kind of adoption model of cases, they don’t simply look at whether it’s ... commercially viable ... which is the way the commercial litigator would look at it. They look at in terms of the wider community impact.

So, for example, if it was to cost a million pounds to take away a million-pound property, then within the Irish system that would be absolutely fair. That’s not to say those principles don’t apply in Britain, but I think going back to the legacy that the UK system operates under due to the legacy of the Assets Recovery Agency, there is still this notion that the impact of asset recovery should be measured in financial terms rather than in the more difficult to measure community impacts or dismantling of criminal schemes terms. I think that the UK continues to labour under that position that “POCA should pay for POCA” when absolutely that’s not the legislative intention of any of these provisions across the world.<sup>58</sup>

While I accept that Ireland is considered by many to be a model asset forfeiture jurisdiction, the constitutional constraints present in the Canadian context – including constraints on the exchange of tactical information – would make it difficult to transpose that model to British Columbia. A legal opinion prepared for the Commission by the Honourable Thomas A. Cromwell, CC, reviews some of the constitutional

57 Evidence of C. King, Transcript, December 16, 2020, pp 128–29. See also Evidence of H. Wood, Transcript, December 15, 2020, p 95.

58 Evidence of H. Wood, Transcript, December 15, 2020, p 95–96.

challenges associated with tactical information sharing between the Civil Forfeiture Office, law enforcement agencies, and tax authorities.<sup>59</sup>

## Australia

Australia introduced its first criminal property confiscation legislation in 1979 by way of amendments to the *Customs Act 1901*, which permitted the imposition of financial penalties against those who engaged in unlawful narcotic trafficking.<sup>60</sup> In the mid-1980s, the federal and state governments began introducing comprehensive proceeds of crime legislation as part of a concerted effort to curb the drug trade and respond to the threat posed by transnational organized crime. Lionel Bowen, former deputy prime minister and federal attorney general, made the following comments with respect to the federal *Proceeds of Crime Bill* when it was introduced for second reading:

The Proceeds of Crime Bill provides some of the most effective weaponry against major crime ever introduced into this Parliament. Its purpose is to strike at the heart of major organized crime by depriving persons involved of the profits and instruments of their crimes. By so doing, it will suppress criminal activity by attacking the primary motive – profit – and prevent the re-investment of that profit in further criminal activity.<sup>61</sup>

From the late 1980s onwards, most state and federal jurisdictions augmented their criminal confiscation regimes with non-conviction-based asset forfeiture schemes that allow for the confiscation of property on the civil standard of proof and in most cases, on the basis of “unlawful” rather than “criminal” conduct.<sup>62</sup> Broadly speaking, there are four circumstances in which these statutes allow for the confiscation of property:

- where the property is used in connection with the commission of a prescribed offence (something known as “crime-used property confiscation”);
- where the property is obtained or derived from the commission of a specified offence (something known as “crime-derived property confiscation”);
- where a person’s wealth exceeds the value of his or her lawfully acquired property (something known as “unexplained wealth order confiscation”); and
- where a person is a declared or taken to be a declared drug dealer (something known as “drug trafficker confiscation”).<sup>63</sup>

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59 A copy of that opinion can be found at Appendix I. In addition, submissions were made by the Province of British Columbia and the BC Civil Liberties Association in response to that opinion, and those submissions have been posted to the Commission’s website.

60 Exhibit 376, Overview Report: Selected Writings of N. Skead, Appendix D, p 177; Evidence of N. Skead, Transcript, December 17, 2020, p 8.

61 Exhibit 376, Overview Report: Selected Writings of N. Skead, Appendix D, p 177.

62 Ibid.

63 Evidence of N. Skead, Transcript, December 17, 2020, pp 15–28; Exhibit 376, Overview Report: Selected Writings of N. Skead, Appendix D, p 178.

For most forms of confiscation, there are conviction-based regimes, non-conviction-based regimes, and hybrid regimes.<sup>64</sup> The breadth of some of these legislative provisions have caused some to raise concerns about disproportionate and unjust outcomes. For example, the drug trafficking confiscation schemes enacted in Western Australia and the Northern Territory go beyond property that is derived from drug trafficking offences and target everything that is owned or controlled by the respondent without many of the procedural safeguards present in other jurisdictions.<sup>65</sup> Dr. Natalie Skead, a professor of law and dean of the University of Western Australia Law School, provided a number of startling examples of the potential injustice that can arise from these provisions.<sup>66</sup>

Australia was one of the first jurisdictions to use unexplained wealth orders as a tool in combatting organized crime. At the federal level, the *Proceeds of Crime Act 2002 (Commonwealth)* allows the court to issue an order, known as a preliminary unexplained wealth order, requiring a person to appear before the court to enable the court to decide whether such an order should be made. Where the court is satisfied that there are reasonable grounds to suspect that the respondent's total wealth exceeds the value of the person's wealth that was lawfully acquired, the court *must* make the order.<sup>67</sup>

In principle, that provision allows for the issuance of an unexplained wealth order without any requirement to show that the property owner was involved in criminal activity or that he or she received any financial benefit from that activity. Moreover, the order applies to the entirety of the respondent's wealth and is not limited to a specific asset.<sup>68</sup>

If the respondent does not make an application within 28 days showing why a final order should not be issued, the court will issue a confiscation order requiring the respondent to pay the difference between the person's total wealth and the amount of that wealth that is not derived from criminal activity.<sup>69</sup>

At the state level within Australia, the structure of the regime is largely the same, though there are important differences in the threshold requirements for the issuance of an unexplained wealth order. In Western Australia, there is no threshold for the issuance of such an order; once the application is filed, the burden immediately shifts to the respondent to prove that their wealth was lawfully obtained.<sup>70</sup> In South Australia, the state must show that it “reasonably suspects that a person has wealth that has not been lawfully acquired.”<sup>71</sup> In New South Wales, Queensland, and Victoria, the state must establish a “reasonable suspicion” that the respondent has, at any time before the making of the order, engaged in serious criminal activity or acquired property from any such activity.<sup>72</sup>

64 Ibid, pp 15–17.

65 Evidence of N. Skead, Transcript, December 17, 2020, pp 31–32, 36–39.

66 Ibid, pp 39–40.

67 Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 23–24.

68 Evidence of H. Wood, December 16, 2020, p 100.

69 Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 23–24.

70 Evidence of N. Skead, Transcript, December 17, 2020, pp 46–47.

71 Exhibit 382, Unexplained Wealth Orders – UK Experience and Lessons for BC, pp 24–25.

72 Ibid.

On their face, these provisions would seem to be an extraordinarily powerful tool in the fight against organized crime. However, the number of unexplained wealth orders issued by federal and state courts is extremely low, and it is “generally accepted that [the regime] has not been very successful.”<sup>73</sup> One of the primary reasons for the lack of success is the difficulty of proving the quantum of unexplained wealth. Dr. Skead testified that the law enforcement agencies charged with administering this scheme do not have the time, money, or expertise to bring these applications and that it is a “complex, lengthy, and very expensive process with no guarantee of success.”<sup>74</sup> She also stated that pinning down the extent of a person’s wealth is particularly difficult when dealing with criminals, who do not have a steady stream of predictable income:

Typically, these actions are not brought against somebody like me who earns a salary and has a steady stream of predictable income. That’s easy to trace. It is a person, firstly, whose wealth is very difficult to pin down. So even just establishing the wealth, so to speak, of the respondent is a complex and difficult exercise. Then going through the process of earmarking how much of that wealth was lawfully acquired and how is another complex exercise. The balance then is unexplained.<sup>75</sup>

The New South Wales Crime Commission has found a measure of success in creating specialized teams to deal with forfeiture issues. However, the success of that initiative is limited, and it appears that unexplained wealth orders remain an underutilized tool.<sup>76</sup>

One of the lessons that can be drawn from the Australian experience is the need to carefully consider the prerequisites for the issuance of an unexplained wealth order.

Unlike the approach in the UK and the Republic of Ireland, the Australian regime is focused solely on the respondent’s wealth and allows for the issuance of an unexplained wealth order without the need to establish any link between the property and any unlawful activity. While an exclusive focus on wealth gives the state another route to the forfeiture of unlawfully obtained wealth, it is a complex, lengthy, and expensive process that may not be worth the cost. Likewise, the low threshold for the issuance of an unexplained wealth order (which requires only a reasonable suspicion that the respondent’s total wealth exceeds the value of the person’s wealth that was lawfully acquired) raises civil liberties concerns and undermines many of the safeguards “which have evolved at common law to protect innocent parties from the wrongful forfeiture of ... property.”<sup>77</sup>

Another lesson that can be drawn from the Australian experience is the difficulty in proving that the respondent’s total wealth exceeds the value of the person’s wealth that was lawfully acquired (which seems to be why unexplained wealth orders remain an underutilized tool).

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73 Evidence of N. Skead, Transcript, December 17, 2020, p 65.

74 Ibid, p 56.

75 Ibid, pp 54–55.

76 Ibid, pp 59, 61.

77 Exhibit 376, Overview Report: Selected Writings of N. Skead, Appendix B, p 489.

## Manitoba

Manitoba's civil forfeiture legislation is largely modelled on the BC statute.<sup>78</sup> The purpose of that legislation is twofold: (a) to prevent people who engage in unlawful activities (and others) from keeping property that was acquired as a result of those activities; and (b) to prevent property from being used to engage in unlawful activities.<sup>79</sup>

Under section 3 of the *Criminal Property Forfeiture Act*, the director of the Manitoba Criminal Property Forfeiture Unit may commence proceedings in court seeking an order forfeiting property to the government where he or she is satisfied that property is proceeds of unlawful activity or an instrument of unlawful activity.<sup>80</sup>

The proceedings can be commenced by action or application and must name as parties the owner of the property, any person in possession of the property, any person with a prior registered interest in the property, and any other person whom the director believes may have an interest in the property.<sup>81</sup>

The Manitoba statute also contains an administrative forfeiture regime. It is similar to the BC model (and other administrative forfeiture models across Canada). In basic terms, that regime applies to property other than real property valued at \$75,000 or less that is in the possession of a law enforcement agency.<sup>82</sup> In such cases, the director can commence administrative forfeiture proceedings by fulfilling three different notice requirements. First, the director publishes notice of the administrative forfeiture proceedings in a newspaper of general circulation throughout the province. Second, he or she files a notice of administrative forfeiture against the subject property in the personal property registry. Third, the director gives written notice to the person from whom the property was seized, the law enforcement agency that seized the property and any other person whom the director believes may have an interest in the property.<sup>83</sup>

A person who claims to have an interest in the subject property may oppose forfeiture by submitting a written notice of dispute to the director within 60 days of receiving notice. Where a notice of dispute is received, the director can either commence civil forfeiture proceedings against the property in accordance with the regular process or discontinue the forfeiture proceedings. Where a notice of dispute is *not* received by the deadline, the subject property is automatically forfeited to the government.<sup>84</sup>

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<sup>78</sup> Evidence of M. Murray, Transcript, May 5, 2021, pp 6–7.

<sup>79</sup> *Criminal Property Forfeiture Act*, CCSM c C306, s 2.

<sup>80</sup> *Ibid*, s 3.

<sup>81</sup> *Ibid*, s 5.

<sup>82</sup> *Ibid*, s 17.2(1).

<sup>83</sup> *Ibid*, ss 17.3, 17.4.

<sup>84</sup> *Ibid*, ss 17.7, 17.8.

Melinda Murray, executive director of the Manitoba Criminal Property Forfeiture Unit, testified that the purpose of the administrative forfeiture regime was to streamline the forfeiture of property in cases where the forfeiture order is unopposed:

The rationale for the administrative forfeiture process was [that] we were seeing a lot of ... cases going to default in the judicial stream. And so there was such a high number that ... the idea was to try to streamline and render this more efficient and more cost efficient. So under the judicial process of course there's legal fees attached and court resources that are expended on proceeding in that fashion, and because of the high number of defaults that were occurring and especially in low-value cases, the administrative forfeiture regime came about to reduce that cost and the resource intensiveness as well as the inefficiency.<sup>85</sup>

Unlike the BC Civil Forfeiture Office, the Manitoba Criminal Property Forfeiture Unit is not a self-funded agency, meaning that its operating costs are paid by government rather than the sale of assets that have been forfeited to the government. While the unit conducts a cost-benefit analysis in deciding whether to pursue a particular asset for forfeiture, the primary considerations are the strength of the evidence and the interests of justice (which includes factors such as fairness and proportionality).<sup>86</sup>

Ms. Murray testified that there have been cases where the unit has lost money pursuing a particular asset because of the high public interest in proceeding. For example, the unit lost money pursuing a Hells Angels clubhouse because of the high public interest in “ridding the neighbourhood” of that property.<sup>87</sup> Likewise, the unit spent a considerable amount of money pursuing the assets of an individual who had defrauded a church in order to return those funds to the church.<sup>88</sup>

While the Criminal Property Forfeiture Unit receives most of its files from law enforcement referrals and does not conduct any proactive investigations, it takes steps to build out the more complex files it receives by looking at open-source and subscription databases that would allow it to locate additional assets:

Generally speaking ... we do not lack for work, and so there hasn't been the ability to start looking for targets, so to speak. So, what will happen in more high-value complex files is we will look at open-source databases or subscription databases where we may locate further assets that a defendant may have when we do those sort of ... information gathering. So, the police might know about two homes and a bank account and two vehicles, but we may discover that the defendant actually has three homes

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85 Evidence of M. Murray, Transcript, May 5, 2021, pp 11-12.

86 Ibid, pp 23-25.

87 Ibid, p 26.

88 Ibid, p 26.

or four homes once we look into open-source information. So, we'll add that to our forfeiture proceedings if we feel we have the evidence to do so.<sup>89</sup>

One of the most important aspects of the Manitoba regime is the ability to apply for a preliminary disclosure order before the commencement of proceedings. Such orders require the person described in the order to provide the following information:

- the nature and extent of the person's interest in the property that is the subject of the proceeding;
- the particulars of the person's acquisition of the property, including how any costs incurred in acquiring the property were met;
- the sources and amounts of the person's lawfully obtained income and assets;
- if the person holds the property, or any part of it, in trust for another person, the details of the trust and the identity of the beneficial owners; and
- any other information specified by the court.<sup>90</sup>

A preliminary disclosure order can be made on application without notice to the property owner or any other person. However, there must be reasonable grounds to suspect that:

- the person named in the order is the owner of the property or has possession of the property;
- the fair market value of the property exceeds \$100,000;
- the person's known sources of income and assets would have been insufficient to enable the respondent to acquire the property; and
- the person, or a person who does not deal with the respondent at arm's length, is or has been involved in unlawful activity.<sup>91</sup>

If the person does not provide the information and documents within the time period specified in the order, there is a rebuttable presumption that the property that is subject to the order is proceeds of unlawful activity or an instrument of unlawful activity.<sup>92</sup>

Ms. Murray testified that most if not all of the information contained in a preliminary disclosure order could be obtained at an examination for discovery, and that the purpose of the provision is to obtain the information at the "front end" in order

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89 Ibid, pp 36–37.

90 *Criminal Property Forfeiture Act*, s 2.3(1).

91 Ibid, s 2.3(6). The court must also be satisfied that the information and documents to be provided under the order would assist the director in deciding whether to commence forfeiture proceedings under section 3.

92 Ibid, s 17.18.

to determine whether to proceed with a forfeiture action.<sup>93</sup> She also gave the following example of the utility of preliminary disclosure orders in obtaining information about criminal assets:

We had a case ... [the] first week that I started ... where ... there was a homicide of a rival drug gang. And ... the police had determined that there was drug trafficking as part of that. So, one of the four individuals charged with the homicide. Also we knew from police that this individual did not work, did not have a job at all and that they received information or found information that he had bank accounts, over \$500,000 in ... 13 different bank accounts, some with his family, jointly owned bank accounts, and that they were living in a residence that was worth \$600,000, yet these individuals, the parents and the defendant or the accused in the criminal case ... were collecting what we call employment insurance assistance, so “EIA” in Manitoba.

And so, this would be the perfect example of what we would want to perhaps obtain information as to where this wealth was acquired in order to determine if it’s legitimate wealth and there’s obviously the ability for them to advise us as to legitimacy of the income. We would then not seek forfeiture if the evidence or the information provided to us was adequately indicated that it was legitimate. But if it’s not legitimate, then we would take a closer look at that information and determine whether we’d proceed with forfeiture under section 3 and file a statement of claim.<sup>94</sup>

Finally, she emphasized that information provided in response to a preliminary disclosure order is subject to use immunity can only be used in connection with civil forfeiture proceedings and cannot be provided to the police or any other person.<sup>95</sup>

## British Columbia

The BC *Civil Forfeiture Act* came into force on April 16, 2006, and was modelled on the Ontario *Remedies for Organized Crime and Other Unlawful Activities Act* (commonly referred to as the *Civil Remedies Act*).<sup>96</sup> While the BC statute does not contain an express statement of purpose, the minister of public safety and solicitor general made the following comments about the legislation when it was introduced for second reading:

With this new legislation we will be taking the profit out of illegal activity. It will be another tool to deter and prevent fraud, theft and a host of other illegal activities, and it will enable the recovery of ill-gotten gains and will assist in providing compensation to eligible victims.

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<sup>93</sup> Evidence of M. Murray, Transcript, May 5, 2021, p 48.

<sup>94</sup> Ibid, pp 49–50.

<sup>95</sup> Ibid, p 55; *Criminal Property Forfeiture Act*, s 2.3(12).

<sup>96</sup> SO 2001, c 28; Exhibit 378, *Civil Asset Forfeiture in Canada*, p 9; Exhibit 373, *Overview Report: Asset Forfeiture in British Columbia*, pp 19–20.

The moneys recovered through forfeiture will compensate eligible victims and will be used to support further crime prevention initiatives. The moral and legal underpinnings of civil forfeiture are very clear. Civil forfeiture is similar to the civil remedy against unjust enrichment. It takes back assets derived from illegal conduct. No one should be allowed to get rich as a result of breaking the law. No one, I hope, can or will seriously argue that point.<sup>97</sup>

In *British Columbia (Director of Civil Forfeiture) v Onn*, 2009 BCCA 402, the British Columbia Court of Appeal held that the policy rationale for the statute was threefold:

- to take the profit out of unlawful activity;
- to prevent the use of property to unlawfully acquire wealth or cause bodily injury; and
- to compensate victims of crime and fund crime prevention and remediation.<sup>98</sup>

The *Civil Forfeiture Act* is divided into eight parts and is supplemented by the *Civil Forfeiture Regulation*, BC Reg 164/2006. I discuss each of these parts below.

## Part 1

Part 1 of the *Civil Forfeiture Act* defines various terms used in the legislation including the terms “unlawful activity,” “proceeds of unlawful activity,” and “instrument of unlawful activity.”

In basic terms, there are three categories of unlawful activity under the statute:

- unlawful activity occurring within the province, defined as an act or omission that, at the time of occurrence, was an offence under an Act of Canada or British Columbia;
- unlawful activity occurring in another province, defined as an act or omission that, at the time of occurrence was an offence under an Act of Canada or an act of the other province (as applicable) and would be an offence in British Columbia if it occurred in this province; and
- unlawful activity occurring in another country, defined as an act or omission that, at the time of occurrence was an offence under an Act of that country and would be an offence in British Columbia if it occurred in this province.<sup>99</sup>

<sup>97</sup> Exhibit 373, Overview Report: Asset Forfeiture in British Columbia, para 55.

<sup>98</sup> *British Columbia (Director of Civil Forfeiture) v Onn*, 2009 BCCA 402, para 14. Another reason to pursue civil asset forfeiture is to prevent the profits of unlawful activity from being reinvested in the criminal enterprise through the purchase of weapons, drugs, and other instruments of crime: Exhibit 378, Civil Asset Forfeiture in Canada, p 4.

<sup>99</sup> *Civil Forfeiture Act*, s 1. Note, however, that the definition of unlawful activity excludes acts or omissions that are offences under a corporate regulation as well as acts or omissions that would be an offence under an enactment of any jurisdiction prescribed under the *Civil Forfeiture Act*.

“Proceeds of unlawful activity” is defined to include the whole or a portion of any right, title, interest, estate, or claim to property, that is acquired, directly or indirectly, as a result of unlawful activity. It also includes any increase in the value of property that results, directly or indirectly, from unlawful activity; the decrease in any debt obligation secured against the property (such as a mortgage) that results, directly or indirectly, from unlawful activity; and any property realized from the sale of the property.<sup>100</sup>

“Instrument of unlawful activity” is defined as property that has been used to engage in unlawful activity, or is likely to be used to engage in unlawful activity, which

- resulted in or was likely to result in the acquisition of property or an interest in property, or
- caused or was likely to cause serious bodily harm.<sup>101</sup>

## Part 2

Part 2 of the *Civil Forfeiture Act* sets out the process for seeking a forfeiture order. Section 3(1) provides that the “director” appointed in accordance with section 21(1) may apply for an order forfeiting to the government the whole or a portion of an interest in property that is proceeds of unlawful activity.<sup>102</sup>

Section 3(2) allows the director to apply for an order forfeiting property that is an instrument of unlawful activity.<sup>103</sup>

Where an application is filed under these provisions, the director must name as a party and give notice to the registered owner of the property and any other person who the director has “reason to believe is an unregistered owner of the interest in property.”<sup>104</sup>

Section 5 provides that where proceedings are commenced under sections 3(1) or 3(2) of the Act, the court must, with certain exceptions, make an order forfeiting to the government the whole or the portion of an interest in property that the court finds is proceeds of unlawful activity or an instrument of unlawful activity.<sup>105</sup>

## Part 3

Part 3 of the *Civil Forfeiture Act* deals with interim preservation orders for property

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid. Note, however, that the interpretation of this provision is the subject of ongoing litigation: see *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCSC 880 (currently under appeal).

<sup>102</sup> *Civil Forfeiture Act*, s 3(1).

<sup>103</sup> Ibid, s 3(2).

<sup>104</sup> Ibid, s 4.

<sup>105</sup> Ibid, s 6. For commentary on this provision see *British Columbia (Director of Civil Forfeiture) v Wolff*, 2012 BCCA 473, para 38 where Madam Justice Newbury held that relief should only be granted under this provision where a forfeiture order would be “manifestly harsh and inequitable.”

that may be subject to a forfeiture order. Section 8 allows the director to apply for an interim preservation order in relation to property that is the subject of legal proceedings under section 3, either on his or her own initiative or with the consent of one or more of the parties to that proceeding.<sup>106</sup>

Section 8(3) sets out a non-exhaustive list of orders that can be sought by the director under that provision. These orders include:

- an order restraining the disposition or transmission of the property or the whole or the portion of the interest in property;
- an order for the possession, delivery to the director, or safekeeping of property;
- an order appointing a person to act as a receiver manager for property or the whole or a portion of an interest in property;
- an order for the disposition of the property or the whole or the portion of the interest in property in order to better preserve the value of the property or the whole or the portion of the interest in property;
- an order directing that the money arising from the disposition of the property or the whole or the portion of an interest in the property be paid into court pending the conclusion of the proceeding under section 3;
- for the purpose of securing performance of an obligation imposed by an order made under Part 2 or 3, an order granting to the director a lien for an amount set by the court on property or the whole or the portion of an interest in property;
- an order the court considers appropriate to prevent the property from being removed from British Columbia or used to engage in unlawful activity;
- an order the court considers appropriate for the preservation of the property or the rights of creditors and other interest holders; and
- any other order that the court considers appropriate in the circumstances.<sup>107</sup>

Unless it is clearly not in the interests of justice, the court must make the interim preservation order sought by the director if it is satisfied that there is a serious question to be tried with respect to the following issues:

- whether the whole or the portion of the interest in property that is the basis of the application is proceeds of unlawful activity; or
- whether the property that is the basis of the application is an instrument of unlawful activity.<sup>108</sup>

<sup>106</sup> *Civil Forfeiture Act*, ss 8(1), 8(2).

<sup>107</sup> *Ibid*, s 8(3).

<sup>108</sup> *Ibid*, s 8(5).

On May 16, 2019, the provincial government introduced new provisions intended to give the director enhanced powers to restrain property before and during a civil forfeiture action. These powers include section 11.02, which permits the director to seek an order restraining the disposition of property, mandating the disposition of property, preventing the property from being removed from British Columbia, or making any other order that the court considers appropriate *before* proceedings are commenced under section 3(1).<sup>109</sup>

The new provisions also allow the director to seek an order requiring any person to disclose to the director any information or records in the custody or control of that person that are reasonably required by the director in order to exercise the director's powers or perform the director's functions and duties under the relevant legislation.<sup>110</sup>

### Part 3.1

Part 3.1 of the *Civil Forfeiture Act* creates a simplified administrative forfeiture regime for property, other than real property, that is valued at \$75,000 or less and is in the possession of a public body such as a municipal police department. The purpose of these amendments was to create a more streamlined process for the forfeiture of low-value matters – such as small amounts of cash seized from local drug dealers – which are unlikely to be defended but require significant time and expense to process.<sup>111</sup> Section 14.02 provides:

**14.02** (1) This Part applies if

- (a) the director has reason to believe that
  - (i) the whole or a portion of an interest in property, other than real property, is proceeds of unlawful activity, or
  - (ii) property, other than real property, is an instrument of unlawful activity,
- (b) the director has reason to believe that the fair market value of the property referred to in paragraph (a) (i) or (ii) is \$75,000 or less,
- (c) the property referred to in paragraph (a) (i) or (ii) is in British Columbia and is in the possession of a public body, and
- (d) the director has no reason to believe that there are any protected interest holders in relation to that property.<sup>112</sup>

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<sup>109</sup> Ibid, s 11.02.

<sup>110</sup> Ibid, ss 11.01, 22.02.

<sup>111</sup> Exhibit 373, Overview Report: Asset Forfeiture in British Columbia, para 72. See also Evidence of P. Tawtel, Transcript, December 18, 2020, pp 57–60.

<sup>112</sup> *Civil Forfeiture Act*, s 14.02. “Public body” is defined in section 14.01 as an entity with which the director has an information-sharing agreement under section 22(4) or a public body prescribed by regulation. At present, the bodies prescribed by regulation include entities such as the Ministry of Finance, the Insurance Corporation of British Columbia, the BC Financial Services Authority, the Ministry of Public Safety and Solicitor General, the BC Lottery Corporation, and the BC Securities Commission: *Civil Forfeiture Regulation*, s 8(1).

Where the director intends to pursue administrative forfeiture under these provisions, it must file a notice of forfeiture in the personal property registry and give written notice of forfeiture to certain individuals and entities including:

- the person from whom the property was seized;
- any person claiming to be lawfully entitled to possession of the property;
- a person whom the director has reason to believe may be a registered or unregistered owner of an interest in the property; and
- the public body in possession of the property.<sup>113</sup>

Under section 14.07, a person who claims to have an interest in the subject property may dispute forfeiture by filing a notice of dispute within 30 days (the dispute period). The notice of dispute must be accompanied by a solemn declaration identifying:

- the name of the person disputing forfeiture;
- the nature of the person's interest in the property; and
- the reasons for disputing forfeiture.<sup>114</sup>

If the director receives a notice of dispute within the dispute period and still wishes to pursue forfeiture of the property, it must commence forfeiture proceedings under section 3:

**14.08** Within 30 days of receiving a notice of dispute under section 14.07, the director must do the following:

- (a) commence proceedings under section 3 or withdraw from proceeding under this Act in relation to the subject property;
- (b) give notice to the public body and each known interest holder of the direction taken under paragraph (a).

If, however, the director does not receive a notice of dispute within seven days of the expiry of the dispute period, the property is forfeited to the government for disposal by the director without the need to commence proceedings under section 3.<sup>115</sup>

While forfeiture of the subject property is deemed to be immediate, section 14.11 gives an added layer of protection to property owners who fail to deliver a notice of dispute within the 30-day timeframe contemplated by section 14.07. Any such person

<sup>113</sup> *Civil Forfeiture Act*, s 14.04. Under section 14.04(1)(c), the director is also required to publish a formal notice of forfeiture in the *BC Gazette* or a newspaper of general circulation in British Columbia that circulates in or near the area in which the property was seized.

<sup>114</sup> *Civil Forfeiture Act*, s 14.07.

<sup>115</sup> *Ibid*, s 14.09.

may commence legal proceedings for the value of the claimant's interest in the subject property at the time of forfeiture or the liquidated value of the subject property that the government received upon disposition of the subject property (whichever is lesser).<sup>116</sup>

However, the claimant must first establish that the failure to deliver a notice of dispute was not willful or deliberate, and that legal proceedings were commenced as soon as possible after the claimant learned of forfeiture. It is also open to the director to defend the proceeding on the basis that the whole or a portion of the claimant's interest in the subject property is proceeds of unlawful activity or an instrument of unlawful activity.<sup>117</sup>

## Part 4

Part 4 of the *Civil Forfeiture Act* addresses the standard of proof in civil forfeiture proceedings and creates a number of statutory presumptions to assist the director in establishing that property subject to forfeiture is either proceeds of unlawful activity or an instrument of unlawful activity.

Section 16 provides that findings of fact in proceedings under Part 2 or 3 or section 14.11 and the discharge of any presumption are to be made on the balance of probabilities. Moreover, section 17 provides that proof that a person was convicted, found guilty, or found not criminally responsible on account of a mental disorder in respect of a criminal offence that falls within the definition of "unlawful activity" is proof that the person engaged in that activity and can be proven by filing a certificate signed by an officer having custody of the record of the court where the person was found guilty.<sup>118</sup>

Section 18 provides that unlawful activity may be found to have occurred even if the person or persons alleged to have committed that offence have not been criminally charged or have been acquitted of a criminal offence.<sup>119</sup>

Section 19 creates a statutory presumption that any property acquired by a person after participating in unlawful activity that resulted in or is likely to have resulted in the person receiving a financial benefit is proof – in the absence of evidence to the contrary – that the property is proceeds of unlawful activity.<sup>120</sup>

Section 19.01 creates a statutory presumption for property owned or controlled by members of criminal organizations (as defined in section 467.1 of the *Criminal Code*). In basic terms, it provides that any property owned or controlled by a member of a criminal organization, or property transferred by a member of a criminal organization for less than fair market value is presumed to be proceeds of unlawful activity in the

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116 Ibid, s 14.11.

117 Ibid, s 14.11.

118 Ibid, s 17.

119 Ibid, s 18.

120 Ibid, s 19.

absence of evidence to the contrary.<sup>121</sup> One of the primary purposes of that provision is to address the prevalence of nominee ownership within criminal organizations.

Interestingly, section 19.03 creates a statutory presumption for cash or negotiable instruments found in close proximity to a controlled substance, or bundled or packaged in a manner that is not consistent with standard banking practices.<sup>122</sup>

While not directly relevant to money laundering, the *Civil Forfeiture Act* also contains a number of statutory presumptions relating to instruments of unlawful activity. One is section 19.04, which provides that a motor vehicle, trailer, vessel, aircraft, or other conveyance is presumed to be an instrument of unlawful activity where certain types of firearms, controlled substances, and drug trafficking equipment are found inside. Another is section 19.05, which provides that a motor vehicle is presumed to be an instrument of unlawful activity where the driver fails to stop within a reasonable period of time after being signalled or requested to stop or uses the motor vehicle to flee from the peace officer.

## Part 5

Part 5 of the *Civil Forfeiture Act* contemplates the appointment of a director of civil forfeiture to carry out certain powers, duties, and functions under the statute, including the collection, use, and disclosure of information; the commencement of legal proceedings under section 3; and the management and distribution of property forfeited to the government. At the time of writing, the director of civil forfeiture is assisted by a team of nine staff members who work out of the Civil Forfeiture Office in Victoria as well as two program managers who have been seconded to the RCMP and the Vancouver Police Department to facilitate the exchange of information between law enforcement and the Civil Forfeiture Office.<sup>123</sup> Philip Tawtel, director of civil forfeiture, described the role of these program managers as follows:

The first responsibility or duty they have is to be a primary point of contact for the police within that department to facilitate the police's understanding of the Civil Forfeiture Office and how the process to make a referral can be done. Those positions also facilitate the referrals of files from that department to the CFO, albeit indirectly. They cannot make a direct referral from them to the CFO. They are a CFO staff member. What they can do is they can compile the necessary package for review by a member of that police department who's authorized to make a referral. So they work alongside other police officers who are assigned to the asset forfeiture unit, and ... their role is to ... facilitate a referral to our office.

<sup>121</sup> Ibid, s 19.01. Section 19.02 provides that proof that a person was convicted, found guilty or found not criminally responsible on account of a mental disorder in respect of a criminal organization offence is proof – in the absence of evidence to the contrary – that the person is a member of a criminal organization.

<sup>122</sup> Ibid, s 19.03.

<sup>123</sup> Evidence of P. Tawtel, Transcript, December 18, 2020, pp 12, 14.

The second role they have is to assist ... our office, with going back to those police departments if there are questions or follow up. So they're a point of contact for the director as well, and they may know who to reach out to within that department to follow up with the director's question.

And finally, as I mentioned earlier, their last role is really to act as an educator and to facilitate an understanding of the office to the police officers in that department.<sup>124</sup>

When the Civil Forfeiture Office receives a file from law enforcement, it is assessed in accordance with an internal file acceptance policy, which mandates that all files referred to the Civil Forfeiture Office be reviewed in accordance with the following criteria:

- public interest factors such as actual or potential harm to individuals (particularly vulnerable individuals such as the elderly), the use of firearms or other weapons in the underlying criminal activity, the involvement of gangs or organized crime, money laundering, the presence of hard drugs, financial exploitation of vulnerable individuals, and harm or potential harm to law enforcement;
- the strength and adequacy of the available evidence (i.e., the likelihood of a successful forfeiture application);
- financial considerations (i.e., the estimated cost of obtaining a successful forfeiture as compared with the estimated financial benefit); and
- the interests of justice (i.e., whether it is in the interest of justice to pursue forfeiture in that particular case).<sup>125</sup>

While it is important for the Civil Forfeiture Office to be “judicious” in making file acceptance decisions, Mr. Tawtel explained that there are cases where the office will accept a file even if the costs of pursuing forfeiture will exceed the expected recovery:

As a self-funding office, we have a responsibility to be judicious in how we make our decisions. So, it is important that we cover our costs ... And while the costs aren't excessive and typically forfeitures far exceed the costs of running the office, we still take a close look and we scrutinize the value of the asset against the likely cost of the litigation.

Now, that said, where the public interest is high, we will take on files where it's relatively clear from the outset that the cost is going to exceed the recovery.

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124 Ibid, pp 12-13.

125 Exhibit 389, Affidavit No. 1 of Philip Tawtel, exhibit E, p 54; Evidence of P. Tawtel, Transcript, December 18, 2020, pp 35-36.

So [an] actual example – and it’s easy to give one because it’s happened more than a handful of times – would be the nuisance house in the community where there’s a high volume of attendance of calls by the police, there’s been serious crime, there’s been drug trafficking, there’s been assaults, there’s been a number of very bad crimes taking place on the property, and those properties are frequently underwater. The value of the property is less than the mortgage. And in those cases, we will look at pursuing forfeiture, paying out the innocent interest holder, and getting that ... house out of that community the best we can.

Now, as noted, we know from the outset that there is going to be either no equity or a very small amount of equity to be taken from the property, and the legal costs will far exceed that. That said, we consider that a tremendous win for the community, and the anecdotal feedback we’ve had from the community is that was important to do.<sup>126</sup>

Importantly, the office relies exclusively on referrals from law enforcement agencies and does not generate any of its own files. Mr. Tawtel explained that the Civil Forfeiture Office does not have the investigative tools to be able to conduct a successful police investigation.<sup>127</sup> He also emphasized the need for caution in giving the Civil Forfeiture Office the ability to investigate unlawful activity in a manner similar to law enforcement:

Well, obviously if you’re putting investigators out on the street to conduct surveillance, there’s a whole host of things that you will have to look at, which is: are they peace officers; what powers do they have; what protection do they have; what infrastructure do they have; ... do [they] seize things; when they seize things, do they become exhibits. So, you’re almost photocopying very much a policing model into the office. You have to have that infrastructure. And ... one of the things is you don’t want to be ... stepping on – and I’ll use that word “stepping on” – ongoing other investigations that you may not be aware of that police departments are doing.

So, it’s easy for ... one police department to know what another police department may be working on because they have that natural integration, they can see [the information on police databases], they have a sense that they won’t step on another investigation. If the [Civil Forfeiture] office goes down this sort of investigative capacity issue, we have to be careful that we aren’t doing that. We don’t want to ever be in a position where we’re stepping on an ongoing criminal investigation. That’s very important to us. And so, I think ... there’s going to have to be a lot of examination of what the scope and framework would be for an investigative capacity for the office.<sup>128</sup>

126 Evidence of P. Tawtel, Transcript, December 18, 2020, pp 35–37.

127 Ibid, pp 19–21 (“a successful police investigation requires the ability to meet with confidential informants to conduct surveillance, to issue special types of orders, tracking orders or surreptitious search warrants. So there is a whole infrastructure that would be required for the office to do that and the office simply does not have the tools or the legal structure for that”).

128 Evidence of P. Tawtel, Transcript, December 18, 2020, pp 81–82.

From 2006 to 2019, the Civil Forfeiture Office obtained approximately \$114 million in forfeited assets, including approximately \$13.4 million in 2019 and \$10.7 million in 2018.

Table 43.2 sets out the referrals received and accepted, as well as the recoveries from civil forfeiture, each year between 2006 and 2019.<sup>129</sup>

**Table 43.2: Civil Forfeiture Office Referrals and Recoveries, 2006–2019**

<b>Year</b>	<b>Referrals Received</b>	<b>Referrals Accepted</b>	<b>Administrative Forfeiture</b>	<b>Recoveries from Forfeiture</b>
2006	31	9	0	\$62,357.06
2007	72	58	0	\$2,925,748.42
2008	107	70	0	\$2,580,128.84
2009	154	113	0	\$2,854,102.07
2010	158	124	0	\$4,894,756.57
2011	322	244	103	\$14,454,324.17
2012	525	425	304	\$9,462,495.20
2013	553	484	389	\$12,064,310.35
2014	674	626	483	\$11,083,795.31
2015	755	692	553	\$12,431,010.55
2016	1,002	840	761	\$7,610,681.23
2017	1,017	894	785	\$9,831,725.02
2018	1,071	961	841	\$10,694,244.68
2019	1,128	1,027	882	\$13,472,014.31

Source: Exhibit 389, Affidavit No. 1 of Philip Tawtel, Exhibit H, p 66.

When viewed in light of the huge volume of illicit funds generated in this province each year, these numbers are surprisingly small. I expect that an increased focus on money laundering / proceeds of crime issues by law enforcement agencies will substantially increase the number and quality of referrals to the Civil Forfeiture Office. However, it is essential that the Civil Forfeiture Office take meaningful steps to “build out” the files it receives from law enforcement, in order to ensure that it more comprehensively targets unlawfully obtained assets and criminal instruments identified in the investigation or connected to the targets of the investigation (and their associates).

Organized crime groups, and others involved in serious criminal activity, including money laundering, should know that their actions will be the subject of focused attention by law enforcement. They should know that the assets they obtain from their

<sup>129</sup> Exhibit 389, Affidavit No. 1 of Philip Tawtel, Exhibit H, p 66.

unlawful activity will be identified and vigorously pursued by a robust civil forfeiture agency, which uses the powerful tools at its disposal to deprive them of the profits of their unlawful activity and the instruments used to obtain those profits.

Mr. Tawtel was asked about the addition of investigators and analysts who would work to trace unlawfully obtained assets and instruments of crime. He said this was the “piece of the puzzle that’s missing.”<sup>130</sup> He also suggested that the addition of these capabilities would greatly assist the Civil Forfeiture Office in fulfilling its mandate:

That’s the piece of the puzzle that’s missing. Between the director and counsel there was a piece missing, and that piece missing is financial investigators and analysts who could facilitate the tracing while the director is busy working on files coming into the office. So, if the director and counsel are left alone to do that work, it’s a lot like trying to change a tire while the car is moving. There’s just too much happening and too much volume of work coming in.

So I would agree with you that now that we’ve familiar with the legislative tools that have been provided to us ... having those positions would support that work.<sup>131</sup>

While these investigators should not be given traditional law enforcement powers, they should make use of information in government and commercial databases – such as the Land Owner Transparency Registry - as well as other open-source information concerning the activities and assets of the individuals that are the subject of law enforcement referrals. The Civil Forfeiture Office should not be shy to bring in outside expertise, such as forensic accountants or investigators, to support their efforts to identify and target illicit assets and build their case against them. It should also, with the assistance of counsel, leverage the relatively new powers in sections 11.01 to 11.04 and 22.02 to 22.03 of the *Civil Forfeiture Act* to identify and target additional assets.

I see it as an essential step in the fight against money laundering that law enforcement agencies make money laundering / proceeds of crime issues a priority in investigations into profit-oriented criminal offences. The Civil Forfeiture Office must expand its focus from the forfeiture of the instruments of crime and low-value assets that were identified incidentally in law enforcement investigations, to the identification and forfeiture of significant and high-value assets owned or controlled by those involved in serious criminal activity *even if those assets have not been identified by law enforcement*.

I therefore recommend that the Civil Forfeiture Office significantly expand its operational capacity by adding investigators and analysts capable of identifying and targeting unlawfully obtained assets and instruments of unlawful activity beyond those identified in the police file.

<sup>130</sup> Evidence of P. Tawtel, Transcript, December 18, 2020, pp 47–48.

<sup>131</sup> Ibid, pp 47–48.

**Recommendation 99:** I recommend that the Civil Forfeiture Office significantly expand its operational capacity by adding investigators and analysts capable of identifying and targeting unlawfully obtained assets and instruments of unlawful activity beyond those identified in the police file.

## Part 6

Part 6 of the *Civil Forfeiture Act* establishes a process for the distribution of funds following a final order of forfeiture under section 5 or the deemed forfeiture of property under section 14.10. In basic terms, any amounts received by the director through the civil forfeiture process (whether through the forfeiture of cash, the disposition of property, or a settlement agreement) must be paid into a special account in the consolidated revenue fund. Under section 27, the director may make payments out of the civil forfeiture account for any of the following purposes:

- compensation of eligible victims;
- prevention of unlawful activities;
- remediation of the effect of unlawful activities;
- administration of the statute, including any costs related to the preservation, management, or disposition of property;
- compliance with a court order; or
- other prescribed purposes (with the approval of the Minister of Finance).

From 2006 to 2019, the Civil Forfeiture Office obtained approximately \$114 million in forfeited assets. Of those funds, it distributed approximately \$55 million in crime prevention grants and \$1.7 million in victim compensation (primarily to senior citizens who were victims of fraud). The remaining funds were used to run the office.

One of the benefits of the self-funding model adopted in British Columbia is that the Civil Forfeiture Office has control over its budget and does not rely on government to fund its operations. At the same time, the experiences of other jurisdictions – including the UK, Ireland, and Manitoba – suggest that the government-funding model would give the Civil Forfeiture Office more flexibility to pursue files that will cause significant disruption to organized crime groups – even if those cases are not “commercially viable” in the sense that the value of the asset exceeds the costs of pursuing a forfeiture action.

After considering the relative benefits of the two models, I believe that the province should transition from a self-funding model to a government-funded model similar to that in place in Ireland and Manitoba. The primary purpose of civil asset forfeiture is to serve the public interest by ensuring that the profits of unlawful

activity do not accrue and accumulate in the hands of those who carry out such activity, and the Civil Forfeiture Office should be free to pursue cases that have the greatest impact on organized crime groups, regardless of whether those cases are commercially viable.

I also expect that the increased law enforcement focus on money laundering issues / proceeds of crime recommended in Chapter 39, and the expanded role of the Civil Forfeiture Office in targeting illicit assets, will lead to the seizure and forfeiture of a significantly increased volume of illicit assets (and, in turn, revenue). The government should determine the allocation of that revenue. It may be, for example, that some of the proceeds generated from the sale of unlawfully obtained assets could appropriately be used to fund core government services such as health care.

I therefore recommend that the Province transition the Civil Forfeiture Office from a self-funded agency to a government-funded agency, in which the revenue generated by the Civil Forfeiture Office flows to government.

**Recommendation 100:** I recommend that the Province transition the Civil Forfeiture Office from a self-funded agency to a government-funded agency, in which the revenue generated by the Civil Forfeiture Office flows to government.

Of course, the risk of moving to a government funding model is that the operations of the Civil Forfeiture Office are not properly resourced. It is essential that the Province ensure that the Civil Forfeiture Office has the resources and personnel necessary to identify, target, and pursue unlawfully obtained assets.

## Part 7

Part 7 of the *Civil Forfeiture Act* contains a number of general provisions, including a regulation-making power that was used by the provincial government to enact the *Civil Forfeiture Regulation*. It also provides that the limitation period for commencing legal proceedings is 10 years from the date on which the unlawful activity occurred.

## Unexplained Wealth Orders

On November 22, 2019, the BC Ministry of Finance prepared a briefing document for the deputy minister recommending that the Province proceed with the development of an unexplained wealth order regime in British Columbia.<sup>132</sup> The briefing document suggested using the UK's unexplained wealth order legislation as a model and the proposal was subsequently approved by the deputy minister.<sup>133</sup> However, I understand

<sup>132</sup> Exhibit 62, Ministry of Finance Briefing Document – Unexplained Wealth Orders (November 22, 2019).

<sup>133</sup> Ibid, p 6.

that the development of that regime was put on hold to allow this Commission to study and make recommendations on this issue.<sup>134</sup>

After reviewing the international evidence with respect to unexplained wealth orders, and the challenges experienced by the Province in targeting money laundering and proceeds of crime, I am persuaded that such orders are a useful and effective tool in the fight against money laundering, and that the Province should proceed with its plan to introduce an unexplained wealth order regime similar to that in place in the UK.<sup>135</sup>

In the United Kingdom, unexplained wealth orders are primarily an investigative tool that allow an enforcement authority (defined as the National Crime Agency, Her Majesty's Revenue and Customs, the Serious Fraud Office, and various other law enforcement agencies) to apply for an order requiring a person to provide information concerning the nature and extent of that person's ownership interest in a particular property, and how they obtained that property.<sup>136</sup> Such applications are filed before civil forfeiture proceedings are commenced and are almost invariably accompanied by an application for a restraint order preventing the property from being sold or transferred.

Under the UK system, where the recipient of an unexplained wealth order fails, without reasonable excuse, to comply with the requirements of that order, a presumption arises that the property was obtained through unlawful conduct. Note, however, that the presumption arising under that provision is rebuttable, meaning that the recipient of the unexplained wealth order is still, in the civil recovery proceedings, able to rebut the presumption by tendering evidence establishing that the property was *not* obtained through unlawful conduct.<sup>137</sup>

While the primary purpose of the UK legislation was to address the movement of illicit wealth into London through the purchase of real estate and other high-value goods, I see merit in the use of unexplained wealth orders to address the accumulation of illicit wealth by organized crime groups and others involved in serious criminal activity in this province. There are often circumstances in which law enforcement agencies have reasonable grounds to suspect that a particular asset *was* obtained or derived from the commission of a criminal offence, but simply do not have the evidence required to prove that fact to the civil standard of proof. Through the introduction of an unexplained wealth order regime, the state can require a property owner to produce information concerning the provenance of a suspicious asset (which may assist the authority in deciding whether to pursue civil forfeiture).

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134 Evidence of M. Sieben, Transcript, June 12, 2020, p 21.

135 I would, however, change some of the prerequisites for the issuance of such an order to allow the Civil Forfeiture Office to make more effective use of unexplained wealth orders in British Columbia.

136 For the proposition that unexplained wealth orders are an investigative tool, see Evidence of H. Wood, Transcript, December 20, 2020, p 11 (“... speaking in the UK context, the unexplained wealth order is purely an investigative tool. It sits under part 8 of the *Proceeds of Crime Act 2002* with a range of other investigative tools that you may be familiar with from your domestic legislation, such as production orders, disclosure orders, account monitoring orders. So it should absolutely in the UK context be seen as an investigative tool to be used to gather information and evidence to support a wider investigation”).

137 *Proceeds of Crime Act 2002*, s 362C(2).

Where the asset was purchased with legitimate funds, it should not, in most cases, be difficult for the property owner to furnish evidence of that fact. People who legitimately own valuable assets, such as houses and luxury vehicles, are “uniquely well placed” to establish the provenance of those assets<sup>138</sup> and it is difficult to think of a situation where a person who owns a valuable asset would be unable to furnish evidence as to the source of that asset.<sup>139</sup> In providing this evidence, the owner of the asset would likely *avoid* the prospect of civil forfeiture proceedings. Where, however, an asset was purchased with illicit funds, the inability to account for the provenance of the asset will allow the Civil Forfeiture Office to target that asset in a civil forfeiture proceeding.

While unexplained wealth orders could be used in a wide variety of circumstances, they may be particularly useful in targeting the assets of individuals further up the criminal hierarchy, who are often involved in highly lucrative but less visible forms of criminal activity. If used properly, unexplained wealth orders also allow authorities to address problems such as nominee ownership, where those involved in criminal activity put unlawfully obtained assets into the hands of a family member or associate who is not involved in criminal activity with a view to insulating the asset from a forfeiture order.

An unexplained wealth order issued to a person suspected to be a nominee owner will force that person to provide evidence with respect to the nature of their interest in the property and provenance of the asset, or risk having the asset forfeited to the state in accordance with the *Civil Forfeiture Act*.

Another benefit of unexplained wealth orders is that they may discourage foreign corrupt officials and others involved in criminal activity from moving their illicit wealth to British Columbia through the purchase of real estate and other valuable assets.

One thing that has become apparent during the Commission process is that many of those involved in profit-oriented criminal activity are – especially at the higher end – rational actors who are aware of the different regulatory requirements in different jurisdictions, and consider those differences in determining where to place and launder their ill-gotten gains. Faced with the prospect of having to prove the provenance of a particular asset to avoid a forfeiture order, these offenders may choose to place their wealth in another jurisdiction.

While some have suggested that unexplained wealth orders give rise to concerns about the presumption of innocence and the right to silence,<sup>140</sup> it is important to understand that the *Civil Forfeiture Act* does not impose any criminal penalties, and that any information provided in response to such an order cannot be used in a criminal prosecution. Moreover, I agree with Ms. Murray’s view that most, if not all, of the information provided in response to an unexplained wealth order could be obtained through the civil discovery process once a civil forfeiture action has been commenced.

138 Evidence of K. McMeel, Transcript, December 16, 2020, p 53.

139 Even if documents are not available to show the provenance of a particular asset, an affidavit setting out the circumstances in which the property was purchased should be sufficient to comply with the order.

140 Closing submission, BC Civil Liberties Association, pp 12–14.

I am strengthened in my view that unexplained wealth orders are a viable solution by a legal opinion on the constitutionality of a UK-style unexplained wealth order regime prepared for the Commission by the Honourable Thomas A. Cromwell, CC.<sup>141</sup>

I therefore recommend that the Province proceed with its plan to develop an unexplained wealth order regime in British Columbia.

**Recommendation 101:** I recommend that the Province proceed with its plan to develop an unexplained wealth order regime in British Columbia.

Like the regime in place in the United Kingdom, the new regime should allow the Civil Forfeiture Office to apply for an order before the commencement of civil forfeiture proceedings requiring the person identified in the order to produce information and documents concerning:

- the nature and extent of the person's ownership interest in the property;
- the source of any funds used to purchase the property;
- the particulars of any trust arrangements concerning the property; and
- any other information specified by the court.

It will be important that such orders are sought with a high degree of specificity to avoid any uncertainty about whether the order has been complied with. Experiences of other jurisdictions have shown that where orders are drafted with insufficient particularity, non-compliance is difficult to establish.

Where the person does not provide the required information within the time period set out in the order, a presumption should arise that the property was obtained or derived as a result of unlawful activity. The legislation should also include significant consequences for the provision of false or misleading information,<sup>142</sup> and make it clear that any information provided in response to the order cannot be used against the person in a criminal prosecution.

The Province will have work to do in drafting or amending legislation to support the new regime. I do not intend to set out in detail the architecture of the regime the Province should implement. I will, however, offer my thoughts on some of the features

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<sup>141</sup> A copy of that opinion is attached as Appendix I. Submissions in response to the opinion were made by two participants – the Province and the BC Civil Liberties Association. Both of those submissions have been posted on the Commission's website.

<sup>142</sup> In Manitoba, those who provide false or misleading information are liable, in the case of an individual, to a fine of not more than \$10,000, or to imprisonment for a term of not more than six months (or both), or, in the case of a corporation, to a fine of not more than \$25,000. In British Columbia, significantly higher penalties will be necessary to have any real deterrent effect.

I believe would enhance the regime and which I would encourage the Province to consider.

## **Legal Standard for Issuance of an Unexplained Wealth Order**

While the international experience shows that different standards could be adopted for the issuance of an unexplained wealth order, I tend to think that a reasonable suspicion standard is the best fit for British Columbia. I view unexplained wealth orders primarily as an *investigative* tool that allows the Civil Forfeiture Office to gather evidence about the provenance of specific assets and make informed decisions about whether or not to pursue a civil forfeiture action. By setting a relatively low standard for the issuance of such an order, the Civil Forfeiture Office will be able to cast a wider net and pursue information about a larger number of assets than it would if a higher standard was adopted (such as reasonable grounds to believe). I note that it is always open to the owner to avoid the presumption by responding to the order with evidence of lawful ownership.

I also note that the reasonable suspicion standard is employed to obtain information in various other contexts, including under the *Criminal Code*, where the ultimate outcome could be a criminal conviction and a loss of liberty.

## **Who Should the Order Apply To?**

I tend to think that both politically exposed persons<sup>143</sup> and those involved in unlawful activity should be brought within the regime. However, the criteria for issuance of an unexplained wealth order should be different for each category of recipient.

For politically exposed persons, I tend to think that the order should issue where there are reasonable grounds to suspect that (a) the person is a politically exposed person; and (b) the person's known sources of income and assets would have been insufficient to enable them to acquire the property legitimately.

For those involved in unlawful activity, it makes sense for the order to issue where there are reasonable grounds to suspect that the legal or beneficial owner of the property has been involved in unlawful activity that resulted in or is likely to have resulted in the person receiving a financial benefit within the past 10 years. For persons in this category, I would not be inclined to include a requirement to prove that the person's known sources of income and assets would have been insufficient to enable them to acquire the property.

The UK and Australian experiences demonstrate that it is extraordinarily difficult to prove that the respondent's known sources of income and assets would have been

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<sup>143</sup> For the purpose of this discussion, I will use the term politically exposed person to include politically exposed persons and heads of international organizations, as well as family members and close associates of politically exposed persons and heads of international organizations.

insufficient to enable him or her to acquire the property, particularly where the potential recipient is a criminal who does not “earn a salary [or have] a steady stream of predictable income.”<sup>144</sup> Moreover, it would be difficult, if not impossible, to make out this requirement where the target also runs a legitimate business.

It is also essential that the provision be drafted so that it addresses the problem of nominee ownership, where a person involved in profit-oriented criminal activity puts *legal* ownership of the property in the name of another person to insulate the property from a potential forfeiture order. The legal owner of the property may not be involved in any criminality and may have legitimate sources of income or wealth. Nevertheless, the order should be available to target such assets.

It is also important to address the situation where a criminal “gifts” an asset obtained from criminal activity to a friend or family member (such as a spouse, child, or parent). In my view, the Province has a legitimate interest in seeking forfeiture of that asset even where the recipient is not holding the property as a nominee owner.

## **Monetary Threshold**

I would suggest that the unexplained wealth order regime be reserved for assets with a fair market value of \$75,000.00 or more. That is, the state should be required to establish that the fair market value of the property exceeds \$75,000. I have suggested a \$75,000 threshold to ensure that the provision is only used to target higher value assets. I also note that in respect of assets worth less than \$75,000.00 (except real property), the administrative forfeiture provisions in the *Civil Forfeiture Act* already provide for an efficient method of targeting those assets.

## **Time Limitation**

One concern associated with unexplained wealth orders is the challenges faced by owners required to establish the legitimacy of property acquired many years ago: witnesses with relevant information may no longer be available or documents may have been lost or destroyed.

I would therefore encourage the Province to consider limiting the reach of the legislation to assets acquired by the respondent within a prescribed time period.

## **Conclusion**

I strongly believe that the civil asset forfeiture regime is an underutilized tool in the fight against money laundering, and that more should be done to identify and target unlawfully obtained assets owned or controlled by those involved in criminal activity.

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<sup>144</sup> Evidence of N. Skead, Transcript, December 17, 2020, pp 54–55.

While I anticipate that a by-product of the increased law enforcement focus on money laundering / proceeds of crime issues will be an increase in referrals to the Civil Forfeiture Office, it is important for the Civil Forfeiture Office to be more proactive in identifying and targeting unlawfully obtained assets owned or controlled by organized crime groups and others involved in serious criminal activity.

Unexplained wealth orders will provide a useful tool to the Civil Forfeiture Office in carrying out that work. However, they cannot be viewed as a substitute for the significant investigative and analytical work that must be undertaken by that office.

**Part XIII**  

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**Conclusion**

## Conclusion

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This Commission was established by Order in Council on May 15, 2019, a little over three years ago. The table of contents for this Report demonstrates the broad and encompassing sweep of the Commission's Inquiry into money laundering. My aim in this conclusion is modest: to look back on some of the numerous topics covered in this Report and also to look ahead to the future. As the Province of British Columbia and various jurisdictions are demonstrating, this is a time of change and reform. Meaningful steps are being taken to combat money laundering (even if much more remains to be done). There are reasons for optimism.

I began this Report by setting out some introductory concepts: what money laundering is, who is involved in it, and how much money is laundered. I concluded that money laundering in British Columbia is a serious problem that needs to be addressed. From there, I considered the international, national, and provincial frameworks within which money laundering has come to be addressed by governmental and non-governmental organizations. Because the provincial framework comprises an uneven patchwork of activity by government, regulators, and law enforcement, I recommended that the Province establish an AML Commissioner – a new officer of the Legislature with expertise and insight into money laundering in British Columbia. The AML Commissioner will ensure that continued focus remains on anti-money laundering initiatives after this Inquiry concludes.

The bulk of this Report centres on specific sectors of the economy in British Columbia identified by my Terms of Reference. The sectors scrutinized include casinos, real estate, financial institutions, the corporate sector, lawyers and notaries, accountants, luxury goods, and virtual assets. However, while money launderers certainly take advantage of legitimate sectors of the economy, a significant amount of activity remains underground, including through bulk cash smuggling and informal value transfer systems.

Finally, I examined the effectiveness and the shortcomings of law enforcement and asset forfeiture work undertaken to stop money laundering enterprises. That review demonstrated that there is a real need in British Columbia for a dedicated provincial money laundering intelligence and investigation unit, which I have recommended in Chapter 41. Furthermore, I recommend a significantly stronger use of asset forfeiture – both criminal and civil – and the creation of an unexplained wealth order regime in BC.

From my canvass of these topic areas, some broad themes have emerged that bear some final discussion. The first and most obvious theme is that money laundering is an opportunistic crime, committed by those who seek out and exploit human and systemic vulnerabilities. Criminals who need to detoxify their profits by separating them from their illicit origin begin with an advantage: they are seeking to find uses for a common medium of exchange in a context where there is endless demand for it and almost unlimited uses. In practice, the only limitation on the use of funds in the laundering process is that the funds must ultimately serve the interests of those for whom they are being laundered, and the user must hide their illegitimate origins.

As with any crimes that rely on the presence of opportunities, money laundering is in a constant state of flux. As opportunities change, so does the focus of the money launderer. It was this characteristic of money laundering that led Peter German to describe attempts to suppress it as a game of “whack-a-mole.” Dr. German’s observation highlights the difficulty of finding an approach to solving the problem of money laundering that is not static, piecemeal, or confined to one sector of the economy. It is my hope that the AML Commissioner will help ensure that entities with an anti-money laundering mandate remain engaged and responsive to new threats.

A second theme that has emerged from the evidence is that the nature and extent of money laundering in British Columbia’s economy – indeed in Canada’s economy and in the global economy – has not been reliably measured. Although I have discussed attempts to establish the quantum of money laundering in British Columbia’s economy, I have been unable to fix on a reliable estimate of the volume of money laundering activity in this province. But what the varied attempts at quantification have in common is one conclusion: the amount of money laundering taking place in British Columbia is enormous.

Unfortunately, when uncertainty pervades the public discussion about money laundering, it can contribute to a proliferation of ungrounded theories about the scale and nature of the problem. As a result, ideas have developed in the public discourse that promote generalizations about the involvement of ethnic or racial groups in money laundering activity in British Columbia. There is, for example, a theory that money laundering by Chinese criminals in the housing market in the Lower Mainland has contributed to a housing unaffordability crisis. I explored this theory in my Report and concluded that low supply, high demand, and low interest rates are the drivers of housing unaffordability in British Columbia – not money laundering. Although it is quite likely that British Columbia’s overheated housing market has been attractive to money

launderers, it does not follow that money laundering in residential real estate is the cause of housing unaffordability, as opposed to being a product of high housing prices.

Money laundering is a crime of opportunism. It flourishes in conditions that are created by other forces and convenient to exploit. Great care must be taken to avoid exciting a response to a significant socio-economic problem (prohibitively expensive housing) that not only misses the mark, but also vilifies ethnic or racial groups as responsible for a problem not of their making. Even with that in mind, however, the Province must recognize that money laundering is not only a threat within its borders, but often connected to external criminal activities from outside the province or the country.

The Commission dedicated significant attention to money laundering in the gaming sector. It became apparent that people with Chinese heritage who appeared to have a strong connection to gaming became primary targets for certain organized crime groups. These groups used such people to introduce large quantities of illicit cash into the legitimate British Columbia economy through Lower Mainland gaming venues.

Money laundering in the gaming sector was a significant part of the public debate in the time leading up to the establishment of this Commission. It presented a rare opportunity to study money laundering in action, on a large scale, over time, in the context of a public enterprise, notwithstanding law enforcement and regulatory oversight. It is difficult to conceive of a better opportunity to develop an understanding of how money laundering infiltrates economic systems and avoids enforcement attempts. It also highlights how money laundering has a global reach that is not easily stifled or isolated. Tracing how and why money laundering evolved in the gaming sector so successfully emphasizes both its opportunistic nature and why a strong political will is necessary to suppress it wherever it may take root.

This Commission was established in the context of such a political will. The Commission's work and, in particular, the recommendations in this Report, are reliant on the continuance of that political will to overcome harms that money laundering can inflict, and *has* inflicted, on the social, political, and economic well-being of the province. Much needs to be done, and much can be done to oppose and reverse the inroads that money laundering enterprises have constructed into British Columbia's social, political, and economic landscape. The importance of vigorously resisting money laundering should not be underestimated.

Commissions of inquiry aim to serve the public interest by taking on an intractable problem with the benefit of evidence and analysis. The reforms and recommendations in this Report fall to governments and agencies to be implemented, particularly by the Province. This Report makes plain that there remain enormous challenges – much work remains to be done. But there are sound reasons for optimism. British Columbians, governments, and agencies are now showing a real interest in tackling money laundering and giving it the priority that it has lacked for far too long. There are numerous policy reforms already underway. More will follow. This bodes well for the future.

# Appendices

# Appendix A

## Terms of Reference

### 1. Definitions

In this order:

“**Act**” means the *Public Inquiry Act*;

“**commission**” means the commission established under section 2 of this order;

“**money laundering**” means the process used to disguise the source of money or assets derived from illegal activity.

### 2. Establishment of commission

1. A study and hearing commission called the Commission of Inquiry into Money Laundering in British Columbia is established under section 2 of the Act.
2. The Honourable Justice Austin F. Cullen is the sole commissioner of the Commission.

### 3. Purposes of commission

The purposes of the commission are as follows:

- a. to inquire into and report on money laundering in British Columbia;
- b. to make recommendations referred to in section 4 (2) (a).

### 4. Terms of reference

1. The terms of reference of the commission are to conduct hearings and make findings of fact respecting money laundering in British Columbia, including the following:
  - a. the extent, growth, evolution and methods of money laundering in the following sectors:

- i. gaming and horse racing;
    - ii. real estate;
    - iii. financial institution and money service, including unregulated entities and persons who provide banking-like services;
    - iv. corporate, in relation to the use of shell companies, trusts, securities and financial instruments for the purposes of money laundering;
    - v. luxury goods;
    - vi. professional service, including legal and accounting;
  - b. the acts or omissions of regulatory authorities or individuals with powers, duties or functions in respect of the sectors referred to in paragraph (a), or any other relevant sector, to determine whether those acts or omissions have contributed to money laundering in British Columbia and whether those acts or omissions have amounted to corruption;
  - c. the scope and effectiveness of the powers, duties and functions exercised or carried out by the regulatory authorities or individuals referred to in paragraph (b);
  - d. the barriers to effective law enforcement respecting money laundering in British Columbia.
2. Further terms of reference of the commission are as follows:
- a. to make recommendations the commission considers necessary and advisable, including recommendations respecting the following:
    - i. the regulation of the sectors referred to in subsection (1) (a) or any other relevant sector;
    - ii. the acts or omissions referred to in subsection (1) (b);
    - iii. the powers, duties and functions referred to in subsection (1) (c);
    - iv. the barriers referred to in subsection (1) (d);
  - b. to review and take into consideration the following reports:
    - i. *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos* conducted for the Attorney General of British Columbia, Peter M. German, Q.C., March 31, 2018;
    - ii. *Vancouver at Risk—Turning the Tide—An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, Peter M. German, Q.C., March 31, 2019;
    - iii. *Real Estate Regulatory Structure Review* (2018), Dan Perrin;
    - iv. *Combating Money Laundering in BC Real Estate*, Maureen Maloney, Tsur Somerville and Brigitte Unger, March 31, 2019;

- c. to submit to the Minister of Public Safety and Solicitor General and Deputy Premier, the Attorney General and Minister Responsible for Housing and the Minister of Finance a final report on or before June 3, 2022.
3. The commission is to carry out the inquiry in such a way as to ensure the inquiry does not jeopardize any ongoing criminal investigation or proceeding.
4. The commission may not inquire into any matter respecting the exercise of prosecutorial discretion.

## **5. Expenses**

Subject to the directives of Treasury Board, the commissioner is entitled to be reimbursed for reasonable travelling and living expenses at the rates specified for Group III employees set out in the government's Core Policy and Procedures Manual.

## Appendix B

# Rules of Practice and Procedure

AUTHORIZED BY THE PUBLIC INQUIRY ACT, S.B.C. 2007, c. 9, s. 9

### **GENERAL**

1. These rules of practice and procedure apply to the Commission of Inquiry into Money Laundering in British Columbia (the “Commission” or “Inquiry”).
2. The Commission will be conducted in accordance with the *Public Inquiry Act*, S.B.C. 2007, c. 9 (the “Act”) and pursuant to Order in Council No. 238/2019 (the “Terms of Reference”).
3. Subject to the Act and the Terms of Reference, the Commission has the power to control its own process.
4. The Commissioner may amend, supplement, vary or depart from any rule for the effective and efficient conduct of the Inquiry.
5. The Commissioner may issue directions or issue orders including on his own motion or following an application.
6. Except as otherwise ordered or directed by the Commissioner, participants, counsel and witnesses must comply with these rules.
7. Without limiting any other powers of enforcement, if any participant, counsel or witness fails to comply with any of these rules, including any time limits specified for taking any actions, the Commissioner, after giving reasonable notice to the participant, counsel or witness, may do one or more of the following:
  - a. schedule a meeting or hearing;
  - b. continue with the Inquiry and make a finding or recommendation based on the information before him, with or without providing an opportunity for submissions from that participant;

- c. extend or abridge any time limit provided for in these rules; or
  - d. make any order necessary for the purpose of enforcing these rules or promoting the fair and efficient conduct of the Inquiry.
8. Commission counsel will communicate with participants primarily by email. Notice or service by email shall be considered adequate notice or service. All participants must identify to Commission counsel the email address they wish to use for this purpose.

### **COMMISSIONER'S POWERS RESPECTING PARTICIPANTS**

9. The Commissioner may make orders respecting:
  - a. the manner and extent of a participant's participation;
  - b. the rights and obligations of a participant, if any; and
  - c. any limits or conditions on a participant's participation.
10. In making an order under Rule 9, the Commissioner may:
  - a. make different orders for different participants or classes of participants; and
  - b. waive or modify one or more of his orders as necessary.

### **RIGHTS OF PARTICIPANTS**

11. A participant:
  - a. may participate on his or her own behalf; or
  - b. may be represented by counsel or, with the approval of the Commissioner, by an agent.

### **RECORDS**

#### **General**

12. In these rules, the term "record" has an extended meaning and includes a photograph, audio or video recording, any record of a permanent or semi-permanent character and any information recorded or stored by means of any device;
13. As soon as reasonably possible after being granted standing, a participant shall:
  - a. identify to the Commission the nature and character of records in the participant's possession or under the participant's control relevant to the subject matter of the Inquiry;

- b. if requested to do so, provide to the Commission a list of records or any subset of records in the participant's possession or under the participant's control; and
  - c. if requested to do so by the Commission, provide copies to and allow inspection of such records by the Commission. Wherever possible, records shall be provided electronically in the format requested by the Commission.
14. The obligation under paragraph 13(a) is a continuing obligation.
15. If it is claimed that a record is privileged from production, the claim must be set out when the record is listed pursuant to Rule 13(b) along with a statement of the grounds of privilege.
16. The nature of any record for which privilege from production is claimed must be described in a manner that, without revealing the information that is privileged, will permit a preliminary assessment of the validity of the claim for privilege.
17. Subject to Rule 18 (Undertaking), the Commission shall treat all records it receives as confidential unless and until they are made part of the public record in accordance with Rule 27. This does not preclude Commission counsel from showing or providing a record to a witness or potential witness, an expert, a consultant or a participant.
18. Commission counsel shall not provide a record to counsel for a participant or counsel for a witness until counsel has delivered to Commission counsel a signed undertaking, in a form approved by the Commission, that all records disclosed by the Commission will be used solely for the purpose of the Inquiry.
19. Counsel for a participant or a witness may provide a record to the participant or witness or expert or consultant only if that person has delivered to counsel a signed confidentiality agreement in a form approved by the Commission, that all records disclosed by the Commission will be used solely for the purpose of the Inquiry, and counsel has delivered the signed confidentiality agreement to Commission counsel.
20. Witnesses or participants who are unrepresented by counsel may be required to sign a confidentiality agreement, in a form approved by the Commission, before being provided records.
21. The Commissioner may:
- a. impose restrictions on the use and dissemination of records;
  - b. require that a record that has not been entered as an exhibit in the evidentiary proceedings, and all copies of the record, be returned to the Commission; and
  - c. on application, release counsel, a participant or a witness, in whole or in part, from the undertaking or confidentiality agreement in relation to any record, or may authorize the disclosure of a record to another person.

**Applications for Further Disclosure of a Record**

22. A participant may seek disclosure of a record from another person (“record holder”) by asking Commission counsel, in writing, to use the powers of the Commission to obtain the record.
23. The request must state:
  - a. the reasons the participant believes the record holder possesses or controls the record; and
  - b. the reasons the participant believes the record is relevant to a matter before the Commission.
24. If Commission counsel accepts the request, he or she will attempt to obtain the record.
25. If Commission counsel rejects the request, he or she will notify the participant, and the participant may apply to the Commissioner, in accordance with Rule 60 (Applications), for an order respecting the request.
26. If the participant applies to the Commissioner under Rule 60 (Applications), the Commission shall deliver the application and any supporting materials to the record holder and to each other participant having an interest in the subject matter of the record.

**Public Access to Records**

27. Unless the Commissioner otherwise determines:
  - a. a record within the Commission’s control that has not been entered as an exhibit is not available for public inspection, copying or publication; and
  - b. a record that has been entered as an exhibit may be made available to the public on the Commission’s website including with redactions made by Commission counsel.
28. A participant or witness may apply to the Commissioner in accordance with Rule 60 (Applications) for an order that an exhibit, or parts of an exhibit, be redacted, sealed or otherwise made unavailable to the public.

**INTERVIEWS AND SECTION 22 MEETINGS**

29. Commission counsel may interview any person who they believe may have information or records that have any bearing upon the subject matter of the Inquiry.
30. A person may be required by summons issued under s. 22(1) of the Act to attend a meeting with Commission counsel and answer questions.
31. Commission counsel may meet with and/or interview the same person more than once. Persons who are met with and/or interviewed are entitled, but not required, to have legal counsel present.

## **OVERVIEW REPORTS**

32. Commission counsel may prepare overview reports derived from their investigations. These overview reports may contain core or background facts, referring to their sources. They may also describe facts and circumstances relevant to the subject matter under discussion.
33. Once final, an overview report is an exhibit before the Commissioner without the necessity of being introduced into evidence through a witness.
34. Before an overview report is finalized:
  - a. Commission counsel will deliver a draft to each participant with standing to participate in respect of the subject matter of the overview report;
  - b. such participants may provide comments in writing on the draft overview report, within 14 days or such other time as Commission counsel advises; and
  - c. Commission counsel may modify the draft overview report in response to comments received from participants or on Commission counsel's own initiative.
35. In accordance with Rule 46, participants may propose witnesses for Commission counsel to call during the evidentiary hearings to support, challenge or comment upon the overview report in ways that are likely to significantly contribute to an understanding of the issues relevant to the Inquiry.

## **EVIDENTIARY HEARINGS**

### **General**

36. The Commissioner will set dates, hours and places for the evidentiary hearings, and will publish this information on the Commission's website.
37. The Commissioner may receive and accept information that he considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

### **Public and Media Access to Evidentiary Hearings**

38. Subject to Rule 39 (below), the Commission will:
  - a. ensure that evidentiary hearings are open to the public, in person and/or through broadcast proceedings; and
  - b. except as otherwise limited by these rules or order of the Commissioner, provide public access to information received in evidentiary hearings.
39. The Commissioner may, by order, prohibit or restrict a person or class of persons, or the public, from attending all or part of an evidentiary hearing, or from accessing all or part of any information provided to or held by the Commission,

- a. if the government asserts privilege or immunity over the information under section 29 of the Act;
  - b. for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165; or
  - c. if the Commissioner has reason to believe that the order is necessary for the effective and efficient fulfillment of the Terms of Reference.
40. In making an order under Rule 39 (above), the Commissioner shall take into account the rights and interests of a participant against whom a finding of misconduct, or a report alleging misconduct, may be made.
41. The Commissioner may impose restrictions on the video and audio recording of the evidentiary hearing proceedings and may, on application, order that there be no video or audio recording of some or all of a witness's testimony.
42. The public and media may report the evidentiary hearing proceedings that are open to the public, except as otherwise ordered.

### **Witnesses**

43. Commission counsel shall decide who will be called as a witness at the evidentiary hearings.
44. Each witness called shall, before testifying, be sworn or affirmed.
45. A witness may be called more than once.
46. Participants may propose witnesses to be called during the evidentiary hearings. Participants shall provide to Commission counsel at the earliest reasonable opportunity and in writing the name and contact information, if known, of any person who the participant believes should be called as a witness during the evidentiary hearings, with a statement of the subject matter of their proposed testimony, their experience and background, anticipated evidence and the estimated length of their testimony.
47. Commission counsel may decline to call a witness proposed by a participant. If the participant believes that the witness's evidence is necessary, the participant may apply, in accordance with Rule 60 (Applications), to the Commissioner for an order that Commission counsel call that witness.

### **Rules of Examination**

48. Commission counsel will call all witnesses at the hearing and may adduce evidence by way of both leading and non-leading questions.
49. Each witness who testifies may, during his or her testimony, have counsel present.
50. Counsel for a witness who is not a participant may only ask questions of the witness with leave of the Commissioner.

51. Subject to direction by the Commissioner, participants may examine witnesses within the areas of their grant of standing.
52. The Commissioner may direct any counsel whose client shares a commonality of interest with the witness only to adduce evidence through non-leading questions.
53. Unless the Commissioner orders otherwise, the order of examinations of a witness will be as follows:
  - a. Commission counsel;
  - b. counsel for participants;
  - c. Commission counsel, if appropriate.
54. The Commissioner may set reasonable time limits for the examination of witnesses and direct the order in which participants examine witnesses.
55. Commission counsel will provide reasonable notice in writing to participants of the name of each proposed witness, the subject matter of the proposed evidence of the witness and a list of records Commission counsel anticipates may be put to the witness.
56. Subject to direction of the Commissioner a participant may not put a record to a witness unless:
  - a. the record has been disclosed to the Commission; and
  - b. written notice has been given to the Commission at least five days prior to the date of the witnesses' scheduled attendance and in the form directed by Commission counsel, identifying the record that the participant intends to put to the witness.
57. Commission counsel will provide all such notices to the witness.
58. The Commissioner has discretion to adjust or vary notice periods, and to determine whether the introduction of a subject matter or a record to a witness should be denied, allowed, or allowed on such terms as he directs.

### **Panels of Witnesses**

59. Commission counsel may call a witness to give evidence as a member of a panel of witnesses.

### **APPLICATIONS TO THE COMMISSIONER**

60. A person may apply to the Commissioner for an order by:
  - a. preparing an application in writing;
  - b. attaching to the application any supporting materials; and
  - c. delivering the application and supporting materials to the Commission by email at [applications@cullencommission.ca](mailto:applications@cullencommission.ca).

61. Unless the Commissioner otherwise directs, the Commission shall promptly deliver the application and supporting materials to each other participant.
62. Participants are entitled to respond to an application where their grant of standing identifies them as having an interest in the subject matter of the application.
63. Commission counsel may provide the Commissioner with any submissions or materials Commission counsel consider relevant and necessary to the proper resolution of the application.
64. The Commissioner will determine the schedule for the filing of submissions and materials and for the hearing of oral argument, if any.
65. The Commissioner may make an order or direction based on the written material filed or, at his discretion, after hearing oral argument.

#### **NOTICES OF ALLEGED MISCONDUCT**

66. The Commissioner will not make a finding of misconduct against a person or make a report that alleges misconduct by a person unless that person has had reasonable notice under s. 11(2) of the Act of the allegations against him or her and has had opportunity during the Inquiry to respond.
67. Any s. 11(2) notices will be delivered on a confidential basis to the persons or participants to whom they relate. Supplementary notices may be delivered from time to time by the Commission as warranted by the information before it.
68. If a person in receipt of a notice under s. 11(2) of the Act believes that it is necessary that additional evidence be received to respond to the allegations of misconduct, he or she may seek to have such evidence placed before the Commissioner in accordance with Rules 46 and 47.

#### **STUDY COMMISSION ACTIVITIES**

69. The Commission may use a range of investigative, research and policy development processes in its work.

#### **SUBMISSIONS**

70. Commission counsel, and each participant authorized to do so, may make submissions to the Commissioner as permitted by the Commissioner.

## Appendix C

### Rules for Standing

1. Commission counsel, who will assist the Commissioner to ensure the orderly conduct of the inquiry, have standing throughout the inquiry.
2. Commission counsel have the primary responsibility for representing the public interest at the inquiry, including the responsibility to ensure that all matters that bear upon the public interest are brought to the Commissioner's attention.
3. Individuals, agencies, institutions or any other entities (collectively "persons") who wish to participate in the inquiry may seek standing by submitting a written application to the Commission with the following information:
  1. the person's name, address, telephone number and email address;
  2. the name of counsel, if any, representing the person, together with counsel's address, telephone number and email address;
  3. the nature of the person's interest in the subject matter of the inquiry, why he or she wishes standing, and how he or she proposes to contribute to the inquiry, having specific regard to the terms of reference; and
  4. the nature and extent of participation sought.
4. Applications for standing must not exceed ten (10) double-spaced pages in length, unless otherwise ordered by the Commissioner.
5. Applications for standing must be filed with the Commission in electronic format at [participants@cullencommission.ca](mailto:participants@cullencommission.ca) on or before September 6, 2019, or at the discretion of the Commissioner on any other date.

6. All applications for standing will be available to the public on the Commission's website unless otherwise ordered by the Commissioner.
7. The Commissioner will determine the outcome of applications for standing on the basis of written applications, unless the Commissioner determines that an oral hearing is necessary. Any oral hearings on standing will take place on such dates as the Commissioner may determine.
8. The Commissioner may grant a person standing after considering all of the following:
  1. whether, and to what extent, the person's interests may be affected by the findings of the Commission;
  2. whether the person's participation would further the conduct of the inquiry; and
  3. whether the person's participation would contribute to the fairness of the inquiry (*Public Inquiry Act*, s. 11(4)).
9. Those granted standing will be designated as participants before the inquiry.
10. The Commissioner will determine on what terms and in which parts of the inquiry a participant may participate, and the nature and extent of such participation. The Commissioner retains the discretion to vary a participant's participation or rescind standing.
11. The Commissioner may direct that a number of applicants share in a single grant of standing.

*Note: Pursuant to Standing Rule 6, the Commissioner has directed that applications for standing will not be published, but will be summarized in rulings.*

## Appendix D Commissioner, Counsel, and Staff

### *Commissioner*

The Honourable Austin F. Cullen

### *Counsel*

Patrick McGowan, QC	Senior commission counsel
Brock Martland, QC	Senior commission counsel
Tam Boyar	Policy counsel
Alison Latimer, QC	Associate commission counsel
Nicholas Isaac	Associate commission counsel
Eileen Patel	Associate commission counsel
Dahlia Shuhaibar	Junior policy counsel
Kyle McCleery	Junior commission counsel
Kelsey Rose	Junior commission counsel
Steven Davis	Junior commission counsel
Charlotte Chamberlain	Junior research counsel

### *Policy Advisor*

Keith R. Hamilton, QC

*Administration*

Dr. Leo Perra, OBC	Executive director
Cathy Stooshnov	Manager, finance and administration
Natasha Tam	Paralegal / Senior administrative assistant, report fact checking
Linda Peter	Executive assistant to Commissioner
Shay Matters	Information technology analyst
Mary Williams	Administrative assistant
Phoenix Leung	Registrar/Hearings coordinator
Sarah LeSage	Administrative assistant, report fact checking
Scott Kingdon	Web developer

*Communications*

Ruth Atherley	Director of communications
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*Report Preparation Team*

AHA Creative Strategies	Report editing and fact checking
Christine Joseph	Report and research counsel
Christine Rowlands	Proofreader
Tom Norman (KAPOW Creative)	Layout and design

## Appendix E

### Commissioner's Rulings

<b>Ruling #</b>	<b>Subject</b>	<b>Date Issued</b>
1	<a href="#">Application for Standing (20 applicants)</a>	September 24, 2019
2	<a href="#">Application for Standing (BCREA)</a>	October 16, 2019
3	<a href="#">Application for Standing (Lightbody and Pinnock)</a>	October 25, 2019
4	<a href="#">Application of Bob Mackin for Copies of Lightbody and Pinnock Application Materials</a>	November 8, 2019
5	<a href="#">Application for Standing (Desmarais)</a>	January 6, 2020
6	<a href="#">Application of Bob Mackin for Copies of Numerous Standing Application Materials</a>	January 28, 2020
7	<a href="#">Application for Standing (Devine)</a>	March 25, 2020
8	<a href="#">Application for BCLC Confidentiality Order (Intelligence Interview Materials)</a>	September 18, 2020
9	<a href="#">Renewed Application for Standing (Desmarais)</a>	September 23, 2020
10	<a href="#">Application for Standing (CPABC)</a>	September 29, 2020
11	<a href="#">Application for Standing (CPA Canada)</a>	October 16, 2020
12	<a href="#">Application for Witness Accommodation Measures</a>	October 23, 2020
13	<a href="#">Application for Directions Regarding Redactions (Gaming Documents)</a>	October 27, 2020
14	<a href="#">Application for Standing (Jin)</a>	November 5, 2020
15	<a href="#">Application of Bob Mackin for Copies of Jin Standing Application Materials</a>	November 12, 2020

16	<a href="#"><u>Application for Standing (Heed)</u></a>	November 12, 2020
17	<a href="#"><u>Application of Fred Pinnock to Redact Place Name</u></a>	November 19, 2020
18	<a href="#"><u>Ruling on Admissibility of Transcripts of Pinnock/Heed Conversations</u></a>	November 26, 2020
19	<a href="#"><u>Application of BCLC for Protective Measures over Certain Intelligence Interviews</u></a>	December 2, 2020
20	<a href="#"><u>Application for Witness Accommodation (Sharma)</u></a>	December 2, 2020
21	<a href="#"><u>Application for Standing (the Province)</u></a>	December 4, 2020
22	<a href="#"><u>Application for Directions re Redactions (Casino Patron Names)</u></a>	December 7, 2020
23	<a href="#"><u>Application for Redactions (Labine Affidavit)</u></a>	December 15, 2020
24	<a href="#"><u>Application for In Camera Hearing (Bank Chief Anti-Money Laundering Officers)</u></a>	January 15, 2021
25	<a href="#"><u>Application for Removal of Certain Documents from Public View (Interac)</u></a>	January 29, 2021
26	<a href="#"><u>Application for Directions on Access to Records (Jin)</u></a>	February 5, 2021
27	<a href="#"><u>Application of Global News Network for Access to Surveillance Footage</u></a>	February 23, 2021
28	<a href="#"><u>Application for Witness Safety Measures (Two Real Estate Witnesses)</u></a>	February 23, 2021
29	<a href="#"><u>Application to Admit Evidence of BCGEU Witnesses' Panel</u></a>	March 12, 2021
30	<a href="#"><u>Application for Witness Accommodation (Hussey)</u></a>	March 29, 2021
31	<a href="#"><u>Application to Exclude Evidence and Maintain Information Confidentiality</u></a>	April 22, 2021
32	<a href="#"><u>Application of Paul Jin for Orders and Directions</u></a>	May 5, 2021
33	<a href="#"><u>Renewed Application for Standing (Alderson)</u></a>	June 25, 2021
34	<a href="#"><u>Application of Paul Jin: Definition of Loan Sharking</u></a>	July 21, 2021
35	<a href="#"><u>Application for Standing (Drover)</u></a>	July 21, 2021
36	<a href="#"><u>Application of Paul Jin: Proposed Overview Report</u></a>	August 20, 2021
37	<a href="#"><u>Application of Paul Jin for Answers to Questions and Requested Documents</u></a>	January 18, 2022
38	<a href="#"><u>Application of Sam Cooper for Disclosure of Information (Hung Guo)</u></a>	January 19, 2022

## Appendix F

### Participants and Counsel

<b>Participants</b>	<b>Counsel</b>
<b>Her Majesty the Queen in Right of the Province of British Columbia</b>	Jacqueline D. Hughes, QC Chantelle M. Rajotte J. Cherisse Friesen Alandra Harlingten Kaitlyn Chewka Joanna Stratton Gina Addario-Berry
<b>Government of Canada</b>	BJ Wray Jan Brongers Judith E. Hoffman Hanna Davis Olivia French Katherine Shelley Dorian Simonneaux Ashley Gardner

<b>Participants</b>	<b>Counsel</b>
<b>Law Society of British Columbia</b>	Ludmila B. Herbst, QC Catherine George Rachael Gardner
<b>Society of Notaries Public of BC</b>	Ron Usher
<b>British Columbia Lottery Corporation</b>	William B. Smart, QC K. Michael Stephens Shannon P. Ramsay Brian Duong Kenneth K. Leung Susan Humphrey
<b>Great Canadian Gaming Corporation</b>	Mark L. Skwarok Melanie Harmer
<b>Gateway Casinos &amp; Entertainment Ltd.</b>	Laura Bevan Meg Gaily David Gruber
<b>Canadian Gaming Association</b>	Paul Burns (President & CEO)
<b>British Columbia General Employees' Union</b>	Jitesh Mistry Ming Lin
<b>BMW</b>	Morgan L. Camley Carina Chu Matthew Sveinson
<b>Chartered Professional Accountants of Canada</b>	Guy Pratte Nadia Effendi Ewa Krajewska Teagan Markin Heather Webster

<b>Participants</b>	<b>Counsel</b>
<b>Chartered Professional Accountants of British Columbia</b>	Allen Soltan Jason K. Herbert
<b>British Columbia Civil Liberties Association</b>	Megan Tweedie Jessica Magonet Stephen Chin (Articling Student)
<b>Canadian Bar Association, BC Branch</b>	Kevin B. Westell Stephanie Dickson Jo-Anne Stark
<b>British Columbia Real Estate Association</b>	Chris Weafer Patrick Weafer
<b>Coalition:</b> <b>Transparency International Canada</b> <b>Canadians For Tax Fairness</b> <b>Publish What You Pay Canada</b>	Jason Gratl Toby Rauch-Davis
<b>James Lightbody</b>	Robin N. McFee, QC Jessie I. Meikle-Kähs Maya Ollek
<b>Robert Kroeker</b>	Marie Henein Christine Mainville Carly Peddle
<b>Brad Desmarais</b>	David Butcher, QC
<b>Paul King Jin</b>	Greg DelBigio, QC
<b>Kash Heed</b>	Peter R. Senkpiel
<b>Ross Alderson</b>	Paul E. Jaffe

## Appendix G

### Witnesses

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Aled ab Iorwerth</b>	Deputy Chief Economist, Canada Mortgage and Housing Corporation	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Wahid Abdallah</b>	Specialist, Policy Analysis, Canada Mortgage and Housing Corporation	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Donna Achimov</b>	Deputy Director and Chief Compliance Officer, Compliance Sector, FINTRAC	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Ken Ackles</b>	Manager of Investigations, Gaming Policy and Enforcement Branch; Former RCMP Officer	<a href="#">Affidavit: Ex. 144</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Ross Alderson</b>	Former Director of Anti-Money Laundering at the British Columbia Lottery Corporation (BCLC)	<a href="#">Affidavit: Ex. 1025</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Gurmit Aujla</b>	Director, Internal Audit, Audit Service Department, BCLC	<a href="#">Affidavit: Ex. 481</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Sandy Austin</b>	Director, People Rewards & Recruitment, BCLC	<a href="#">Affidavit Ex. 1049</a>
<b>Don Avison, QC</b>	Executive Director / CEO, Law Society of British Columbia	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>David Avren</b>	Vice-President, Legal and Compliance, Real Estate Council of British Columbia	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Gurprit Bains</b>	Deputy Chief Legal Officer, Law Society of British Columbia	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit Ex. 992</a>
<b>Bal Bamra</b>	Manager, Anti-Money Laundering Intelligence, BCLC	<a href="#">Affidavit: Ex. 143</a>
<b>Rob Barber</b>	Former Investigator, Gaming Policy and Enforcement Branch; Former RCMP Officer	<a href="#">Affidavit: Ex. 145</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Jon Baron</b>	Executive Director, Data, Finance Real Estate Data Analytics – BC Finance	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michael Barron</b>	UK Consultant, Co-Author of <i>Towards a Global Norm of Beneficial Ownership Transparency</i>	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Graham Barrow</b>	UK Transparency Expert, Co-Host of “The Dark Money Files”	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Gary Bass</b>	Former member of RCMP	<a href="#">Affidavit: Ex. 1023</a>
<b>Barry Baxter</b>	Former member of RCMP	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>S/Sgt. Kurt Bedford</b>	Integrated Market Enforcement Team, RCMP “E” Division	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Steve Beeksmā</b>	BCLC Anti-Money Laundering Project Specialist; Former Surveillance Shift Manager, Great Canadian Gaming Corporation	<a href="#">Affidavit No. 1: Ex. 78</a> <a href="#">Affidavit No. 2: Ex. 79</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Kevin Begg</b>	Former Assistant Deputy Minister, Policing and Community Safety Branch; Former Director of Police Services	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Ellen Bekkering</b>	Chief, Statistics Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Alexon Bell</b>	Chief Product Officer, Quantexa	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Diana Bennett</b>	Chair, Board of Paragon Gaming, Inc.	<a href="#">Affidavit: Ex. 1048</a>
<b>Dr. Katie Benson</b>	Professor, Lancaster University	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Maria Bergström</b>	Associate Professor of European Law, Uppsala University	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Cpl. Karen Best</b>	RCMP	<a href="#">Affidavit No. 1: Ex. 652</a> <a href="#">Transcript</a> <a href="#">Webcast</a> <a href="#">Affidavit No. 2: Ex. 765</a>
<b>Sue Birge</b>	Former Executive Director, Policy and Legislation Division, and Former Acting Assistant Deputy Minister and General Manager, Gaming Policy and Enforcement Branch	<a href="#">Affidavit: Ex. 527</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Larry Blaschuk</b>	Registrar of Land Titles, Land Title and Survey Authority of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Richard Block</b>	Senior Specialist, Regulatory Reporting and Fixed Assets, BCLC	<a href="#">Affidavit: Ex. 785</a>
<b>Shirley Bond</b>	Leader of the Opposition; Former Minister of Public Safety and Solicitor General; Former Attorney General and Minister of Justice	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Dr. Martin Bouchard</b>	Ph.D., Professor, School of Criminology, Simon Fraser University	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michael Bowman</b>	Global Chief Anti-Money Laundering Officer, Toronto Dominion Bank Group	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Bob Boyle</b>	Ernst & Young	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Stephanie Brooker</b>	Partner, Gibson, Dunn & Crutcher – Washington, D.C.; Former Director, Enforcement Division, Financial Crimes Enforcement Network (FinCEN), U.S. Department of Treasury; Former Chief, Asset Forfeiture and Money Laundering, U.S. Attorney's Office, District of Columbia; Former Federal Prosecutor	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Justin Brown</b>	Senior Director, Financial Crimes Policy, Department of Finance – Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Oliver Bullough</b>	Journalist and author of <i>Moneyland: The Inside Story of the Crooks and Kleptocrats Who Rule the World</i>	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Detective Inspector Barry Butler</b>	Criminal Assets Bureau (Ireland)	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Craig Callens</b>	Retired Deputy Commissioner of RCMP	<a href="#">Affidavit: Ex. 1022</a>
<b>Chris Carter</b>	Deputy Registrar of Mortgage Brokers, BC Financial Services Authority	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>John Cassara</b>	Former US Intelligence Officer and Treasury Special Agent in the Treasury's FinCEN, US Secret Service and US Customs Service	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Stefan Cassella</b>	Author, <i>Money Laundering and Forfeiture Digest</i> ; Former Assistant U.S. Attorney, Office of the U.S. Attorney; Former Chief, Asset Forfeiture and Money Laundering, Office of the U.S. Attorney – Baltimore; Former Deputy Chief, Asset Forfeiture and Money Laundering, U.S. Department of Justice	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Jonathan Caulkins</b>	Professor of Operations Research and Public Policy, Carnegie Mellon University's Heinz College	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Chris Chandler</b>	CEO, Access Cash; President and CEO, Perativ; Past President, ATM Industry Association	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Jay Chaudhary</b>	Former Mortgage Broker	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Ezekiel Chhoa</b>	Vice-President, Risk and Compliance, BlueShore Financial	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Maggie Chiu</b>	Manager, VIP Development, Gateway Casinos & Entertainment Ltd.	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Cpl. Melvin Chizawsky</b>	RCMP	<a href="#">Affidavit Ex. 663</a> <a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Calvin Chrustie</b>	Former RCMP	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit: Ex. 999</a>
<b>Charlene Cieslik</b>	Chief Compliance Officer, Localcoin; Principal, Complifact AML Inc.; Former Chief Compliance Officer, Chief Anti-Money Laundering Officer, and Privacy Officer, Coinsquare Ltd and subsidiaries	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Ward Clapham</b>	Former Officer-in-Charge, Richmond RCMP Detachment	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Christy Clark</b>	Former Premier	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Garry Clement</b>	Consultant; Former National Director, Proceeds of Crime, RCMP	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Prof. Arthur Cockfield</b>	Faculty of Law, Queen's University	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Supt. Stephen Cocks</b>	Superintendent in Charge of "E" Division RCMP, Special Investigative and Operational Techniques	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>James Cohen</b>	Executive Director, Transparency International Canada	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Rich Coleman</b>	Former Minister of Public Safety and Solicitor General; Former Minister of Housing and Social Development; Former Minister of Energy and Mines and Minister Responsible for Housing	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Michael Cox</b>	Chief Compliance Officer & Finance Director, Vancouver Bullion & Currency Exchange	<a href="#">Transcript</a>
		<a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Deputy Chief Brett Crosby-Jones</b>	Abbotsford Police Department	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Caterina Cuglietta</b>	AML Business Intelligence Analyst, BCLC	<a href="#">Affidavit No. 1: Ex. 482</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Affidavit No. 2: Ex. 784</a>
		<a href="#">Affidavit No. 3: Ex. 1045</a>
<b>Sarah D'Ambrogio</b>	Policy Analyst for Canada Border Services Agency	<a href="#">Affidavit: Ex. 1000 (see also exhibits 1001–1005)</a>
<b>Reuben Danakody</b>	Director, Land Owner Transparency Registry	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Stuart Davis</b>	EVP, Global Head of Financial Crimes Risk Management and Group Chief AML Officer, Scotiabank	In Camera Hearing
<b>Christina Dawkins</b>	Executive Lead, Finance Real Estate Data Analytics (FREDA), BC Ministry of Finance	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Kevin deBruyckere</b>	Director, AML & Investigations, Legal Compliance, Security Division, BCLC	<a href="#">Affidavit No. 2: Ex 484</a> <a href="#">Affidavit No. 3: Ex 485</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michael de Jong</b>	Opposition Attorney General Critic; Former Minister of Finance	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Peter Dent</b>	Managing Partner, Financial Advisory, BC Region, Deloitte LLP	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Jean-Philippe Deschamps-Laporte</b>	Chief, Statistics Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Brad Desmarais</b>	Chief Operating Officer, Vice-President of Casino and Community Gaming, Interim Vice-President of Legal, Compliance and Security, BCLC	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Affidavit No. 1: Ex. 522</a>
		<a href="#">Affidavit No. 2: Ex. 995</a>
<b>Beth Dewitt</b>	National Leader, Data Protection and Privacy, Deloitte LLP	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Derek Dickson</b>	Director, Casino Investigations, Gaming Policy and Enforcement Branch	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Giles Dixon</b>	Senior Manager, Grant Thornton, Toronto	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Terrance Doyle</b>	President, Strategic Growth and Chief Compliance Officer, Great Canadian Gaming Corporation	<a href="#">Affidavit: Ex. 560</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Rick Duff</b>	Former Employee of Great Canadian Gaming Corporation and Paragon	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>David Eby</b>	Attorney General; Former Opposition Spokesperson for Gaming	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Chris Elgar</b>	Vice-President and Deputy Superintendent of Financial Institutions, Prudential Supervision, BC Financial Services Authority	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Stephen Ellis</b>	Real Estate Brokers Association of BC	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Lisa Eng-Liu</b>	Vice-President, Public Practice Regulation, Chartered Professional Accountants of BC	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Patrick Ennis</b>	Former Vice-President, Corporate Security and Compliance, Great Canadian Gaming Corporation	<a href="#">Affidavit No. 1: Ex. 530</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Affidavit No. 2: Ex. 998</a>
<b>Insp. Tony Farahbackchian</b>	Federal Serious and Organized Crime, Financial Integrity Unit, Money Laundering Team, RCMP “E” Division	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Craig Ferris, QC</b>	President, Law Society of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Anna Fitzgerald</b>	Executive Director, Compliance Division, Gaming Policy and Enforcement Branch	<a href="#">Affidavit: Ex. 781</a>
<b>Sherri-Lynn Foran</b>	Director of the Appeals & Enforcement Litigation Division of the Recourse Directorate, in the Finance and Corporate Management Branch of Canada Border Services Agency	<a href="#">Affidavit: Ex. 1006</a>
<b>Gordon Friesen</b>	Former Manager of Investigations, BCLC; Former RCMP Officer	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Richard Fyfe</b>	Deputy Attorney General	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Anna Gabriele</b>	Anti-Money Laundering Manager, Financial Intelligence Unit – High Risk Customer Group, Global Anti-Money Laundering, Toronto Dominion Bank	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Samantha Gale</b>	CEO, Canadian Mortgage Brokers Association – British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>C/M Bryanna Gateley</b>	Intelligence Analyst, Federal Serious and Organized Crime Unit, RCMP	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Dr. Peter German</b>	Consultant; Former Deputy Commissioner, RCMP	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Joel Gibbons</b>	Senior Program Advisor, Intelligence and Targeting Directorate, Canada Border Services Agency	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Robert Gilchrist</b>	RCMP Chief Superintendent, Director General of the Criminal Intelligence Service Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Cpl. Aaron Gilkes</b>	Digital Forensic Supervisor, RCMP “E” Division, British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>William Gilmore</b>	Emeritus Professor of International Criminal Law, School of Law, University of Edinburgh, Scotland	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Marko Goluz</b>	Director, Professional Conduct, Insurance Council of British Columbia	<a href="#">Affidavit: Ex. 777</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Prof. Joshua Gordon</b>	Simon Fraser University	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michael Graydon</b>	Former Chief Executive Officer, BCLC	<a href="#">Affidavit: Ex. 576</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Craig Hamilton</b>	Detective Inspector; Acting Director, Financial Crime Group, New Zealand Police	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Megan Harris</b>	Executive Director and Anti-Money Laundering Secretariat Lead, BC Ministry of Attorney General	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Insp. Mike Heard</b>	Vancouver Police Department	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Kash Heed</b>	Former Minister of Public Safety and Solicitor General; Former Chief Constable, West Vancouver Police Department	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Dr. José Hernandez</b>	Ph.D., CEO, Ortus Strategies	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Lindzee Herring</b>	Director, Corporate Security, First West Credit Union	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Mike Hiller</b>	Former BCLC Investigator; Former RCMP Officer	<a href="#">Affidavit: Ex. 166</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Wayne Holland</b>	Former RCMP Officer and Officer-in-Charge, Integrated Illegal Gaming Enforcement Team; Former Chief Constable, Nelson Police Department	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Gary Hughes</b>	Barrister, Akarana Chambers, New Zealand	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Raheel Humayun</b>	Managing Director, Investigations, Office of the Superintendent of Real Estate	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>S/Sgt Joel Hussey</b>	Combined Forces Special Enforcement Unit – BC, Joint Illegal Gaming Investigation Team	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Darlene Hyde</b>	Chief Executive Officer, British Columbia Real Estate Association	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Joseph Iuso</b>	Executive Director, Canadian Money Services Business Association	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Mora Johnson</b>	Lawyer, Ottawa	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Robin Jomha</b>	Director, Corporate Registration Unit, Licensing, Registration and Certification Division, Gaming Policy and Enforcement Branch	<a href="#">Affidavit: Ex. 782</a>
<b>John Karlovcec</b>	Former Director, Anti-Money Laundering & Investigations, BCLC; Former RCMP Officer	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Dr. Colin King</b>	Reader in Law and Director of Postgraduate Research Studies, Institute of Advanced Legal Studies, University of London	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Sgt. Warren Krahenbil</b>	RCMP Federal Cybercrime Operations Group Team Leader	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Robert Kroeker</b>	Former Officer, RCMP; Former Director of Civil Forfeiture and Former Vice-President, Compliance and Legal, Great Canadian Gaming Corporation; Former Vice-President, Legal, Compliance and Security / Chief Compliance Officer, BCLC	<a href="#">Affidavit No. 1: Ex. 490</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Affidavit No. 2: Ex. 783</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Muriel Labine</b>	Former Great Canadian Gaming Corporation Dealer Supervisor	<a href="#">Affidavit: Ex. 147</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Bill Lang</b>	Executive Director, VIP, Gateway Casinos & Entertainment Ltd.	<a href="#">Affidavit No. 1: Ex. 480</a> <a href="#">Affidavit No. 2: Ex. 1040</a>
<b>Tim Law</b>	UK Consultant, Co-Author of <i>Towards a Global Norm of Beneficial Ownership Transparency</i>	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michelle Lee</b>	Executive Director, Consumer Taxation Programs Branch, Revenue Division, Ministry of Finance of BC	<a href="#">Affidavit: Ex. 779</a>
<b>Stone Lee</b>	BCLC Investigator; Former Great Canadian Gaming Corporation Surveillance Manager	<a href="#">Affidavit: Ex. 87</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Doug LePard</b>	Consultant; Former Vancouver Police Department	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Dr. Christian Leuprecht</b>	Professor, Queen's University and Royal Military College of Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michael Levi</b>	Professor, Cardiff University	<a href="#">Transcript</a> <a href="#">Webcast</a> <a href="#">Transcript</a> <a href="#">Webcast</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Prof. David Ley</b>	University of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Qi Li</b>	Former Edgewater Casino Employee	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Jian Wei Liang</b>	Businessman	<a href="#">Affidavit: Ex. 766</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Jim Lightbody</b>	Chief Executive Officer and President, BCLC	<a href="#">Affidavit: Ex. 505</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Simon Lord</b>	Senior officer and money laundering expert, National Crime Agency (UK).	<a href="#">Transcript</a>
		<a href="#">Webcast</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Tobias Louie</b>	Executive Director of the BC Ferry Authority; former Executive Director of the Corporate Policy and Planning Office in the Ministry of Public Safety and Solicitor General	<a href="#">Affidavit: Ex. 994</a>
<b>Carlos MacDonald</b>	Director of Land Titles, Land Title and Survey Authority of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Barry MacKillop</b>	Deputy Director, Intelligence Sector, FINTRAC	<a href="#">Transcript</a>
		<a href="#">Webcast</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Sam MacLeod</b>	Assistant Deputy Minister and General Manager, Gaming Policy and Enforcement Branch	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Nicholas Maxwell</b>	Head of the Future of Financial Intelligence Sharing (FFIS) Programme, RUSI Centre for Financial Crime and Securities Studies	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>John Mayr</b>	Executive Director, Society of Notaries Public of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>John Mazure</b>	Former Assistant Deputy Minister and General Manager, Gaming Policy and Enforcement Branch	<a href="#">Affidavit No. 1: Ex. 541</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Haig McCarrell</b>	Director of Investment, Science and Technology, Statistics Canada	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit No. 2: Ex. 997</a>
<b>William McCrea</b>	Former Executive Director, Gaming Policy and Enforcement Branch	<a href="#">Affidavit: Ex. 1042</a>
<b>Matthew McGuire</b>	Co-Founder, The AML Shop	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Barbara McIsaac</b>	Lawyer, Author of <i>The Law of Privacy in Canada</i>	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Kevin McMeel</b>	Bureau Legal Officer, Criminal Assets Bureau (Ireland)	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Jeanette McPhee</b>	CFO and Director of Trust Regulation, Law Society of British Columbia	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michael McTavish</b>	Director, Business Solutions, BC Financial Services Authority	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Len Meilleur</b>	Former Executive Director of Compliance, Gaming Policy and Enforcement Branch	<a href="#">Affidavit No. 1: Ex. 587</a> <a href="#">Transcript</a> <a href="#">Webcast</a>  <a href="#">Transcript</a> <a href="#">Webcast</a> <a href="#">Affidavit No. 2: Ex. 1057</a> <a href="#">Affidavit No. 3:* Ex. 1058</a> (*By order of the Commissioner, the exhibits to this affidavit are not to be published.) <a href="#">Affidavit No. 4: Ex. 1059</a>
<b>Dr. M-J Milloy</b>	Ph.D., Research Scientist, British Columbia Centre on Substance Use	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Anton Moiseienko</b>	Research Fellow, Centre for Financial Crime and Security Studies, Royal United Services Institute	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Marny Morin</b>	Secretary, Society of Notaries Public of BC	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Kirkland Morris</b>	Vice-President, Enterprise Initiatives & External Affairs, Interac Corp.	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Blair Morrison</b>	Chief Executive Officer, BC Financial Services Authority	<a href="#">Transcript</a> <a href="#">Webcast</a> <a href="#">Affidavit: Ex. 1051</a>
<b>Ryan Mueller</b>	Chief Compliance Officer, Netcoins	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Insp. Chris Mullin</b>	New Westminster Police Department	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Melinda Murray</b>	Executive Director, Criminal Property Forfeiture, Community Safety Division, Manitoba Justice; Former Crown Counsel, Province of Manitoba	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Megan Nettleton</b>	Supervisor, RCMP National Headquarters, Financial Crime Analysis Unit	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Gabriel Ngo</b>	Senior Advisor, Financial Crimes Policy, Department of Finance – Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Micheal Noseworthy</b>	Superintendent of Real Estate	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Brendon Ogmundson</b>	Chief Economist, BC Real Estate Association	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Melanie Paddon</b>	Investigator, Joint Illegal Gaming Investigation Team, Combined Forces Special Enforcement Unit – BC	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Supt. Peter Payne</b>	Director of Financial Crime, RCMP National Headquarters	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Clayton Pecknold</b>	Police Complaint Commissioner; Former Assistant Deputy Minister and Director of Police Services, Policing and Security Branch	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Bert Pereboom</b>	Senior Manager, Housing Market Policy, Canada Mortgage and Housing Corporation	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Fred Pinnock</b>	Former RCMP Officer and Officer-in-Charge, Integrated Illegal Gaming Enforcement Team	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Ian Place</b>	Director Solutions Architecture, Chainalysis	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Carol Prest</b>	Executive Director and Registrar, BC Registries and Online Services	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Joseph Primeau</b>	A/ED, Financial and Corporate Sector Policy Branch, BC Ministry of Finance	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Joel Rank</b>	Manager in the Project Management Office of the Canada Border Services Agency Assessment and Revenue Manager (CARM) Project	<a href="#">Affidavit: Ex. 993</a>
<b>Deputy Chief Laurence Rankin</b>	Vancouver Police Department	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Francien Rense</b>	Partner, NautaDutilh	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Peter Reuter</b>	Professor, University of Maryland School of Public Policy and Department of Criminology	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Wayne Rideout</b>	Assistant Deputy Minister and Director of Police Services, Policing and Security Branch	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Tom Robertson</b>	Former RCMP Officer and Officer- in-Charge, Integrated Illegal Gaming Enforcement Team; Former Investigator, Gaming Policy and Enforcement Branch	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Sgt. Ben Robinson</b>	Combined Forces Special Enforcement Unit – BC	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Adam Ross</b>	Consultant, White Label Insights	<a href="#">Affidavit No. 1: Ex. 729</a>
		<a href="#">Affidavit No. 3: Ex. 1041</a>
<b>Brad Rudnicki</b>	Anti-Money Laundering Intelligence Specialist, BCLC	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit No. 1: Ex. 1007 (see also exhibits 1009–1012)</a>
		<a href="#">Affidavit No. 2: Ex. 1008 (see also Exhibit 1013)</a>
		<a href="#">Affidavit No. 3: Ex. 1062</a>
<b>Annette Ryan</b>	Deputy Director and Chief Financial Officer, Enterprise Policy, Research and Programs Sector, FINTRAC	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit No. 1: Ex. 990 (see also Exhibit 991)</a>
<b>Joe Schalk</b>	Former Senior Director, Casino Investigations, Gaming Policy and Enforcement Branch	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit: Ex. 1043</a>
<b>Stephen Schneider</b>	Professor, St. Mary's University, Halifax	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
<b>Doug Scott</b>	Former Assistant Deputy Minister and General Manager, Gaming Policy and Enforcement Branch	<a href="#">Affidavit No. 1: Ex. 557</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit No. 2: Ex. 1056</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Michael Scott</b>	Director, Compliance and Investigations, Real Estate Council of BC	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit: Ex. 1050</a>
<b>Erin Seeley</b>	Chief Executive Officer, Real Estate Council of BC	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Sgt. Sushile Sharma</b>	Member, Federal Serious and Organized Crime Unit, RCMP	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Jason Sharman</b>	Sir Patrick Sheehy Professor of International Relations, Politics and International Studies, University of Cambridge	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Norman Shields</b>	Vice-President, Finance and Administration, BMW Canada	<a href="#">Affidavit: Ex. 778</a>
<b>Mark Sieben</b>	Deputy Solicitor General, BC Ministry of Public Safety and Solicitor General	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Jeffrey Simser</b>	Co-Author of <i>Civil Asset Forfeiture in Canada</i>	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Dr. Natalie Skead</b>	Professor in Law and Dean and Head of School, University of Western Australia Law School	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Cary Skrine</b>	Executive Director, Enforcement Division, Gaming Policy and Enforcement Branch	<a href="#">Affidavit: Ex. 504</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Bud Smith</b>	Former Board Chair, BCLC	<a href="#">Transcript</a> <a href="#">Webcast</a> <a href="#">Affidavit No. 1: Ex. 537</a> <a href="#">Affidavit No. 2: Ex. 996</a>
<b>Prof. Tsur Somerville</b>	University of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Walter Soo</b>	Former Employee of Great Canadian Gaming Corporation (including as Vice-President of Player and Gaming Development)	<a href="#">Affidavit: Ex. 559</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Lesley Soper</b>	Director-General in the National and Cyber Security Branch of Public Safety Canada	<a href="#">Affidavit: Ex. 1019</a>
<b>Jesse Spiro</b>	Global Head of Policy & Regulatory Affairs, Chainalysis	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Jay Stark</b>	Senior Vice-President, Financial Crimes and Chief Anti-Money Laundering Officer, Royal Bank of Canada	In Camera Hearing
<b>Georgia Stavridis</b>	Executive Vice-President and Chief Compliance Officer, HSBC	In Camera Hearing
<b>Tom Steenvoorden</b>	Executive Director, Office of the Police Complaint Commissioner; Former Acting Executive Director, Public Safety & Policing Operations Support, Policing and Security Branch	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Leslie Stevens</b>	Inspector, Criminal Intelligence Service British Columbia / Yukon Territory Bureau	<a href="#">Transcript</a> <a href="#">Webcast</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Gregory Steves</b>	Vice-President, Policy and Legal Services, Land Title and Survey Authority of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>David Stewart</b>	Partner, Financial Crime Analytics, Deloitte LLP	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Derek Sturko</b>	Former Assistant Deputy Minister and General Manager, Gaming Policy and Enforcement Branch	<a href="#">Affidavit: Ex. 507</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Beatrice Sturtevant</b>	Managing Director, Canadian Jewellers Association	<a href="#">Affidavit: Ex. 776</a>
<b>Kevin Sweeney</b>	Director of Security, Privacy and Compliance, Legal, Compliance, Security Division, BCLC	<a href="#">Affidavit: Ex. 520</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Chris Taggart</b>	Co-founder and CEO, OpenCorporates	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Edward Tanaka</b>	Vice-President, Professional Conduct, Chartered Professional Accountants of BC	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Philip Tawtel</b>	Executive Director, British Columbia Civil Forfeiture Office	<a href="#">Affidavit: Ex. 389</a> <a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Supt. Brent Taylor</b>	Federal Serious and Organized Crime, Officer-in-Charge, Operations and Financial Integrity, RCMP “E” Division	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Erin Tolfo</b>	Vice-President, Compliance and Financial Crime Risk Management and Chief Anti-Money Laundering Officer, Coast Capital Savings Federal Credit Union	<a href="#">Transcript</a> <a href="#">Webcast</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Daryl Tottenham</b>	Manager, Anti-Money Laundering (AML) Programs, BCLC; Former New Westminster Police Department Officer	<a href="#">Affidavit No. 1: Ex. 148</a>
		<a href="#">Affidavit No. 2: Ex. 149</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Terry Towns</b>	Former Vice-President of Corporate Security and Compliance, BCLC	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Brigitte Unger</b>	Professor of Law, Economics and Governance, Utrecht University School of Economics, and Economics of the Public Sector Chair, Utrecht University, Netherlands	<a href="#">Transcript</a>
		<a href="#">Webcast</a>
<b>Terri Van Sleuwen</b>	Former Executive Director, Gaming Policy and Enforcement Branch	<a href="#">Affidavit: Ex. 1044</a>
<b>Rolf van Wegberg</b>	Assistant Professor, Faculty of Technology, Policy and Management, Organization & Governance Section, Delft University of Technology	<a href="#">Transcript</a>
<b>Larry Vander Graaf</b>	Former Executive Director of Investigations, Gaming Policy and Enforcement Branch; Former RCMP Officer	<a href="#">Webcast</a>
		<a href="#">Transcript</a>
		<a href="#">Webcast</a>
		<a href="#">Affidavit No. 2: Ex. 529</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Sgt. Adrienne Vickery</b>	RCMP National Cryptocurrency Coordinator, National Headquarters Federal Policing Criminal Operations, Financial Crime – Proceeds of Crime Money Laundering Section	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Sir Robert Wainwright</b>	Former Executive Director of Europol and partner with Deloitte based in the Netherlands	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Bruce Wallace</b>	Manager of Strategic Policy and Reviews, FINTRAC	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Lori Wanamaker</b>	Deputy Minister to the Premier, Cabinet Secretary and Head of the British Columbia Public Service; Former Deputy Minister of Finance; Former Deputy Minister of Public Safety and Solicitor General	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Peter Warrack</b>	Chief Compliance Officer, Bitfinex	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Ryland Wellwood</b>	Civilian Member Analyst, RCMP	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Cheryl Wenezenki-Yolland</b>	Former Associate Deputy Minister of Finance	<a href="#">Affidavit No. 1: Ex. 922</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Affidavit No. 2: Ex. 1018</a>

<b>Witness</b>	<b>Brief Biography</b>	<b>Evidence</b>
<b>Frederica Wilson</b>	Executive Director and Deputy CEO, Federation of Law Societies of Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
		<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Helena Wood</b>	Associate Fellow, Royal United Services Institute	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Michele Wood-Tweel</b>	Vice-President, Regulatory Affairs, CPA Canada	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>Prof. Henry Yu</b>	University of British Columbia	<a href="#">Transcript</a> <a href="#">Webcast</a>
<b>John Zdanowicz</b>	President of International Trade Alert, Inc. and Professor of Finance, Florida International University	<a href="#">Transcript</a> <a href="#">Webcast</a>

## Appendix H

### Exhibits

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>OVERVIEW REPORTS (May 25, 2020)</b>	
<a href="#">0001</a>	Overview Report: Basel AML Index	May 25, 2020
<a href="#">0002</a>	Overview Report: International Legal Initiatives	May 25, 2020
<a href="#">0003</a>	Overview Report: Canada Reports	May 25, 2020
<a href="#">0004</a>	Overview Report: FATF Records	May 25, 2020
<a href="#">0005</a>	Overview Report: Hansard	May 25, 2020
	<b>STEPHEN SCHNEIDER (May 25, 26 &amp; 27, 2020)</b>	
<a href="#">0006</a>	Money Laundering in British Columbia: A Review of the Literature submitted by Stephen Schneider	May 25, 2020
<a href="#">0007</a>	Money Laundering in Canada: An Analysis of RCMP Cases	May 26, 2020
<a href="#">0008</a>	Stephen Schneider Annotated Bibliography	May 26, 2020
<a href="#">0009</a>	Hunting for El Chapo	May 27, 2020
	<b>SIMON LORD (MAY 28 &amp; 29, 2020)</b>	
<a href="#">0010</a>	Curriculum Vitae – Simon Lord	May 28, 2020
<a href="#">0011</a>	IVTS Network Map	May 28, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0012</a>	National Crime Agency NAC (19)122 – Ethnic Chinese Money Laundering in the UK v.1.0, June 2019	May 28, 2020
<a href="#">0013</a>	National Crime Agency – Chinese Underground Banking and “Diagou” (NAC/NECC v.1.0), October 2013	May 28, 2020
	<b>OLIVER BULLOUGH (Jun 1 &amp; 2, 2020)</b>	
<a href="#">0014</a>	How Britain can help you get away with stealing-millions: a five-step guide	June 1, 2020
<a href="#">0015</a>	The Great American tax haven: why the super-rich love South Dakota	June 1, 2020
<a href="#">0016</a>	Offshore secrecy: inside the movement to crack it open	June 1, 2020
<a href="#">0017</a>	How Britain let Russia hide its dirty money	June 2, 2020
	<b>WILLIAM GILMORE (Jun 3 &amp; 4, 2020)</b>	
<a href="#">0018</a>	Curriculum Vitae – Professor William Gilmore	June 3, 2020
<a href="#">0019</a>	Professor William Gilmore – Report	June 3, 2020
<a href="#">0020</a>	Summary of Canada’s Follow up Reports to FATF (2017–2019)	June 4, 2020
	<b>MICHAEL LEVI &amp; PETER REUTER (Jun 5 &amp; 8, 2020)</b>	
<a href="#">0021</a>	Curriculum Vitae – Professor Michael Levi	June 5, 2020
<a href="#">0022</a>	Curriculum Vitae – Professor Peter Reuter	June 5, 2020
<a href="#">0023</a>	Money-Laundering Typologies: A review of their fitness for purpose	June 5, 2020
<a href="#">0024</a>	Cash, Crime and Anti-Money Laundering	June 5, 2020
<a href="#">0025</a>	Understanding the laundering of organized crime money	June 5, 2020
<a href="#">0026</a>	Can the AML system be evaluated without better data?	June 5, 2020
<a href="#">0027</a>	Italy – Financial Security Committee – National Analysis of the risks of money laundering and terrorist financing	June 5, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0028</a>	Japan – National Risk Assessment of Money Laundering and Terrorist Financing (December 2014)	June 5, 2020
<a href="#">0029</a>	Japan – National Risk Assessment of Money Laundering and Terrorist Financing (November 2017)	June 5, 2020
<a href="#">0030</a>	National Risk Assessment of Money Laundering for the Netherlands 2017	June 5, 2020
<a href="#">0031</a>	Singapore National Money Laundering and Terrorist Financing Risk Assessment Report 2013	June 5, 2020
<a href="#">0032</a>	Switzerland – Report on the national evaluation of risks of money laundering and terrorist financing in Switzerland 2015	June 5, 2020
<a href="#">0033</a>	UK national risk assessment of money laundering and terrorist financing 2015	June 5, 2020
<a href="#">0034</a>	US National Money Laundering Risk Assessment 2015	June 5, 2020
<a href="#">0035</a>	US National Money Laundering Risk Assessment 2018	June 5, 2020
<a href="#">0036</a>	UK national risk assessment of money laundering and terrorist financing 2017	June 8, 2020
	<b>CRIMINAL INTELLIGENCE SERVICE CANADA PANEL: ROBERT GILCHRIST, INSP. LESLIE STEVENS &amp; RYLAND WELLWOOD (June 9 &amp; 10, 2020)</b>	
<a href="#">0037</a>	CISC Request from Cullen Commission Member Agencies	June 9, 2020
	<b>PROVINCIAL PANEL: CHRISTINA DAWKINS, MARK SIEBEN &amp; MEGAN HARRIS (June 11 &amp; 12, 2020)</b>	
<a href="#">0038</a>	Mark Sieben – Biography	June 11, 2020
<a href="#">0039</a>	Curriculum Vitae – Chris Dawkins	June 11, 2020
<a href="#">0040</a>	Curriculum Vitae – Megan Harris	June 11, 2020
<a href="#">0041</a>	Draft – Ministry of Attorney General – Anti-Money Laundering Deputy Ministers Terms of Reference	June 11, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0042</a>	Final – Government of BC – Money Laundering Deputy Ministers Terms of Reference	June 11, 2020
<a href="#">0043</a>	AML Current Human Resources (Slides)	June 11, 2020
<a href="#">0044</a>	The Provincial Anti–Money Laundering Strategy (Slide deck)	June 11, 2020
<a href="#">0045</a>	Anti–Money Laundering Strategic Timeline: Three Year Plan	June 11, 2020
<a href="#">0046</a>	Provincial Anti–Money Laundering Strategy	June 11, 2020
<a href="#">0047</a>	Agendas for the Meetings of Deputy Minister’s Committee on Anti–Money Laundering	June 11, 2020
<a href="#">0048</a>	Minutes of Meetings of Deputy Minister’s Committee on Anti–Money Laundering	June 11, 2020
<a href="#">0049</a>	Deloitte, Government of BC Anti–Money Laundering Jurisdictional Scan	June 11, 2020
<a href="#">0050</a>	Ministry of Finance Briefing Document dated February 25, 2018 – Threshold for reporting beneficial ownership through companies under the proposed Land Ownership Transparency Act	June 11, 2020
<a href="#">0051</a>	Briefing Document dated February 26, 2019 – Final Structure of the Land Owner Transparency Act (LOTA)	June 11, 2020
<a href="#">0052</a>	Briefing Document dated March 13, 2019 – Summary of Land Owner Transparency Act (LOTA) legislation and registry	June 11, 2020
<a href="#">0053</a>	Briefing Document dated May 31, 2019 – Effective Date of Beneficial Owner Transparency Register	June 11, 2020
<a href="#">0054</a>	Briefing Document dated November 27, 2018 – Proposed Changes to the Land Owner Transparency Act (LOTA)	June 11, 2020
<a href="#">0055</a>	BC Consultation on a Public Beneficial Ownership Registry January 2020	June 11, 2020
<a href="#">0056</a>	Briefing Document dated June 3, 2019- Federal/ Provincial Implications of Expert Panel on Money Laundering in Real Estate Recommendations	June 11, 2020
<a href="#">0057</a>	Briefing Document dated September 17, 2019 – Single Regulator for Real Estate	June 11, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0058</a>	Briefing Document dated October 16, 2019 – Single Regulator for Real Estate – Rule-making procedures	June 11, 2020
<a href="#">0059</a>	Anti–Money Laundering Designated Policing Unit Discussion (Slide Deck)	June 11, 2020
<a href="#">0060</a>	Anti–Money Laundering Financial Intelligence and Investigations Unit Draft Proposal	June 11, 2020
<a href="#">0061</a>	BC Compliance and Enforcement Anti–Money Laundering Fusion Centre (Slide Deck) May 2019	June 12, 2020
<a href="#">0062</a>	Briefing Document dated November 22, 2019 – Unexplained Wealth Orders	June 12, 2020
	<b>SIR ROBERT WAINWRIGHT (June 15 &amp; 16, 2020)</b>	
<a href="#">0063</a>	Curriculum Vitae – Sir Robert Wainwright	June 15, 2020
<a href="#">0064</a>	Europol – Why is Cash Still King? A Strategic Report on the Use of Cash by Criminal Groups as a Facilitator for Money Laundering	June 15, 2020
<a href="#">0065</a>	Europol – From Suspicion to Action	June 15, 2020
<a href="#">0066</a>	Europol – Does Crime Still Pay	June 15, 2020
	<b>OVERVIEW REPORTS – GAMING SECTOR (October 26, 2020)</b>	
<a href="#">0067</a>	Overview Report: Regulation of Gaming in BC	October 26, 2020
<a href="#">0068</a>	Overview Report: Regulation of Land-Based Casino Gaming and Horse Racing in Ontario	October 26, 2020
<a href="#">0069</a>	Overview Report: Regulation of Horse Racing in British Columbia	October 26, 2020
<a href="#">0070</a>	Overview Report: Gaming Control Act Hansard	October 26, 2020
<a href="#">0071</a>	Overview Report: Gaming Policy and Enforcement Branch Annual Reports	October 26, 2020
<a href="#">0072</a>	Overview Report: British Columbia Lottery Corporation Annual Reports	October 26, 2020
<a href="#">0073</a>	Overview Report: Past Reports and Recommendations Related to the Gaming Sector in British Columbia	October 26, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0074</a>	Overview Report: 2016 River Rock Casino Chip Swap	October 26, 2020
<a href="#">0075</a>	Overview Report: 2016 BCLC Voluntary Self-Declaration of Non-Compliance	October 26, 2020
<a href="#">0076</a>	Overview Report: BCLC Standards, Policies, Procedures and Operational Services Agreements	October 26, 2020
<a href="#">0077</a>	Overview Report: Integrated Illegal Gaming Enforcement Team	October 26, 2020
	<b>STEVE BEEKSMA (October 26, 2020)</b>	
<a href="#">0078</a>	Affidavit 1 of Steve Beeksma	October 26, 2020
<a href="#">0079</a>	Affidavit 2 of Steve Beeksma	October 26, 2020
<a href="#">0080</a>	Email from Patrick Ennis re DVD/Footage request: Large Cash Buy ins – Jan 28, 2015	October 26, 2020
<a href="#">0081</a>	Not public by order of the Commissioner	October 26, 2020
<a href="#">0082</a>	Not public by order of the Commissioner	October 26, 2020
<a href="#">0083</a>	Not public by order of the Commissioner	October 26, 2020
<a href="#">0084</a>	Email from Gordon Friesen to Steve Beeksma RE: Under \$50K buy ins in \$20 bills – September 23, 2011.	October 26, 2020
<a href="#">0085</a>	A collection of 18 Interview forms – Interview Format for Identified HRP Patrons	October 26, 2020
<a href="#">0086</a>	BCLC Anti Money Laundering (AML) Protocol for Conditions & Interviews	October 26, 2020
	<b>STONE LEE (October 27, 2020)</b>	
<a href="#">0087</a>	Affidavit 1 of Stone Lee.	October 27, 2020
<a href="#">0088</a>	Incident Report at Starlight Casino on Unusual Financial – Transaction (IN20150010775) – Feb 27, 2015	October 27, 2020
<a href="#">0089</a>	Not public by order of the Commissioner	October 27, 2020
<a href="#">0090</a>	Incident Report from River Rock on Unusual Financial Transaction (IN20200006443) – January 29, 2020	October 27, 2020
<a href="#">0091</a>	Incident Report from River Rock on Unusual Financial Transaction (IN20200012826)	October 27, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0092</a>	Notes of Interview April 10, 2015 of Stone Lee and Proposed Questions	October 27, 2020
	<b>WARD CLAPHAM (October 27 &amp; 28, 2020)</b>	
<a href="#">0093</a>	Email from Ward Clapham – December 13, 2004	October 27, 2020
<a href="#">0094</a>	RCMP Briefing Note – Supt. Ward Clapham – Richmond RCMP Annual Reference Level Update 2007/2008	October 27, 2020
<a href="#">0095</a>	Call for Service – Site Specific – The Great Canadian Casino and River Rock Casino	October 27, 2020
<a href="#">0096</a>	Serious & Unreported Crime at the Casinos (Adapted from a report by Cst. David Au of Richmond CIS)	October 27, 2020
<a href="#">0097</a>	City of Richmond – Report to Committee – September 1, 2006	October 27, 2020
<a href="#">0098</a>	City of Richmond – Additional Level Request Form for Budget Year 2007	October 27, 2020
<a href="#">0099</a>	City of Richmond Regular (Closed) Council Meeting, September 25th, 2006	October 27, 2020
<a href="#">0100</a>	Email from Ward Clapham to Mahon and Pinnock Re: River Rock Casino – A Policing Response	October 27, 2020
<a href="#">0101</a>	RCMP Memorandum to City of Richmond – December 11, 2006	October 27, 2020
<a href="#">0102</a>	City of Richmond Regular Council Meeting, February 26th, 2007	October 28, 2020
<a href="#">0103</a>	City of Richmond – Law & Community Safety 2007 Achievements / 2008 Priorities	October 28, 2020
<a href="#">0104</a>	2007 Annual Report, City of Richmond	October 28, 2020
	<b>GORDON FRIESEN (October 28 &amp; 29, 2020)</b>	
<a href="#">0105</a>	GPEB Audit Report Review of BCLC Player Gaming Fund Accounts Pilot Project 2009/2010	October 28, 2020
<a href="#">0106</a>	Letter from Gordon Friesen re Review of BCLC Player Gaming Fund Accounts Pilot Project – February 17, 2010	October 28, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0107</a>	Email from Gordon Friesen re Under \$50K Buy Ins in \$20 Bills – September 23, 2011	October 28, 2020
<a href="#">0108</a>	Letter from Derek Dickson re Loan Sharking/ Suspicious Currency & Chip Passing – April 14, 2010	October 28, 2020
<a href="#">0109</a>	Letter from Gordon Friesen re Loan Sharking/ Suspicious Currency and Chip Passing – May 4, 2010	October 28, 2020
<a href="#">0110</a>	Letter from Derek Dickson re Money Laundering in Casinos – November 24, 2010	October 28, 2020
<a href="#">0111</a>	Letter from John Karlovcec re: Money Laundering in BC Casinos – December 24, 2010	October 28, 2020
<a href="#">0112</a>	Letter from Joe Schalk re Money Laundering in BC Casinos – February 28, 2011	October 28, 2020
<a href="#">0113</a>	Email exchange between Karlovcec, Alderson and Beeksma re \$100 Bills at RRRCR – February 3, 2012	October 29, 2020
	<b>JOHN KARLOVCEC (October 29 &amp; 30, 2020)</b>	
<a href="#">0114</a>	Email from John Karlovcec re Derek Dickson – Jan 27, 2011	October 29, 2020
<a href="#">0115</a>	Email from Rob Kroeker re Vancouver Sun – AML story today – Nov 28, 2017	October 29, 2020
<a href="#">0116</a>	Email from Daryl Tottenham to: AML, RE: CFSEU/ High Risk list review – for discussion – June 4, 2014	October 30, 2020
<a href="#">0117</a>	Email from John Karlovcec to Daryl Tottenham – June 6, 2014 Subject: RE: CFSEU/High Risk list review – for discussion	October 30, 2020
<a href="#">0118</a>	Email from Desmarais re Info For Presentation, Prohibited BCLC Patrons Numbers – November 23, 2017	October 30, 2020
<a href="#">0119</a>	Email from John Karlovcec to Brad Desmarais, Subject: FW: CFSEU list – outline of procedures – June 10, 2014	October 30, 2020
<a href="#">0120</a>	Email from Kurt Bulow to John Karlovcec, Subject: CFSEU Uniform Team BCLC – June 17, 2014	October 30, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0121</a>	Email from John Karlovcec to Robert Grace, re CFSEU River Rock Casino Orientation – Jun 20, 2014	October 30, 2020
<a href="#">0122</a>	Email from John Karlovcec to Trevor Emmerson, re Casino Cash Facilitators	October 30, 2020
<a href="#">0123</a>	A collection of 10 target sheets	October 30, 2020
<a href="#">0124</a>	Email from Brad Desmarais re Heads up on another large cash Buy-in River Rock 2014-52289 – November 23, 2017	October 30, 2020
<a href="#">0125</a>	Email from John Karlovcec to Patrick Ennis, re River Rock Surveillance Reports – “ALERT ISSUE again...” – October 16, 2014	October 30, 2020
<a href="#">0126</a>	Email from John Karlovcec to Patrick Ennis, re Meeting to Discuss Protocol for Approaching VIP Players – October 17, 2014	October 30, 2020
<a href="#">0127</a>	Email from John Karlovcec to Brad Desmarais, Re: FW: Unusual Financial Transaction – October 18, 2014	October 30, 2020
<a href="#">0128</a>	Email from John Karlovcec to Brad Desmarais – January 2, 2015	October 30, 2020
<a href="#">0129</a>	Email from John Karlovcec to Robert Kroeker, Re: Large Cash Buy-Ins – January 8, 2015	October 30, 2020
<a href="#">0130</a>	Email from Ross Alderson re VVIP Players and Sanctions – May 14, 2015	October 30, 2020
<a href="#">0131</a>	Letter from Robby Judge to Brad Desmarais, re Compliance Examination Findings – January 23, 2015	October 30, 2020
<a href="#">0132</a>	FINTRAC Examination November 2014 Findings Explanatory Document – March 4, 2015	October 30, 2020
<a href="#">0133</a>	Email from Tottenham to John Karlovcec, re Lisa Gao Summary – December 5, 2017	October 30, 2020
<a href="#">0134</a>	Letter from Bob Stewart to John Karlovcec, re Ms. Gao 200k Buy In – December 8, 2017	October 30, 2020
<a href="#">0135</a>	Email from Ben Robinson to John Karlovcec re CFSEU-BC File 2016-54 – Request for Information	October 30, 2020
<a href="#">0136</a>	Combined Forces Special Enforcement Unit British Columbia letter to John Karlovcec re Request for Information – February 7, 2018	October 30, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0137</a>	BCLC memo from Bal Bamra to John Karlovcec and Rob Kroeker, subject: MSB Due Diligence – January 11, 2018	October 30, 2020
<a href="#">0138</a>	Letter from John Karlovcec to Cary Skrine re Questions with Feedback – October 19, 2018	October 30, 2020
<a href="#">0139</a>	Meeting Notes – Fintrac Audit Jan 1–Jun 30, 2012 for SFT’s Exit Meeting – Meeting date: December 14, 2012	October 30, 2020
<a href="#">0140</a>	AML Compliance & Analytics Enhancement Project Business Case Fiscal 2014/15	October 30, 2020
<a href="#">0141</a>	Summary Review Anti–Money Laundering Measures at BC Gaming Facilities, February 2011	October 30, 2020
<a href="#">0142</a>	Email from John Karlovcec to Daryl Tottenham, Subject: FW: Post Media Inquiry – December 14, 2017	October 30, 2020
	<b>ADDITIONAL DOCUMENT (November 2, 2020)</b>	
<a href="#">0143</a>	Affidavit 1 of Bal Bamra	November 2, 2020
	<b>KEN ACKLES (November 2, 2020)</b>	
<a href="#">0144</a>	Affidavit 3 of Ken Ackles	November 2, 2020
	<b>ROB BARBER (November 3, 2020)</b>	
<a href="#">0145</a>	Affidavit 1 of Robert Barber	November 3, 2020
<a href="#">0146</a>	Email Robert Stewart, subject: Fw: CIR_17-003_ AML Month of December.docx – February 23, 2017	November 3, 2020
	<b>MURIEL LABINE (November 3, 2020)</b>	
<a href="#">0147</a>	Affidavit 1 of Muriel Labine	November 3, 2020
	<b>DARYL TOTTENHAM (November 4, 2020)</b>	
<a href="#">0148</a>	Affidavit 1 of Daryl Tottenham	November 4, 2020
<a href="#">0149</a>	Affidavit 2 of Daryl Tottenham	November 4, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>FRED PINNOCK (November 5 &amp; 6, 2020)</b>	
<a href="#">0150</a>	Memo from S/Sgt T Robertson Re Introduction and Mandate of the RCMP's Integrated Illegal Gaming Enforcement Team – 10-Nov-2004	November 5, 2020
<a href="#">0151</a>	Integrated Illegal Gaming Enforcement Team – Implementation Plan of Operations – 24-June-2004	November 5, 2020
<a href="#">0152</a>	RCMP – Five Year Strategic Projection: Provincial Policing – 2004-2009	November 5, 2020
<a href="#">0153</a>	S/Sgt F Pinnock – IIGET Consultative Board Meeting minutes – 26-Nov-2007	November 5, 2020
<a href="#">0154</a>	Integrated Illegal Gaming Enforcement Team RCMP and GPEB Consultative Board Meeting – 29-Nov-2004	November 5, 2020
<a href="#">0155</a>	RCMP Backgrounder (2003–05)	November 5, 2020
<a href="#">0156</a>	Memo from NCO IIGET “E” Division Re Status Report – Integrated Illegal Gaming Enforcement Team– 14-March-2007	November 5, 2020
<a href="#">0157</a>	S/Sgt F Pinnock – Integrated Illegal Gaming Enforcement Team Performance Report for IIGET Consultative Board – 23-July-2007	November 5, 2020
<a href="#">0158</a>	Undated memo detailing IIGET and BCLC working group to target loan sharks and other organized criminal activity	November 5, 2020
<a href="#">0159</a>	Integrated Illegal Gaming Enforcement Team (IIGET) – A Provincial Casino Enforcement – Intelligence Unit, June 27, 2007	November 5, 2020
<a href="#">0160</a>	Email from Fred Pinnock Re IIGET Business Cases – DD 07JUN27 – 19-June-2007	November 5, 2020
<a href="#">0161</a>	S/Sgt F Pinnock – Business Case for the Expansion of Integrated Illegal Gaming Enforcement Team (IIGET) – 20-July-2007	November 5, 2020
<a href="#">0162</a>	Overview of the Report on the Integrated Illegal Gaming Enforcement Team (IIGET) Effectiveness Review by Catherine Tait – March 31, 2009	November 5, 2020
<a href="#">0163</a>	Transcript of a phone call between Heed and Pinnock on July 10, 2018	November 6, 2020
<a href="#">0164</a>	Transcript of a lunch meeting between Heed and Pinnock on September 7, 2018	November 6, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>TOM ROBERTSON (November 6, 2020)</b>	
<a href="#">0165</a>	Email from Donald Smith, Re: IIGET File 05-661 Loansharking Investigation – February 25, 2005	November 6, 2020
	<b>MIKE HILLER (November 9, 2020)</b>	
<a href="#">0166</a>	Affidavit 1 of Michael Hiller	November 9, 2020
<a href="#">0167</a>	Mike Hiller notebook #2 – June 1, 2009 to June 16, 2010	November 9, 2020
<a href="#">0168</a>	Email exchange between Mike Hiller and Jim Wall, Subject: [Patron name] Buy-ins with No Play – August 18, 2014	November 9, 2020
	<b>DARYL TOTTENHAM (November 10, 2020)</b>	
<a href="#">0169</a>	Email from Heather Samson to Laurin Stenerson, Re: Subject Detailed Report – October 2, 2017	November 10, 2020
<a href="#">0170</a>	Email from Ross Alderson, subject: List for VP – September 9, 2015	November 10, 2020
<a href="#">0171</a>	Email from Daryl Tottenham to Rob Kroeker, Re: Exhibit listing – October 10, 2017	November 10, 2020
<a href="#">0172</a>	Email from Daryl Tottenham to Patrick Ennis, re: [Patron name] cash buy-in – August 3, 2016	November 10, 2020
<a href="#">0173</a>	Email from Patrick Ennis to Daryl Tottenham, Re: \$200K Cash from [Patron name] – August 17, 2016	November 10, 2020
<a href="#">0174</a>	Email exchange between Daryl Tottenham and David Zhou, re: [Patron name] – June 5, 2017	November 10, 2020
<a href="#">0175</a>	A chain of email re: German Recommendation #1 – Source of Funds Declaration – December 28, 2017	November 10, 2020
<a href="#">0176</a>	Email from Ross Alderson to Daryl Tottenham, Re: COMM-8669 Final Report – Provincially Banned Cash Facilitators – May 6, 2017	November 10, 2020
<a href="#">0177</a>	Email from Ross Alderson, Re: Jia Gao – April 27, 2015	November 10, 2020
<a href="#">0178</a>	Email from Daryl Tottenham, Re: Jia Gao – October 5, 2015	November 10, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0179</a>	Email from Ross Alderson, Re: AML – January 24, 2017	November 10, 2020
<a href="#">0180</a>	Email from Ross Alderson, Subject: Resignation – December 21, 2017	November 10, 2020
	<b>LARRY VANDER GRAAF (November 12 &amp; 13, 2020)</b>	
<a href="#">0181</a>	Affidavit 1 of Larry Vander Graaf	November 12, 2020
<a href="#">0182</a>	Curriculum Vitae – Larry Peter Vander Graaf	November 12, 2020
<a href="#">0183</a>	Letter from Derek Sturko To Vic Poleschuk – March 28, 2003	November 12, 2020
<a href="#">0184</a>	Email from Larry Vander Graaf, Re: Patron Gaming Fund Account Discussion – September 14, 2009	November 12, 2020
<a href="#">0185</a>	Gaming Policy and Enforcement Branch, Investigations and Regional Operations Division – Compliance Note to the Minister – February 19, 2014	November 12, 2020
<a href="#">0186</a>	Las Vegas Review Journal – Casinos shudder over possible federal requirement to divulge source of rollers’ gambling funds – April 8, 2014	November 13, 2020
<a href="#">0187</a>	Email from John Mazure to Larry Vander Graaf, Re: Comments to GPEB Investigations Report on Money Laundering in BC Casinos – December 2, 2013	November 13, 2020
<a href="#">0188</a>	Email from Larry Vander Graaf to Bill McCrea, Re: Strategic Priority Measurements – July 23, 2013	November 13, 2020
<a href="#">0189</a>	GPEB/BCLC Joint Executive Meeting – November 5, 2012	November 13, 2020
<a href="#">0190</a>	Gaming Policy and Enforcement Branch, Investigations and Regional Operations Division – Report of Findings	November 13, 2020
	<b>OVERVIEW REPORTS: PROFESSIONALS SECTOR (November 16, 2020)</b>	
<a href="#">0191</a>	Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC	November 16, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0192</a>	Overview Report: Regulation of Legal Professionals in BC	November 16, 2020
<a href="#">0193</a>	Overview Report: Legal Professionals and Accountants Publications	November 16, 2020
	<b>PANEL: GABRIEL NGO &amp; BRUCE WALLACE (November 16, 2020)</b>	
<a href="#">0194</a>	FINTRAC Research Report – Review of Money Laundering Court Cases in Canada – November 2015	November 16, 2020
<a href="#">0195</a>	Terms of Reference – Federation of Law Society of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing (Draft for policy discussion)	November 16, 2020
<a href="#">0196</a>	Recent Amendments to Canada’s AML/ATF Regulations – June 25, 2020	November 16, 2020
<a href="#">0197</a>	Audit Program Presentation	November 16, 2020
<a href="#">0198</a>	Overview of the Federation of Law Societies of Canada and the Govt. of Canada Working Group on Money Laundering and Terrorist Financing presented by Department of Finance Canada, presentation to Cullen Commission – October 2020	November 16, 2020
<a href="#">0199</a>	Presentation to the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing – June 26, 2019	November 16, 2020
<a href="#">0200</a>	Sanitized Case Executive Summary	November 16, 2020
	<b>FREDERICA WILSON (November 16 &amp; 17, 2020)</b>	
<a href="#">0201</a>	Federation of Law Societies of Canada – Executive memo to Council re Anti–Money Laundering and Terrorist Financing Issues – September 14, 2015	November 16, 2020
<a href="#">0202</a>	Email from Deborah Armour, Re: FATF – November 09, 2015	November 16, 2020
<a href="#">0203</a>	Memorandum from Federation Executive to Council of the Federation & Law Society Presidents & CEOs Re Anti–Money Laundering & Terrorist Financing Issues – December 3, 2015	November 16, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0204</a>	Federation of Law Societies of Canada – Memorandum from Frederica Wilson to CEO, Re: FATF Mutual Evaluation Report – September 21, 2016	November 16, 2020
<a href="#">0205</a>	Societies Federation of Law of Canada – Memorandum from Richard Scott to Federation Council Law Society Presidents and CEOs, Re Anti–Money Laundering and Terrorist Financing Engagement with Department of Finance – July 30, 2018	November 16, 2020
<a href="#">0206</a>	Federation of Law Societies of Canada – Amended Model Rule on Cash Transactions	November 17, 2020
<a href="#">0207</a>	Federation of Law Societies of Canada – Memorandum from No Cash Model Rule Sub-group, Re: Review of No Cash Rule – April 8, 2017	November 17, 2020
<a href="#">0208</a>	Federation of Law Societies of Canada – Consultation Report Anti–Money Laundering and Terrorist Financing Working Group – October 2, 2017	November 17, 2020
<a href="#">0209</a>	Federation of Law Societies of Canada – Amended Model Rule on Client Identification and Verification	November 17, 2020
<a href="#">0210</a>	Federation of Law Societies of Canada – Memorandum from CIV Subgroup AML Working Group to AML Working Group, Re: Report on CIV Issues Review – April 24, 2019	November 17, 2020
<a href="#">0211</a>	Changes to the Model Rules on Money Laundering and Terrorist Financing, 2018, one-page summary	November 17, 2020
<a href="#">0212</a>	Federation of Law Societies of Canada – Model Trust Accounting Rule	November 17, 2020
<a href="#">0213</a>	Federation of Law Societies of Canada – Guidance to the Legal Profession – December 14, 2018	November 17, 2020
<a href="#">0214</a>	Federation of Law Societies of Canada – Risk advisories to the legal profession – December 2019	November 17, 2020
<a href="#">0215</a>	Federation of Law Societies of Canada – Risk Assessment Case Studies for the Legal Profession – February 2020	November 17, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0216</a>	Thematic summary of Feedback from Consultation on 2018 AMLTF Model Rules amendments	November 17, 2020
	<b>KATIE BENSON (November 17, 2020)</b>	
<a href="#">0217</a>	Curriculum Vitae – Katie Benson	November 17, 2020
<a href="#">0218</a>	The Facilitation of Money Laundering by Legal and Financial Professionals; Roles, Relationships and Response – A thesis submitted by Katie Benson, 2016	November 17, 2020
<a href="#">0219</a>	Money Laundering, Anti-Money Laundering and the Legal Profession by Katie Benson, 2018	November 17, 2020
<a href="#">0220</a>	The Law of Financial Crime – Lawyers and the Proceeds of Crime – The Facilitation of Money Laundering and Its Control by Katie Benson, 2020. Not public by order of the Commissioner	November 17, 2020
<a href="#">0221</a>	Solicitors Disciplinary Tribunal – Case no. 11178-2013 – Hearing date: 17 December 2013	November 17, 2020
	<b>LAW SOCIETY OF BC PANEL: CRAIG FERRIS, DON AVISON, JEANETTE MCPHEE &amp; GURPRIT BAINS (November 18 &amp; 19, 2020)</b>	
<a href="#">0222</a>	LSBC – Introduction to the Law Society Summary	November 18, 2020
<a href="#">0223</a>	LSBC – Investigations and Discipline Programs Summary	November 18, 2020
<a href="#">0224</a>	LSBC – Regulation of the Practice of Law	November 18, 2020
<a href="#">0225</a>	LSBC – Trust Assurance Program Summary	November 18, 2020
<a href="#">0226</a>	LSBC – Education of the Profession	November 18, 2020
<a href="#">0227</a>	LSBC 2020 Fees and Budgets Report	November 18, 2020
<a href="#">0228</a>	LSBC Memo to Executive Committee from Michael Lucas re Summary of Relevant Points in German Report (real estate, luxury vehicle sales & horse racing) – May 13, 2019	November 18, 2020
<a href="#">0229</a>	Email from Deborah Armour to Craig Ferris re Code of Conduct Rule 3.2-7 Commentary – May 11, 2018	November 18, 2020
<a href="#">0230</a>	Amendments to Rules Relating to Fiduciary Property Under Consideration – Undated	November 18, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0231</a>	Email from Jeanette McPhee to Michael Lucas re Model Trust Accounting Rule, comments from Eva Milz – October 11, 2018	November 18, 2020
<a href="#">0232</a>	Email from Gurprit Bains re Fiduciary Property Examples – January 14, 2019	November 18, 2020
<a href="#">0233</a>	LSBC Agenda for Act and Rules Committee – October 24, 2019	November 18, 2020
<a href="#">0234</a>	Email from Jeanette McPhee to Michael Lucas re Model Trust Accounting Rule, Lawyers Acting in a Representative Capacity – October 11, 2018	November 18, 2020
<a href="#">0235</a>	Memo to FLSC AMLTF Working Group, CIV Working Group from Jeanette McPhee re Source of Funds and Wealth – October 25, 2019	November 19, 2020
<a href="#">0236</a>	Email from Jeanette McPhee re CIV Rules – March 26, 2019	November 19, 2020
<a href="#">0237</a>	LSBC Briefing Note for Cullen Commission – October 7, 2020	November 19, 2020
<a href="#">0238</a>	Email from Karen Mok re Law Firm Regulation AML Issues – January 29, 2019	November 19, 2020
<a href="#">0239</a>	Email from Jeanette McPhee to Varro & Wilson re Further Issues for Phase 2, Update from BC – May 29, 2019	November 19, 2020
<a href="#">0240</a>	LSBC Memo to Jeanette McPhee from Eva Milz re Resources – April 24, 2017	November 19, 2020
<a href="#">0241</a>	Letter from Catherine George re Question to the LSBC re Information-sharing with law enforcement entities – September 24, 2020	November 19, 2020
<a href="#">0242</a>	LSBC Guidelines for Disclosing Information to Law Enforcement	November 19, 2020
<a href="#">0243</a>	Letter from Catherine George – October 26, 2020	November 19, 2020
	<b>MICHAEL LEVI (November 20, 2020)</b>	
<a href="#">0244</a>	Lawyers, their AML regulation and Suspicious Transaction Reporting – Report for the Cullen Commission – 2020	November 20, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0245</a>	The Legal and Institutional Infrastructure of Anti-Money Laundering in the UK: A Report for the Cullen Commission	November 20, 2020
	<b>OVERVIEW REPORTS: VIRTUAL ASSET SECTOR (November 23, 2020)</b>	
<a href="#">0246</a>	Overview Report: Quadriga CX	November 23, 2020
<a href="#">0247</a>	Overview Report: Canadian Securities Administrators Publications on Virtual Assets	November 23, 2020
<a href="#">0248</a>	Overview Report: FATF Publications on Virtual Assets	November 23, 2020
<a href="#">0249</a>	Overview Report: Federal Regulation of Virtual Currencies	November 23, 2020
	<b>RCMP PANEL: CPL. AARON GILKES, SGT. ADRIENNE VICKERY &amp; SGT. WARREN KRAHENBIL (November 23, 2020)</b>	
<a href="#">0250</a>	Curriculum Vitae – Sgt. Adrienne Vickery	November 23, 2020
<a href="#">0251</a>	Curriculum Vitae – Cpl. Aaron Gilkes	November 23, 2020
<a href="#">0252</a>	Curriculum Vitae – Sgt. Warren Krahenbil	November 23, 2020
<a href="#">0253</a>	RCMP Virtual Assets Slideshow	November 23, 2020
<a href="#">0254</a>	Senate Report – Digital Currency: You Can’t Flip this Coin! – June 2015	November 23, 2020
	<b>CHAINALYSIS PANEL: JESSE SPIRO &amp; IAN PLACE (November 24, 2020)</b>	
<a href="#">0255</a>	Curriculum Vitae – Jesse Spiro	November 24, 2020
<a href="#">0256</a>	Curriculum Vitae – Ian Place	November 24, 2020
<a href="#">0257</a>	Chainalysis – The 2020 State of Crypto Crime report – January 2020	November 24, 2020
<a href="#">0258</a>	Chainalysis – The 2020 Geography of Cryptocurrency Report – September 2020	November 24, 2020
<a href="#">0259</a>	FATF Report – Virtual Assets Red Flag Indicators – September 2020	November 24, 2020
<a href="#">0260</a>	Chainalysis Reactor webpage	November 24, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>INDUSTRY PANEL: CHARLENE CIESLIK, GILES DIXON, RYAN MUELLER &amp; PETER WARRACK (November 25, 2020)</b>	
<a href="#">0261</a>	Curriculum Vitae – Peter Warrack	November 25, 2020
<a href="#">0262</a>	Curriculum Vitae – Charlene Cieslik	November 25, 2020
<a href="#">0263</a>	Curriculum Vitae – Ryan Mueller	November 25, 2020
<a href="#">0264</a>	Curriculum Vitae – Giles Dixon	November 25, 2020
<a href="#">0265</a>	Ontario Securities Commission Report – April 14, 2020	November 25, 2020
<a href="#">0266</a>	Fifth Report of the Monitor – June 19, 2019	November 25, 2020
<a href="#">0267</a>	City of Vancouver Memo to mayor re: Bitcoin ATMS – October 30, 2020	November 25, 2020
<a href="#">0268</a>	Central 1 Credit Union Anti-Money Laundering and Counter-Terrorist Financing Requirements	November 25, 2020
	FREDERICK PINNOCK (Per Ruling #18 issued on November 26, 2020)	
<a href="#">0269</a>	Transcript of phone call between Heed and Pinnock on 31 December 2018	November 27, 2020
	<b>PANEL: MICHAEL BARRON &amp; TIMOTHY LAW (November 27, 2020)</b>	
<a href="#">0270</a>	Curriculum Vitae – Michael Barron	November 27, 2020
<a href="#">0271</a>	Curriculum Vitae – Timothy Law	November 27, 2020
<a href="#">0272</a>	Towards a Global Norm of Beneficial Ownership – A scoping study on a strategic approach to achieving a global norm – March 2019	November 27, 2020
<a href="#">0273</a>	Canada’s 2018-2020 National Action Plan on Open Government	November 27, 2020
<a href="#">0274</a>	FATF Best Practices on Beneficial Ownership for Legal Persons – October 2019	November 27, 2020
<a href="#">0275</a>	Ministry of Finance Briefing Document – Company Beneficial Ownership Consultation – Summary – May 26, 2020	November 27, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0276</a>	Response to BC Government's Consultation on a Public Beneficial Ownership Registry – from Michael Barron – April 29, 2020	November 27, 2020
<a href="#">0277</a>	Global Witness – Learning the lessons from the UK's public beneficial ownership register – October 2017.	November 27, 2020
	<b>BENEFICIAL OWNERSHIP TRANSPARENCY PANEL: JAMES COHEN, PETER DENT, MORA JOHNSON &amp; CHRIS TAGGART (November 30, 2020)</b>	
<a href="#">0278</a>	Resume – James Cohen	November 30, 2020
<a href="#">0279</a>	Biography – Peter Dent	November 30, 2020
<a href="#">0280</a>	Curriculum Vitae – Mora Johnson	November 30, 2020
<a href="#">0281</a>	Curriculum Vitae – Chris Taggart	November 30, 2020
<a href="#">0282</a>	Transparency International Canada, Ending Canada's Snow-Washing Problem with a Publicly Accessible Beneficial Ownership Registry – An Advocacy Handbook, April 2020	November 30, 2020
<a href="#">0283</a>	Mora Johnson: Submission to the Cullen Commission – November 2020	November 30, 2020
<a href="#">0284</a>	Transparency International Canada, Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options, 2020	November 30, 2020
<a href="#">0285</a>	BC Beneficial Ownership Consultation Submission, Deloitte (Peter Dent), 2020	November 30, 2020
<a href="#">0286</a>	BC Beneficial Ownership Consultation Submission, TI Coalition, 2020	November 30, 2020
<a href="#">0287</a>	Opencorporates, EU Company Data: State of the Union 2020 – How Poor Access to Company Data is Undermining the EU, 2020	November 30, 2020
<a href="#">0288</a>	Opencorporates, US Company Data: State of the Union 2020 – How Accessible is official company register data in the US, 2020	November 30, 2020
<a href="#">0289</a>	UK Department for Business, Energy and Industry Strategy Review of the Implementation of the PSC Register, March 2019	November 30, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0290</a>	Mora Johnson, A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis, October 2019	November 30, 2020
<a href="#">0291</a>	Transparency International Canada, Technical Briefing Note – Comparison of Information Fields Amongst Beneficial Registries in International Jurisdictions (2020)	November 30, 2020
<a href="#">0292</a>	Transparency International Canada, Technical Briefing Note – Necessary Components and Considerations for a Publicly Accessible, Pan-Canadian Company Registry of Beneficial Owners (2020)	November 30, 2020
	<b>CAROL PREST (December 1, 2020)</b>	
<a href="#">0293</a>	BC Registries Budget (Excel spreadsheet)	December 1, 2020
<a href="#">0294</a>	Structure of BC Registries	December 1, 2020
<a href="#">0295</a>	Active Entities (Excel spreadsheet)	December 1, 2020
<a href="#">0296</a>	Types of Registered Entities – Questions and Answers	December 1, 2020
<a href="#">0297</a>	“Nature of Business” Occurring More than 200 Times – May 25, 2020 (Excel spreadsheet)	December 1, 2020
<a href="#">0298</a>	Incorporators Showing How Many Corporations (No Xpro) They Incorporated Since 2020 (Excel spreadsheet)	December 1, 2020
<a href="#">0299</a>	Directors / Officers Showing How Many Corporations (Including XPro) They Were Appointed to Since 2010 (Excel spreadsheet)	December 1, 2020
<a href="#">0300</a>	Directors / Officers – Questions and Answers	December 1, 2020
<a href="#">0301</a>	Searches – BC Onlines and Corporate searches	December 1, 2020
<a href="#">0302</a>	Enforcement – Question and Answers	December 1, 2020
	<b>JOSEPH PRIMEAU (December 1, 2020)</b>	
<a href="#">0303</a>	BC MOF Briefing Document re Federal Proposal for Improving Beneficial Ownership Transparency in Canada – November 30, 2017	December 1, 2020
<a href="#">0304</a>	DOF Canada, Agreement to Strengthen Beneficial Ownership Transparency – July 11, 2019	December 1, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0305</a>	BC MOF Briefing Document re Exemptions to the Corporate Transparency Register Requirement in the Business Corporations Act – November 28, 2019	December 1, 2020
<a href="#">0306</a>	BC MOF Briefing Document re Effective Date of Beneficial Ownership Transparency Register – May 31, 2019	December 1, 2020
<a href="#">0307</a>	BC MOF Briefing document re Consultation for a publicly accessible, government-maintained transparency registry of the significant individuals of BC private companies – September 18, 2019	December 1, 2020
<a href="#">0308</a>	BC MOF Briefing Document re Company Beneficial Ownership Consultation – Summary – May 26, 2020	December 1, 2020
<a href="#">0309</a>	A collection of emails – Beneficial Ownership Transparency consultation submissions	December 1, 2020
<a href="#">0310</a>	BC MOF – Money Service Businesses Public Consultation Paper – March 2020	December 1, 2020
<a href="#">0311</a>	BC MOF Briefing Document re Money Services Businesses Consultation – Summary – June 8, 2020	December 1, 2020
	<b>GRAHAM BARROW (December 2, 2020)</b>	
<a href="#">0312</a>	Curriculum Vitae – Graham Barrow	December 2, 2020
<a href="#">0313</a>	UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform – 18 September 2020	December 2, 2020
<a href="#">0314</a>	Canadian Entities Involved in Global Laundromat Style Company Formations	December 2, 2020
	<b>WAYNE HOLLAND (December 2, 2020)</b>	
<a href="#">0315</a>	IIGET Status Report – IIGET Consultative Board Meeting – July 25, 2007	December 2, 2020
<a href="#">0316</a>	IIGET Consultative Board Meeting Agenda – December 16, 2008	December 2, 2020
<a href="#">0317</a>	Email from Kevin Begg, Re: Media A-TIP-IIGET – December 17, 2009	December 2, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>BARBARA MCISAAC (December 3, 2020)</b>	
<a href="#">0318</a>	Curriculum Vitae – Barbara McIsaac, QC	December 3, 2020
<a href="#">0319</a>	Report for the Cullen Commission on Privacy Laws and Information Sharing – November 17, 2020	December 3, 2020
<a href="#">0320</a>	OPCC – Financial Transactions and Reports Analysis Centre of Canada Audit Report of the Privacy Commissioner of Canada (2013)	December 3, 2020
<a href="#">0321</a>	OPCC – Financial Transactions and Reports Analysis Centre of Canada Audit Report of the Privacy Commissioner of Canada (2017)	December 3, 2020
	<b>OVERVIEW REPORTS: QUANTIFICATION SECTOR (December 4, 2020)</b>	
<a href="#">0322</a>	Overview Report: Simplified Text on Quantification of Money Laundering	December 4, 2020
<a href="#">0323</a>	Overview Report: Quantification of Money Laundering	December 4, 2020
	<b>BRIGITTE UNGER (December 4, 2020)</b>	
<a href="#">0324</a>	Curriculum Vitae – Dr. Brigitte Unger	December 4, 2020
<a href="#">0325</a>	Slides – Regarding controversy between criminologists and economists on measuring money laundering and on politics based on real numbers- Prof. Unger	December 4, 2020
<a href="#">0326</a>	Measuring Global Money Laundering – The Walker Gravity Model (Review of Law and Economics) (Unger & Walker) (2009)	December 4, 2020
<a href="#">0327</a>	How Big is Global Money Laundering (Journal of Money Laundering Control) (Walker) (1999)	December 4, 2020
<a href="#">0328</a>	Estimating Money Laundering Flows with a Gravity model Based Simulation (Unger et al 2020)	December 4, 2020
<a href="#">0329</a>	Slides – Scientific Reports 2020	December 4, 2020
<a href="#">0330</a>	Combatting Money Laundering in BC Real Estate (“The Maloney Report”)	December 4, 2020
<a href="#">0331</a>	Estimating Illicit Financial Flows, UNODC (Unger and Walker) (October 2011)	December 4, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0332</a>	Gravity models of trade-based money laundering – Applied Economics 45 (Ferwerda & Unger) (2013)	December 4, 2020
	<b>PANEL: MARTIN BOUCHARD &amp; MICHAEL-JOHN MILLOY (December 7, 2020)</b>	
<a href="#">0333</a>	Curriculum Vitae – Dr. Martin Bouchard	December 7, 2020
<a href="#">0334</a>	Curriculum Vitae – Dr. Michael-John Milloy	December 7, 2020
<a href="#">0335</a>	Research Report Estimating the size of the fentanyl market in British Columbia, October 26, 2020	December 7, 2020
	<b>PANEL: JONATHAN CAULKINS &amp; PETER REUTER (December 8, 2020)</b>	
<a href="#">0336</a>	Curriculum Vitae – Jonathan Caulkins	December 8, 2020
<a href="#">0337</a>	White Paper on Relating the Size of Illegal Markets to Associated Amounts of Money Laundered – November 19, 2020	December 8, 2020
	<b>OVERVIEW REPORTS: TRADE BASED MONEY LAUNDERING SECTOR (December 9, 2020)</b>	
<a href="#">0338</a>	Overview Report: Canada’s Customs Mutual Assistance Agreements	December 9, 2020
<a href="#">0339</a>	Overview Report: Trade-Based Money Laundering Publications and Records	December 9, 2020
	<b>JOHN CASSARA (December 9, 2020)</b>	
<a href="#">0340</a>	Biography – J. Cassara	December 9, 2020
<a href="#">0341</a>	Final Statement by John A. Cassara	December 9, 2020
	<b>TRADE BASED MONEY LAUNDERING PANEL: JOEL GIBBONS, SGT. SUSHILE SHARMA &amp; C/M BRYANNA GATELEY (December 10 &amp; 11, 2020)</b>	
<a href="#">0342</a>	Curriculum Vitae – Joel Gibbons	December 10, 2020
<a href="#">0343</a>	Curriculum Vitae – Sushile Sharma	December 10, 2020
<a href="#">0344</a>	Curriculum Vitae – Bryanna Gateley	December 10, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0345</a>	Government of Canada, Trade-Based Money Laundering Overview, presented April 1, 2020.	December 10, 2020
<a href="#">0346</a>	FINTRAC, Professional money laundering through trade and money services businesses, July 18, 2018.	December 11, 2020
<a href="#">0347</a>	CBSA, Trade-Based Money Laundering 101, June 5, 2019.	December 11, 2020
<a href="#">0348</a>	RCMP Trade-Based Money Laundering: A Law Enforcement Perspective	December 11, 2020
<a href="#">0349</a>	CBSA, Backgrounder: Trade-Based Money Laundering in Canada, September 10, 2019	December 11, 2020
<a href="#">0350</a>	CBSA, Trade Fraud & Trade-Based Money Laundering Centre of Expertise, 101 Overview, April 2020	December 11, 2020
<a href="#">0351</a>	CBSA, CBSA Knowledge Pool on Trade-Based Money Laundering, undated.	December 11, 2020
<a href="#">0352</a>	Criminal Intelligence Service British Columbia & Yukon Territory, CISCBC/YT 2016 Provincial Threat Assessment, Part “B”, undated.	December 11, 2020
<a href="#">0353</a>	Criminal Intelligence Service British Columbia & Yukon Territory, CISCBC/YT 2017 Provincial Threat Assessment, Part “B”, undated.	December 11, 2020
<a href="#">0354</a>	Criminal Intelligence Service British Columbia & Yukon Territory, CISCBC/YT 2018 Provincial Threat Assessment, Part “B”, undated.	December 11, 2020
<a href="#">0355</a>	Criminal Intelligence Service British Columbia & Yukon Territory, CISBC-YT Money Laundering Collection Initiative (2018), May 3, 2018.	December 11, 2020
<a href="#">0356</a>	Criminal Intelligence Service British Columbia & Yukon Territory, General Framework of how TBML fits into the ML Process, February 13, 2018.	December 11, 2020
<a href="#">0357</a>	CBSA, COVID-19 Implications for Trade Fraud, April, 2020.	December 11, 2020
<a href="#">0358</a>	CBSA, Trade-Based Money Laundering Overview, June 8, 2020	December 11, 2020
<a href="#">0359</a>	CBSA, Electronics and Canadian Goods Returned/ The Abuse of Tariff Codes 9813 and 9814 in TBML ICAP, October 1, 2020.	December 11, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>PROF. JOHN ZDANOWICZ (December 11, 2020)</b>	
<a href="#">0360</a>	Biography – John Zdanowicz	December 11, 2020
<a href="#">0361</a>	Review of Law & Economics Article by John Zdanowicz, TBML and Terrorist Financing – 2009	December 11, 2020
<a href="#">0362</a>	Canada International Trade Pricing Analysis 2015	December 11, 2020
<a href="#">0363</a>	Canada International Trade Pricing Analysis 2016	December 11, 2020
<a href="#">0364</a>	Canada International Trade Pricing Analysis 2017	December 11, 2020
<a href="#">0365</a>	Canada International Trade Pricing Analysis 2018	December 11, 2020
<a href="#">0366</a>	Canada International Trade Pricing Analysis 2019	December 11, 2020
<a href="#">0367</a>	Excel Spreadsheet, BC Money In – Exports Over 2019	December 11, 2020
<a href="#">0368</a>	Excel Spreadsheet, BC Money In – Imports Under 2019	December 11, 2020
<a href="#">0369</a>	Excel Spreadsheet, BC Money Out – Imports Over 2019	December 11, 2020
<a href="#">0370</a>	Excel Spreadsheet, BC Money Out – Exports Under 2019	December 11, 2020
<a href="#">0371</a>	TBML in Canada and BC, 2015-2019 – undated	December 11, 2020
<a href="#">0372</a>	Slide Presentation by John Zdanowicz, TBML – undated	December 11, 2020
	<b>OVERVIEW REPORTS: ASSET FORFEITURE SECTOR (December 14, 2020)</b>	
<a href="#">0373</a>	Overview Report: Asset Forfeiture in British Columbia	December 14, 2020
<a href="#">0374</a>	Overview Report: Reports Related to Asset Forfeiture and Unexplained Wealth Legislation in Jurisdictions outside of Canada	December 14, 2020
<a href="#">0375</a>	Overview Report: Asset Forfeiture in Ireland and Selected Writings of Dr. Colin King	December 14, 2020
<a href="#">0376</a>	Overview Report: Selected Writings of Dr. Natalie Skead	December 14, 2020
	<b>JEFFREY SIMSER (December 14, 2020)</b>	
<a href="#">0377</a>	Curriculum Vitae – Jeffrey Simser	December 14, 2020

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0378</a>	Civil Asset Forfeiture in Canada by Jeffrey Simser	December 14, 2020
<a href="#">0379</a>	Seizing Family Homes from the Innocent by Louis Rulli	December 14, 2020
	<b>PANEL: HELENA WOOD &amp; ANTON MOISEIENKO (December 15, 2020)</b>	
<a href="#">0380</a>	Curriculum Vitae – Helena Wood	December 15, 2020
<a href="#">0381</a>	Curriculum Vitae – Anton Moiseienko	December 15, 2020
<a href="#">0382</a>	Unexplained Wealth Orders: UK Experience and Lessons for BC – October 2020	December 15, 2020
	<b>ASSET FORFEITURE PANEL: DR. COLIN KING, DET. INSP. BARRY BUTLER &amp; KEVIN MCMEEL (December 16, 2020)</b>	
<a href="#">0383</a>	Curriculum Vitae – Colin King	December 16, 2020
<a href="#">0384</a>	Barry Butler Career History Summary	December 16, 2020
<a href="#">0385</a>	Kevin McMeel Career History Summary	December 16, 2020
<a href="#">0386</a>	Slide deck – Criminal Assets Bureau Structure and Legislation – Kevin McMeel, December 16, 2020	December 16, 2020
<a href="#">0387</a>	Civil Processes and Tainted Assets: Exploring Canadian Models of Forfeiture, Michelle Gallant – Ch 8 – 2014	December 16, 2020
	<b>NATALIE SKEAD (December 17, 2020)</b>	
<a href="#">0388</a>	Curriculum Vitae – Dr. Natalie Skead	December 17, 2020
	<b>PHIL TAWTEL (December 18, 2020)</b>	
<a href="#">0389</a>	Affidavit 1 of Phil Tawtel	December 18, 2020
<a href="#">0390</a>	Patrick Daley, “Civil Asset Forfeiture: An Economic Analysis of Ontario and British Columbia” – 2014	December 18, 2020
	<b>OVERVIEW REPORTS: PROFESSIONAL (ACCOUNTING) SECTOR (January 11, 2021)</b>	
<a href="#">0391</a>	Overview Report: Accounting Sector in British Columbia – Dec 17, 2020	January 11, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>MATT MCGUIRE (January 11, 2021)</b>	
<a href="#">0392</a>	Curriculum Vitae – Matt McGuire	January 11, 2021
<a href="#">0393</a>	CPA Guide to Comply with Canada’s Anti–Money Laundering (AML) Legislation prepared by MNP LLP	January 11, 2021
<a href="#">0394</a>	Report on Accountants, Money Laundering, and Anti–Money Laundering prepared by the amlSHOP October 19, 2020 and updated December 31, 2020	January 11, 2021
<a href="#">0395</a>	CPA Canada Meeting Minutes, March 4, 2015	January 11, 2021
<a href="#">0396</a>	Department of Finance Canada, Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada (2015)	January 11, 2021
<a href="#">0397</a>	CPA Canada, Alert: Proceedings of Crime (Money Laundering) and Terrorist Financing – Know Your Obligations (July 2015).	January 11, 2021
<a href="#">0398</a>	BC’s Public Registry to Combat Money Laundering: Broken on Arrival, by Kevin Comeau, C.D. Howe Institute – Commentary No. 583, Nov 2020	January 11, 2021
	<b>CHARTERED PROFESSIONAL ACCOUNTANTS OF BC PANEL: EDWARD TANAKA &amp; LISA ENG-LIU (January 12, 2021)</b>	
<a href="#">0399</a>	CPABC Strategy, Governance, Risk & Human Resource AudioWeb – Anti–Money Laundering: An Interactive Overview	January 12, 2021
<a href="#">0400</a>	CPA Memo from Lisa Eng-Liu, Re: Possible opportunities for education, December 21, 2020	January 12, 2021
<a href="#">0401</a>	Public Practice Committee Meeting Minutes – September 11, 2020	January 12, 2021
<a href="#">0402</a>	Public Practice Committee Data Sheet, Pre-Reading #6 dated September 4, 2020	January 12, 2021
<a href="#">0403</a>	CPABC Review of McGuire Report on Accountants – Jan 7, 2021	January 12, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>CHARTERED PROFESSIONAL ACCOUNTANTS OF CANADA PANEL: DR. JOSE HERNANDEZ &amp; MICHELE WOOD-TWEEL (January 13, 2021)</b>	
<a href="#">0404</a>	Curriculum Vitae – Michele Wood-Tweel	January 13, 2021
<a href="#">0405</a>	Curriculum Vitae – Jose Hernandez	January 13, 2021
<a href="#">0406</a>	CPAC Background Report on CPA Canada’s AML Activities	January 13, 2021
<a href="#">0407</a>	Anti–Money Laundering & Anti-Terrorist Financing Committee of the Chartered Professional Accountants of Canada – Terms of Reference – February 2015	January 13, 2021
<a href="#">0408</a>	FINTRAC presentation – Anti–Money Laundering and Anti– Terrorism Financing in Canada (CPA Canada) – March 4, 2015	January 13, 2021
<a href="#">0409</a>	CPA Canada Alert – Proceeds of Crime (Money Laundering) and Terrorist Financing – Know your Obligations, July 2015	January 13, 2021
	<b>NICHOLAS MAXWELL (January 14, 2021)</b>	
<a href="#">0410</a>	Curriculum Vitae – Nick Maxwell	January 14, 2021
<a href="#">0411</a>	Canada in Context: FFIS Briefing Paper to the Cullen Commission – January 4, 2021	January 14, 2021
<a href="#">0412</a>	FFIS, Case Studies of the Use of Privacy Preserving Analysis – June 2020 Version	January 14, 2021
<a href="#">0413</a>	FFIS, Case Studies of the Use of Privacy Preserving Analysis – January 2021	January 14, 2021
<a href="#">0414</a>	Government Response to the 24th report of the House of Commons Standing Committee on Finance	January 15, 2021
	<b>CHRIS ELGAR (January 15, 2021)</b>	
<a href="#">0415</a>	BCFSA Organizational Chart November 30, 2019	January 15, 2021
<a href="#">0416</a>	Office of the Superintendent of Financial Institutions Canada guideline, Deterring and Detecting Money Laundering and Terrorist Finance no. B-8 dated December 2008	January 15, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0417</a>	FICOM Letter from Frank Chong to All Provincially Regulated Financial Institution May 5, 2016	January 15, 2021
<a href="#">0418</a>	BCFSA Risk Matrix	January 15, 2021
<a href="#">0419</a>	Memorandum of Understanding January 9, 2005	January 15, 2021
<a href="#">0420</a>	FICOM – Reporting Statistics Update: Fiscal Year 2017–2018	January 15, 2021
<a href="#">0421</a>	FINTRAC ComPack	January 15, 2021
<a href="#">0422</a>	BCSFA Advisory Number re 20-002 2020/2021 Regulatory Roadmap dated November 5, 2020	January 15, 2021
<a href="#">0423</a>	BCFSA 2020/21 – 2022/23 Service Plan February 2020	January 15, 2021
<a href="#">0424</a>	BCFSA Letter from Frank Chong re New Regulatory Guidance Terminology August 11, 2020	January 15, 2021
	<b>WHITE LABEL ATM PANEL: CHRIS CHANDLER, KIRKLAND MORRIS &amp; MELANIE PADDON (January 15, 2021)</b>	
<a href="#">0425</a>	Curriculum Vitae – Melanie D. Paddon	January 15, 2021
<a href="#">0426</a>	Curriculum Vitae – Chris Chandler	January 15, 2021
<a href="#">0427</a>	Biography – Kirkland Morris	January 15, 2021
<a href="#">0428</a>	Interac – Number of WLATMs in BC since 2010	January 15, 2021
<a href="#">0429</a>	RCMP Criminal Intelligence – Project Scot, November 10, 2008	January 15, 2021
<a href="#">0430</a>	WLTM Brief – Department of Finance, March 5, 2020	January 15, 2021
<a href="#">0431</a>	ATMs in Context: Debunking the myth that ATMs present a material risk for organized crime money laundering	January 15, 2021
<a href="#">0432</a>	Actual versus Perceived Risks of Money Laundering at White-Label ATMs in Canada – 2017	January 15, 2021
<a href="#">0433</a>	Not public by order of the Commissioner	January 15, 2021
<a href="#">0434</a>	Interac – Overview WLCO Regs, 2020	January 15, 2021
<a href="#">0435</a>	Not public by order of the Commissioner	January 15, 2021
<a href="#">0436</a>	Confronting Money Laundering and Terrorist Financing – Standing Committee Report	January 15, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>MONEY SERVICES BUSINESSES – INDUSTRY &amp; POLICING PANEL: MICHAEL COX, JOSEPH IUSO &amp; MEGAN NETTLETON (January 18, 2021)</b>	
<a href="#">0437</a>	CISBC/YT – Provincial Threat Assessment 2018	January 18, 2021
<a href="#">0438</a>	CISBC/YT – Report – Money Service Businesses – Nov 1, 2018	January 18, 2021
<a href="#">0439</a>	Email exchange between Christian Nordin and Joseph Iuso March and April 2020	January 18, 2021
<a href="#">0440</a>	Money Services Businesses Public Consultation Paper – March 2020	January 18, 2021
	<b>MONEY SERVICES BUSINESSES – FINTRAC PANEL: DONNA ACHIMOV, BARRY MACKILLOP &amp; ANNETTE RYAN (January 18, 2021)</b>	
<a href="#">0441</a>	Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs) FINTRAC Typologies and Trends Reports – July 2010	January 18, 2021
<a href="#">0442</a>	Professional Money Laundering in Canada – March 2019	January 18, 2021
<a href="#">0443</a>	“Trends in Canadian Suspicious Transaction Reporting (STR) FINTRAC Typologies and Trends Reports – April 2011” – April 1, 2011	January 18, 2021
<a href="#">0444</a>	Trends in Canadian Suspicious Transaction Reporting (STR) – Part II – Oct 1, 2011	January 18, 2021
<a href="#">0445</a>	Financial Intelligence Report Criminal Informal Value Transfer Systems (IVTS) – February 2016	January 18, 2021
<a href="#">0446</a>	FINTRAC Statistics Letter – January 15th, 2021	January 18, 2021
<a href="#">0447</a>	FINTRAC Report to the Minister of Finance on Compliance and Related Activities – Sept 30, 2017	January 18, 2021
<a href="#">0448</a>	2018 FINTRAC’s Report to the Minister of Finance on Compliance and Related Activities – September 2018	January 18, 2021
<a href="#">0449</a>	List of Compliance Engagement Activities 2017–18 to 2019–20	January 18, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>CREDIT UNIONS' CHIEF ANTI-MONEY LAUNDERING OFFICERS PANEL: EZEKIEL CHHOA, LINDZEE HERRING &amp; ERIN TOLFO (January 19, 2021)</b>	
<a href="#">0450</a>	Biography – Ezekiel Chhoa	January 19, 2021
<a href="#">0451</a>	Biography – Lindzee Herring	January 19, 2021
<a href="#">0452</a>	Biography – Erin Tolfo	January 19, 2021
<a href="#">0453</a>	Brief of Kevin Comeau to FINA Committee respecting proposed changes to PCMLTFA, June 12, 2018	January 19, 2021
	<b>BANKS' CHIEF ANTI-MONEY LAUNDERING OFFICERS PANEL – IN-CAMERA HEARING: STUART DAVIS, JAY STARK &amp; GEORGIA STAVRIDIS (January 19, 2021)</b>	
<a href="#">0454</a>	Curriculum Vitae – Stuart Davis	January 19, 2021
<a href="#">0455</a>	Biography – Jay Stark	January 19, 2021
<a href="#">0456</a>	Biography – Georgia Stavridis	January 19, 2021
<a href="#">0457</a>	Not public by order of the Commissioner	January 19, 2021
<a href="#">0458</a>	Meeting minutes – Project Athena – April 24, 2019	January 19, 2021
	<b>ANNA GABRIELE (January 20, 2021)</b>	
<a href="#">0459</a>	Email from Alezandra Andreu re Project Athena casino patrons list Oct 2018 – January 9, 2019	January 20, 2021
<a href="#">0460</a>	Email from Melanie Paddon re Project Athena June 2018 – August 14, 2018	January 20, 2021
<a href="#">0461</a>	Combined Forces Special Enforcement Unit British Columbia – Project Athena Stakeholders Meeting Agenda – January 23, 2019	January 20, 2021
<a href="#">0462</a>	Email from Ben Robinson re Project Athena Update – January 24th, 2019	January 20, 2021
<a href="#">0463</a>	Email from Melanie Paddon re Project Athena, Jan 2019 – March 21, 2019	January 20, 2021
<a href="#">0464</a>	TD – Project Athena: A Public/Private Partnership presentation – Undated	January 20, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0465</a>	Email from Anna Gabriele re Project Athena – May 17, 2019	January 20, 2021
<a href="#">0466</a>	Email from Kevin Doherty re Project Athena – June 21, 2019	January 20, 2021
<a href="#">0467</a>	Email from Amy Hellen re Project Athena advisory role, – November 7, 2019	January 20, 2021
<a href="#">0468</a>	Message from Anna Gabriele and Kevin Doherty re TDs involvement with Project Athena – July 11, 2019	January 20, 2021
<a href="#">0469</a>	Project Athena Meeting Minutes – July 24, 2019	January 20, 2021
<a href="#">0470</a>	Email from Dermot Hickey re Project Athena, customer review – November 28, 2019	January 20, 2021
<a href="#">0471</a>	Email from Anna Gabriele re Project Athena meeting date with Amy H. – January 7, 2020	January 20, 2021
	<b>MICHAEL BOWMAN (January 20, 2021)</b>	
<a href="#">0472</a>	Email from Melanie Paddon re Project Athena bank drafts for July 2018 – September 27, 2018	January 20, 2021
<a href="#">0473</a>	Caitlin Riddolls Interview – October 21, 2020	January 20, 2021
<a href="#">0474</a>	Letter to Michael Bowman re: Misuse of Bank Drafts, TDs Response – March 20, 2020	January 20, 2021
<a href="#">0475</a>	Letter from Michael Bowman re: Misuse of Bank Drafts, TDs Response – June 15, 2020	January 20, 2021
<a href="#">0476</a>	Project Athena Stakeholders Meeting minutes – October 24th, 2018	January 20, 2021
<a href="#">0477</a>	Email from Kevin Doherty re Project Athena – May 13, 2019	January 20, 2021
<a href="#">0478</a>	Michael Bowman Interview – October 22, 2020	January 20, 2021
	<b>MAGGIE CHIU (January 21, 2021)</b>	
<a href="#">0479</a>	Not public by order of the Commissioner	January 21, 2021
	<b>ADDITIONAL DOCUMENTS (January 21, 2021)</b>	
<a href="#">0480</a>	Affidavit 1 of Bill Lang	January 21, 2021
<a href="#">0481</a>	Affidavit 1 of Gurmit Aujla	January 21, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>CATERINA CUGLIETTA (January 21, 2021)</b>	
<a href="#">0482</a>	Affidavit 1 of Caterina Cuglietta	January 21, 2021
<a href="#">0483</a>	A report to John Karlovcec, re: STR Trend Analysis, prepared by Cathy Cuglietta – July 18, 2018	January 21, 2021
	<b>KEVIN DEBRUYCKERE (January 21, 2021)</b>	
<a href="#">0484</a>	Affidavit 2 of Kevin deBruyckere	January 21, 2021
<a href="#">0485</a>	Affidavit 3 of Kevin deBruyckere	January 21, 2021
	<b>DEREK DICKSON (January 22, 2021)</b>	
<a href="#">0486</a>	Email exchange between Kris Gade and Derek Dickson, re: Confirmation Requested – March 13, 2015	January 22, 2021
<a href="#">0487</a>	Memo Organized Crime Groups	January 22, 2021
	<b>JOE SCHALK (January 22, 2021)</b>	
<a href="#">0488</a>	Letter from Joe Schalk re Suspicious Currency Transactions/Money Laundering Review Report – Dec 27, 2012	January 22, 2021
<a href="#">0489</a>	Email exchange between Douglas Scott and Michael Graydon, re: GPEB letter – Privileged and Confidential – Jan 18, 2013	January 22, 2021
	<b>ROBERT KROEKER (January 25 &amp; 26, 2021)</b>	
<a href="#">0490</a>	Affidavit 1 of Robert Kroeker	January 25, 2021
<a href="#">0491</a>	Emails Re: Story showing how vigilant Great Canadian Gaming is at preventing money laundering – Aug 26, 2015	January 26, 2021
<a href="#">0492</a> <a href="#">(A)</a> , <a href="#">(B)</a>	1. Email from Brad Desmarais Re: RR File 2014-52094 – April 16, 2018 2. Chart of Suspicious Transactions by Patrons and BCLCs Enforcement Actions	January 26, 2021
<a href="#">0493</a>	Corporate Security & Compliance AML Document – September 8, 2015	January 26, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0494</a>	A spreadsheet with five incident reports from different casinos, dated between Feb 14, 2015 and May 13, 2015	January 26, 2021
<a href="#">0495</a>	BCLC Information note COMM-8669 Final Report – May 11, 2018	January 26, 2021
<a href="#">0496</a>	Email from Rob Kroeker re MNP Audit Investigations and AML Response, Jul 19 2016	January 26, 2021
<a href="#">0497</a>	GPEB Section 86 Report re Alleged Service Provider non-compliance to PCMLTFA, Jan 18 2016	January 26, 2021
<a href="#">0498</a>	Consent Order of Federal Court, between BCLC and AG of Canada – July 2017	January 26, 2021
<a href="#">0499</a>	Resignation letter of Ross Alderson – 3 October 2017	January 25, 2021
	<b>OVERVIEW REPORTS: GAMING SECTOR (January 27, 2021)</b>	
<a href="#">0500</a>	Overview Report: Ministry Service Plans – Ministries Responsible for Gaming	January 27, 2021
<a href="#">0501</a>	Overview Report: BCLC Shareholder’s Letters of Expectations and Mandate Letters	January 27, 2021
<a href="#">0502</a>	Overview Report: British Columbia Lottery Corporation Service Plans	January 27, 2021
<a href="#">0503</a>	Overview Report: 1998–2001 BCLC Security Incident Reports Related to Loan Sharking, Money Laundering and Suspicious Transactions in British Columbia Casinos	January 27, 2021
	<b>CARY SKRINE (January 27, 2021)</b>	
<a href="#">0504</a>	Affidavit 1 of Cary Skrine	January 27, 2021
	<b>JAMES LIGHTBODY (January 28, 2021)</b>	
<a href="#">0505</a>	Affidavit 1 of Jim Lightbody	January 28, 2021
<a href="#">0506</a>	1-page undated notes of James Lightbody dealing with the conversation with Cheryl Wenezenki-Yolland.	January 28, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>DEREK STURKO (January 28, 2021)</b>	
<a href="#">0507</a>	Affidavit 1 of Derek Sturko	January 28, 2021
<a href="#">0508</a>	GPEB – Roles and Responsibilities of Participants in British Columbia’s Gaming Industry – February 22, 2010	January 28, 2021
<a href="#">0509</a>	Email from Bill McCrea, re: Money Laundering Risk Management, March 30, 2009	January 28, 2021
<a href="#">0510</a>	Emails re: Casino Lg Accounts, March 31, 2009	January 28, 2021
<a href="#">0511</a>	1. Emails from Bill McCrea re: BCLC Money Management Material, July 8, 2009 2. Money Laundering Risk Management – Comparison of GPE proposals, FINTRAC requirements and BCLC current practice – 8 July 2009	January 28, 2021
	<b>JAMES LIGHTBODY (January 29, 2021)</b>	
<a href="#">0512</a>	Letter from Jim Lightbody to John Mazure, re: Peter German recommendations, December 13, 2017	January 29, 2021
<a href="#">0513</a>	BCLC Minutes of the Meeting of the Board of Directors, 29 October 2015	January 29, 2021
<a href="#">0514</a>	BCLC Briefing – July 31, 2017	January 29, 2021
<a href="#">0515</a>	Pages of notes of James Lightbody, dated 1/17/18	January 29, 2021
<a href="#">0516</a>	1-page notes of James Lightbody, dated 1/17/18	January 29, 2021
	<b>TERRY TOWNS (January 29, 2021)</b>	
<a href="#">0517</a>	Affidavit 1 of Terry Towns	January 29, 2021
<a href="#">0518</a>	Email from Michael Graydon Re: Current Year Forecast Budget – December 1, 2011	January 29, 2021
<a href="#">0519</a>	Email from Michael Graydon Re: Year End Forecast – December 13, 2011	January 29, 2021
	<b>KEVIN SWEENEY (January 29, 2021)</b>	
<a href="#">0520</a>	Affidavit 1 of Kevin Sweeney	January 29, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0521</a>	BCLC Directive – Source of Funds Declaration – Effective date: January 10, 2018	January 29, 2021
	<b>BRAD DESMARAIS (February 1 &amp; 2, 2021)</b>	
<a href="#">0522</a>	Affidavit 1 of Brad Desmarais	February 1, 2021
<a href="#">0523</a>	BCLC Patron Risk Decision Tree	February 2, 2021
<a href="#">0524</a> <a href="#">(A, B, C)</a>	1. Email from Brad Desmarais to Jim Lightbody Re: Measurement Report to Ministry – March 14, 2013 2. Email from Jim Lightbody to Brad Desmarais re: Measurement Report to Ministry – March 15, 2013 3. Anti-Money Laundering in BC Gaming Measuring Performance Progress – draft – with comments	February 2, 2021
<a href="#">0525</a>	Letter from Douglas Scott, re: BCLC Request for Policy Change Regarding Casino Cheque Issuance – Sept 22, 2013	February 2, 2021
<a href="#">0526</a>	Email exchange between Brad Desmarais to Robert Scarpelli, Re: SP Job Loss in the event of reduction of High Limit Rooms and/or elimination of Cash Buy-Ins over \$10K – Oct 12, 2017	February 2, 2021
	<b>SUE BIRGE (February 3, 2021)</b>	
<a href="#">0527</a>	Affidavit 1 of Sue Birge	February 3, 2021
<a href="#">0528</a>	Email from Larry Vander Graaf to Bill McCrea and others, Re: Patron Gaming Fund Accounts Pilot – BCLC Report – Feb 25, 2011	February 3, 2021
	<b>ADDITIONAL DOCUMENT (February 3, 2021)</b>	
<a href="#">0529</a>	Affidavit 2 of Larry Vander Graaf	February 3, 2021
	<b>PATRICK ENNIS (February 3 &amp; 4, 2021)</b>	
<a href="#">0530</a>	Affidavit 1 of Patrick Ennis	February 3, 2021
<a href="#">0531</a>	BCLC High Limit Baccarat Evaluation – a report by Bill Zender and Associates – Feb 2017	February 3, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0532</a>	BCLC Incident Report 2016-0008580 at River Rock Casino Resort – 10 Feb 2016	February 3, 2021
<a href="#">0533</a>	Emails re: River Rock – Four Items Noted – Topic Tracking Sheeting & LCT Issues – November 2, 2015	February 3, 2021
<a href="#">0534</a>	Email from Patrick Ennis to Dave Pacey and Arlene Strongman, re: \$20 bills buy ins – Nov 8, 2010	February 3, 2021
<a href="#">0535</a>	BCLC Directive – FINTRAC Amendments effective June 17, 2017, dated Jun 15, 2017	February 3, 2021
<a href="#">0536</a>	BCLC forms – Reasonable Measures	February 3, 2021
	<b>BUD SMITH (February 4, 2021)</b>	
<a href="#">0537</a>	Affidavit 1 of Stuart Douglas Boland Smith	February 4, 2021
<a href="#">0538</a>	1. Email to Bud Smith from Jim Lightbody, re: Letter to Minister Re AML – Oct 24, 2015 2. A draft letter in response to the letter from the Minister regarding BCLC's AML approach	February 4, 2021
<a href="#">0539</a>	1. Email to Bud Smith from Jim Lightbody, re: Background material for tomorrow – Nov 17, 2015 2. BCLC Briefing for Minister Michael de Jong – Nov 18, 2015	February 4, 2021
<a href="#">0540</a>	Board Meeting – 29 October 2015 – Management Report – Corporate Security & Compliance	February 4, 2021
	<b>JOHN MAZURE (February 5, 2021)</b>	
<a href="#">0541</a>	Affidavit 1 of John Mazure	February 5, 2021
<a href="#">0542</a>	MOF Briefing Document, Title: Minimizing Unlawful Activity in BC Gambling Industry – Feb 6, 2015	February 5, 2021
<a href="#">0543</a>	MOF Briefing Document, Title: Table Limits in Casinos – Dec 13, 2013	February 5, 2021
<a href="#">0544</a>	BCLC letter from Michael Graydon to John Mazure, re: High Limit Table Changes – Dec 19, 2013	February 5, 2021
<a href="#">0545</a>	Letter from John Mazure to Michael Graydon – Dec 24, 2013	February 5, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0546</a>	MOF Gaming Policy and Enforcement Branch Review – Sept 18, 2014	February 5, 2021
<a href="#">0547</a>	GPEB Review: Investigations and Regional Operations and Audit and Compliance Divisions Review – Sept 18, 2014	February 5, 2021
<a href="#">0548</a>	MOF Briefing Document, Title: Internal operational review of the Gaming Policy & Enforcement Branch (GPEB) – Update – Nov 22, 2014	February 5, 2021
<a href="#">0549</a>	MOF Gaming Policy & Enforcement Briefing Note prepared for Cheryl Wenezenki-Yolland – Nov 26, 2014	February 5, 2021
<a href="#">0550</a>	MOF Briefing Document, Title: June 4 2015 Anti-Money Laundering Workshop “Exploring Common Ground, Building Solutions” – May 14, 2015	February 5, 2021
<a href="#">0551</a>	GPEB Meeting Highlights – Anti-Money Laundering Workshop: Exploring Common Ground – June 25, 2015	February 5, 2021
<a href="#">0552</a>	MOF Strategy Document, Title: Gaming Policy and Enforcement Branch’s Anti-Money Laundering Strategy: Phase 3 – Sept 3, 2015	February 5, 2021
<a href="#">0553</a>	MOF Briefing Document, Title: Options for issuing anti-money laundering directives to BCLC – Sept 1, 2015	February 5, 2021
<a href="#">0554</a>	MOF Briefing Document, Title: Anti-Money Laundering Strategy (Phase 3 Initiatives) – Date Requested: May 17, 2016	February 5, 2021
<a href="#">0555</a>	MOF Briefing Document, Title: 2016 MNP Report on Anti-Money Laundering Practices in Gaming Facilities – Sept 30, 2016	February 5, 2021
<a href="#">0556</a>	MOF Briefing Document, Title: Minister’s Direction to Manage Source of Funds in BC Gambling Facilities – Feb 2017	February 5, 2021
	<b>DOUG SCOTT (February 8, 2021)</b>	
<a href="#">0557</a>	Affidavit 1 of Douglas Scott	February 8, 2021
<a href="#">0558</a>	Emails re: Briefing Request-BCLC matter – May 6, 2019	February 8, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>WALTER SOO (February 9, 2021)</b>	
<a href="#">0559</a>	Affidavit 1 of Walter Soo	February 9, 2021
	<b>TERRANCE DOYLE (February 9 &amp; 10, 2021)</b>	
<a href="#">0560</a>	Affidavit 1 of Terrance Doyle	February 9, 2021
<a href="#">0561</a>	Email from Ross Alderson, re: [Patron name] Buy in Clarification, April 24, 2015	February 9, 2021
<a href="#">0562</a>	GCGC Business Case – River Rock Casino 3rd Floor High Limit Facilities Enhancements, October 2014	February 9, 2021
<a href="#">0563</a>	Email chain, re: patron [Patron name] (Incident 14-55769) – Nov 6, 2014	February 9, 2021
<a href="#">0564</a>	Email from Robert Kroeker to Terrance Doyle and others, re: AML-Granting of Credit – Feb 18, 2015	February 9, 2021
<a href="#">0565</a>	Email from Ross Alderson, re: Sanctions on high limit players – August 5, 2015	February 9, 2021
<a href="#">0566</a>	Email from Terrance Doyle to Andrea Lieuwen, re: Credit report – September 14, 2015	February 9, 2021
<a href="#">0567</a>	Letter from Ross Alderson to Pat Ennis, Re: BCLC Direction to RRCR regarding patron – December 18, 2015	February 9, 2021
<a href="#">0568</a>	Email from Terrance Doyle to Patrick Ennis, re: [Patron name] – Conditions to be imposed – Nov 10, 2015	February 9, 2021
<a href="#">0569</a>	River Rock UFT/STR Review completed by AML Unit – Feb 12, 2016	February 10, 2021
<a href="#">0570</a>	GPEB Internal Memo from Parminder Basi to Len Meilleur, re: Cash Flow Review of River Rock Casino High Limit Rooms – Dec 15, 2015	February 10, 2021
<a href="#">0571</a>	BCLC letter from Ross Alderson to Pat Ennis, re: large Cash Transaction Reporting at RRCR – April 21, 2017	February 10, 2021
<a href="#">0572</a>	Amended and Restated Casino Operational Services Agreement between BCLC and Great Canadian Casinos Inc, effective as at November 17, 2005	February 10, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>OVERVIEW REPORTS: GAMING SECTOR (February 11, 2021)</b>	
<a href="#">0573</a>	Overview Report: Ross Alderson	February 11, 2021
<a href="#">0574</a>	Overview Report: Casino Surveillance Footage	February 11, 2021
<a href="#">0575</a>	Overview Report: Briefing Documents, Briefing Notes, Issues Notes and Similar Documents Related to Suspicious Cash Transactions and Money Laundering in British Columbia Casinos	February 11, 2021
	<b>MICHAEL GRAYDON (February 11, 2021)</b>	
<a href="#">0576</a>	Affidavit 1 of Michael Graydon	February 11, 2021
<a href="#">0577</a>	Email from Michael Graydon, re Revenue – March 23, 2012	February 11, 2021
<a href="#">0578</a>	Email from Byron Hodgkin to Michael Graydon, re: Fintrac audit – Dec 14, 2012	February 11, 2021
<a href="#">0579</a>	Email from Bryon Hodgkin to Michael Graydon, Re: GPEB letter-Privileged and Confidential – January 7, 2013	February 11, 2021
	<b>JOHN MAZURE (February 11, 2021)</b>	
<a href="#">0580</a>	Presentation titled “Gaming Policy and Enforcement Branch Anti–Money Laundering (AML) Briefing” – January 2015	February 11, 2021
<a href="#">0581</a>	Presentation titled “Gaming Policy and Enforcement Branch and the British Columbia Lottery Corporation Present: Exploring Common Ground, Building Solutions” – June 4, 2015	February 11, 2021
<a href="#">0582</a>	Presentation by GPEB, titled “Minister of Finance Briefing Anti–Money Laundering (AML) Gaming Facilities” – April 4, 2016	February 11, 2021
<a href="#">0583</a>	Email chain, re: BCLC Briefing Note date January 22, 2017 – Jan 26, 2017 (with attachment)	February 11, 2021
<a href="#">0584</a>	MOF Briefing Document, Title: Minister’s Directive to Refuse Un sourced Cash in British Columbia Gambling Facilities – Jan, 2017	February 11, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0585</a>	Email chain, re: BN for Minister – 2016 MNP Report on Anti-Money Laundering Practices in BC – Oct 4, 2016 (with attachment)	February 11, 2021
<a href="#">0586</a>	Not public by order of the Commissioner	February 11, 2021
	<b>LEN MEILLEUR (February 12, 2021)</b>	February 12, 2021
<a href="#">0587</a>	Affidavit 1 of Joseph Emile Leonard Meilleur	February 12, 2021
<a href="#">0588</a>	Email from Len Meilleur to John Mazure, re Draft – AML Direction for discussion Nov 6, 2014 – Nov 12, 2014 (with attachment)	February 12, 2021
<a href="#">0589</a>	Email from Derek Dickson to Len Meilleur, re: AML – May 21, 2015	February 12, 2021
<a href="#">0590</a>	Email from Cal Chrustie, re: AML June 4 Workshop – Backgrounder – final draft – May 22, 2015	February 12, 2021
<a href="#">0591</a>	GPEB AML Timeline – Significant Events and GPEB Activities	February 12, 2021
<a href="#">0592</a>	Email from Derek Dickson to Len Meilleur, re: AML Strategies – Aug 31, 2015	February 12, 2021
<a href="#">0593</a>	GPEB Current Intelligence Report (CIR 16-005) November 8, 2016	February 12, 2021
<a href="#">0594</a>	GPEB Current Intelligence Report – CIR 17-002 January 19, 2017	February 12, 2021
<a href="#">0595</a>	GPEB Current Intelligence Report (CIR 17-003) February 17, 2017	February 12, 2021
<a href="#">0596</a>	GPEB Current Intelligence Report (CIR 17-004) March 17, 2017	February 12, 2021
<a href="#">0597</a>	GPEB Current Intelligence Report (CIR 17-006) May 5, 2017	February 12, 2021
<a href="#">0598</a>	Current Intelligence Report (CIR 17-009) August – September 2017	February 12, 2021
<a href="#">0599</a>	Email from Murray Dugger to Ross Alderson, re: BCLC Casino proposals – March 9, 2016	February 12, 2021
<a href="#">0600</a>	GPEB Internal Memo from Lynn Li to Len Meilleur, re: Review of Transactions from China’s Sky Net List of 100 Most Wanted Fugitives – April 29, 2016	February 12, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>OVERVIEW REPORTS – REAL ESTATE SECTOR (February 16, 2021)</b>	
<a href="#">0601</a>	Overview Report: Literature on Money Laundering and Real Estate & Response from Real Estate Industry	February 16, 2021
<a href="#">0602</a>	Overview Report: Lower Mainland Housing Prices	February 16, 2021
<a href="#">0603</a>	Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia	February 16, 2021
<a href="#">0604</a>	Overview Report: Registrar of Mortgage Brokers Discipline Orders	February 16, 2021
<a href="#">0605</a>	Overview Report: Mortgage Brokers Act Consultation	February 16, 2021
	<b>BC GOVT REGULATORS PANEL: CHRIS CARTER, BLAIR MORRISON &amp; MICHAEL NOSEWORTHY (February 16, 2021)</b>	
<a href="#">0606</a>	BC Financial Services Authority Organizational Chart – Nov 30, 2019	February 16, 2021
<a href="#">0607</a>	Real Estate Regulatory Structure Review prepared by Dan Perrin	February 16, 2021
<a href="#">0608</a>	Organizational chart – Office of the Superintendent of Real Estate – Nov 1, 2019	February 16, 2021
<a href="#">0609</a>	Mandate letter from Carol James to Dr. Stanley Hamilton – January 14, 2020	February 16, 2021
<a href="#">0610</a>	Vulnerabilities in mortgage lending (FICOM, CMHC)	February 16, 2021
<a href="#">0611</a>	OSRE Presentation to the Province’s Expert Panel on Money Laundering – January 23, 2019	February 16, 2021
<a href="#">0612</a>	Email from Jonathan Vandall, Re: 2019-08-20 Discussion Paper re Regulating Market Conduct v2 – Aug 29, 2019 (with attachment)	February 16, 2021
<a href="#">0613</a>	OSRE Briefing Document, re: Filing regulatory data and information gaps – Oct 24, 2019	February 16, 2021
	<b>REAL ESTATE COUNCIL OF BC PANEL: ERIN SEELEY &amp; DAVID AVREN (February 16 &amp; 17, 2021)</b>	
<a href="#">0614</a>	PPT presentation – Overview of RECBC – Jan 2019	February 16, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0615</a>	RECBC Memorandum of Understanding with FINTRAC – March 2019	February 16, 2021
<a href="#">0616</a>	Information Sharing Agreement between the Registrar of Mortgage Brokers and the Real Estate Council of BC – March 2005	February 16, 2021
<a href="#">0617</a>	RECBC Anti-Money Laundering in Real Estate online course materials	February 16, 2021
<a href="#">0618</a>	Report of the Independent Advisory Group – June 2016	February 16, 2021
<a href="#">0619</a>	RECBC Administrative Penalty Guidelines 2021	February 17, 2021
<a href="#">0620</a>	FINTRAC Overview – slide presentation to RECBC – May 2019	February 17, 2021
	<b>BC REAL ESTATE ASSOCIATION PANEL: DARLENE HYDE &amp; BRENDON OGMUNDSON (February 17, 2021)</b>	
<a href="#">0621</a>	Curriculum Vitae – Darlene Hyde	February 17, 2021
<a href="#">0622</a>	Curriculum Vitae – Brendon Ogmundson	February 17, 2021
<a href="#">0623</a> <a href="#">(A), (B),</a> <a href="#">(C), (D),</a> <a href="#">(E), (F)</a>	Mastering Compliance AML Training for Brokers: Module 1: Introduction and Culture of Compliance Module 2: Defining Roles and Responsibilities Module 3: Compliance Reporting and Record Keeping Module 5: Risk Assessments Module 7: The Training Program Module 8: Effectiveness Review and Examinations Part 1	February 17, 2021
<a href="#">0624</a>	BC Real Estate Sector Submits Anti-Money Laundering Recommendations to Government – April 15, 2019	February 17, 2021
<a href="#">0625</a>	Letter from Darlene Hyde to Expert Panel on Money Laundering, re: Proposal for risk assessment on money laundering in real estate – Dec 10, 2018	February 17, 2021
<a href="#">0626</a>	FINTRAC’S AML/TF Real Estate Sector Presentation – Sept 19, 2018	February 17, 2021
<a href="#">0627</a>	FINTRAC’s Meeting with the representatives of the Canadian Real Estate Association – June 5, 2018	February 17, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0628</a>	FINTRAC memorandum on issue: Money Laundering and Real Estate in British Columbia: Banking and Private Lenders – December 13, 2018	February 17, 2021
<a href="#">0629</a>	FINTRAC Report to the Minister of Finance on Compliance and Related Activities – Sept 30, 2019	February 17, 2021
<a href="#">0630</a>	FINTRAC Report to the Minister of Finance on Compliance and Related Activities – Sept 30, 2017	February 17, 2021
<a href="#">0631</a>	BCREA Market Intelligence Report – September 9, 2020: “The Unusual World of Pandemic Economics” – Why BC’s Housing Market Remains Strong Despite COVID-19	February 17, 2021
<a href="#">0632</a>	BCREA First Quarter Forecast Update – January 25, 2021	February 17, 2021
	<b>ALED AB IORWERTH (February 18, 2021)</b>	
<a href="#">0633</a>	Curriculum Vitae – Aled ab Iorwerth	February 18, 2021
	<b>HOUSING PRICES PANEL: PROF. JOSHUA GORDON, PROF. DAVID LEY &amp; PROF. TSUR SOMERVILLE (February 18, 2021)</b>	
<a href="#">0634</a>	Biography – Josh Gordon	February 18, 2021
<a href="#">0635</a>	Summary Curriculum Vitae – David Ley	February 18, 2021
<a href="#">0636</a>	Publications Summary of David Ley	February 18, 2021
<a href="#">0637</a>	Curriculum Vitae – Craig Tsurriel (Tsur) Somerville	February 18, 2021
<a href="#">0638</a>	Reconnecting the Housing Market: to the Labour Market: Foreign Ownership and Housing Affordability in Urban Canada, written by Joshua Gordon, March 2020	February 18, 2021
<a href="#">0639</a>	Slides for the Cullen Commission – Joshua Gordon, SFU	February 18, 2021
	<b>PROF. HENRY YU (February 19, 2021)</b>	
<a href="#">0640</a>	Curriculum Vitae – Henry Yu	February 19, 2021
<a href="#">0641</a>	Then and Now: Trans-pacific Ethnic Chinese Migrants – Henry Yu – January 2006	February 19, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0642</a>	Global migrants and the new Pacific Canada – International – Journal – Henry Yu – Autumn 2009	February 19, 2021
<a href="#">0643</a>	Review Essay – Is Vancouver the Future or the Past – Henry Yu - 2006	February 19, 2021
<a href="#">0644</a>	So you want to get your money out of China – Cut out and keep edition – FT Alphaville, by David Keohane – March 3, 2016	February 19, 2021
<a href="#">0645</a>	China Tightens Controls on Overseas Use of Its Currency – The New York Times – by Keith Bradsher – Nov 29, 2016	February 19, 2021
<a href="#">0646</a>	Chinese foreign property investment at 4-year low amid clampdown – Financial Times, by Gabriel Wildau – Nov 22, 2017	February 19, 2021
	<b>SAMANTHA GALE (February 22, 2021)</b>	
<a href="#">0647</a>	CMBA-BC Anti-Money Laundering Course Module – draft	February 22, 2021
<a href="#">0648</a>	What the German Report Got Wrong by Samantha Gale – Summer 2019	February 22, 2021
	<b>MICHAEL MCTAVISH (February 22, 2021)</b>	
<a href="#">0649</a>	Curriculum Vitae – Michael McTavish	February 22, 2021
<a href="#">0650</a>	FICOM Investigative Services, Review of Sample of Mortgage Transactions – Case file: INV11.343.48836	February 22, 2021
<a href="#">0651</a>	Case note: Meeting with RCMP – Case File: INV18.313.53758 – Filing date 03 Apr 2019	February 22, 2021
	<b>CPL. KAREN BEST (February 23, 2021)</b>	
<a href="#">0652</a>	Affidavit 1 of Karen Best	February 23, 2021
	<b>JAY CHAUDHARY (February 24, 2021)</b>	
<a href="#">0653</a>	Suspension Order In the matter of the Mortgage Brokers Act and Jay Kanth Chaudhary – October 16, 2008	February 24, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0654</a>	Investigation report on client files of Jay Chaudhary	February 24, 2021
<a href="#">0655</a>	Cease and Desist Order in the matter of the Mortgage Brokers Act and Jay Kanth Chaudhary – May 23, 2019	February 24, 2021
	<b>REAL ESTATE INVESTIGATOR: RAHEEL HUMAYAN (February 25, 2021)</b>	
<a href="#">0656</a>	Biography – Raheel Humayun	February 25, 2021
<a href="#">0657</a>	Organizational Chart – Office of the Superintendent of Real Estate – Feb 16, 2021	February 25, 2021
<a href="#">0658</a>	Letter to the Commission from Chantelle Rajotte, in response to Commission counsel’s information request – Jun 9, 2020	February 25, 2021
	<b>REAL ESTATE INVESTIGATOR: MICHAEL SCOTT (February 25, 2021)</b>	
<a href="#">0659</a>	Curriculum Vitae – Michael Scott	February 25, 2021
<a href="#">0660</a>	UBC RECBC AML in Real Estate Course Evaluation Report – Nov 17, 2020	February 25, 2021
<a href="#">0661</a>	Letter from FICOM to RECBC, re: Real Estate Licensees working with Jay Kanth Chaudhary – Jun 7, 2019	February 25, 2021
	<b>STEPHEN ELLIS (February 26, 2021)</b>	
<a href="#">0662</a>	Curriculum Vitae – Stephen Ellis	February 26, 2021
	<b>CPL. MELVIN CHIZAWSKY (March 1, 2021)</b>	
<a href="#">0663</a>	Affidavit of Cpl. Melvin Chizawsky	March 1, 2021
	<b>DELOITTE/QUANTEXA PANEL: ALEXON BELL, PETER DENT, BETH DEWITT &amp; DAVID STEWART (March 2, 2021)</b>	
<a href="#">0664</a>	Biography – Alexon Bell	March 2, 2021
<a href="#">0665</a>	Biography – Beth Dewitt	March 2, 2021
<a href="#">0666</a>	Biography – David Stewart	March 2, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0667</a>	Presentation – Application of Networks to detect and mitigate organized crime – March 2021	March 2, 2021
<a href="#">0668</a>	To Surveil and Predict – publication of University of Toronto – International Human Rights Program – 2020	March 2, 2021
	<b>BRAD RUDNICKI (March 2, 2021)</b>	
<a href="#">0669</a>	Curriculum Vitae – Brad Rudnicki	March 2, 2021
<a href="#">0670</a>	Real Estate Observations BCLC AML Unit 2019	March 2, 2021
<a href="#">0671</a>	Link Chart prepared by Brad Rudnicki – Nov 27, 2018	March 2, 2021
<a href="#">0672</a>	Analytical Concepts for Cullen Commission	March 2, 2021
	<b>QI LI (March 3, 2021)</b>	
<a href="#">0673</a>	Incident Report #IN20150017386 – April 2, 2015	March 3, 2021
<a href="#">0674</a>	Notice of Civil Claim – VLC-S-S-154010 – May 15, 2015	March 3, 2021
<a href="#">0675</a>	BCLC Banned Patron Subject Detailed sheet, printed July 30, 2020	March 3, 2021
	<b>IN-CAMERA HEARING (March 4, 2021)</b>	
<a href="#">0676</a>	Not public by order of the Commissioner	March 4, 2021
<a href="#">0677</a>	Not public by order of the Commissioner	March 4, 2021
<a href="#">0678</a>	Not public by order of the Commissioner	March 4, 2021
<a href="#">0679</a>	Not public by order of the Commissioner	March 4, 2021
	<b>SOCIETY OF NOTARIES PUBLIC OF BC PANEL: JOHN MAYR &amp; MARNY MORIN (March 5, 2021)</b>	
<a href="#">0680</a>	Resume – John Mayr	March 6, 2021
<a href="#">0681</a>	Resume – Marny Morin	March 6, 2021
<a href="#">0682</a>	SNPBC Organizational Chart 2021	March 6, 2021
<a href="#">0683</a>	SNPBC 2017-2020 Complaints Summary	March 6, 2021
<a href="#">0684</a>	The Conveyancing Web of Communication, Coordination, and Context, Version K – Oct 2020	March 6, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0685</a>	Conveyancing Cash Flow Charts v3, Oct 2020	March 6, 2021
<a href="#">0686</a>	ABC Solutions Training	March 6, 2021
	<b>FINANCE REAL ESTATE AND DATA ANALYTICS PANEL: CHRISTINA DAWKINS &amp; JOSEPH PRIMEAU (March 8, 2021)</b>	
<a href="#">0687</a>	FREDA Data Branch Strategy 2020	March 8, 2021
<a href="#">0688</a>	Presentation – OneFSR Legislative Summary – Feb 19, 2021	March 8, 2021
<a href="#">0689</a>	MOF Briefing Document, Title: Single Regulator for Real Estate – Rule-making Procedures – Oct 16, 2019	March 8, 2021
<a href="#">0690</a>	Memo from Connie Fair to Shauna Brouwer – Nov 26, 2018	March 8, 2021
<a href="#">0691</a>	Recommendation from Maloney Report	March 8, 2021
<a href="#">0692</a>	Agenda – Project Update on Finance Maloney Report Response	March 8, 2021
<a href="#">0693</a>	Chart of policy projects	March 8, 2021
<a href="#">0694</a>	MOF Briefing Document, Title: Mortgage Brokers Act Review Consultation – Summary – Aug 18, 2020	March 8, 2021
<a href="#">0695</a>	Email from Suzanne Anderson, re: BCNA Mortgage Broker Act Review and Comment – Sept 30, 2020 (with attachment)	March 8, 2021
<a href="#">0696</a>	Email from Erin Seeley, re: MB Discussion Paper and AMPs – Sept 20, 2019	March 8, 2021
<a href="#">0697</a>	MOF Briefing Document, Title: Authorize sharing Corporate Registry Data with the Ministry of Finance – Jan 31, 2020	March 8, 2021
<a href="#">0698</a>	Privacy Impact Assessment for Data Analysis Branch	March 8, 2021
	<b>FEDERAL-PROVINCIAL WORKING GROUP ON REAL ESTATE PANEL: CHRISTINA DAWKINS &amp; JUSTIN BROWN (March 8, 2021)</b>	
<a href="#">0699</a>	Curriculum Vitae – Justin Brown	March 8, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0700</a>	Letter from Minister Carole James to Minister Morneau – Feb 1, 2018	March 8, 2021
<a href="#">0701</a>	Letter from Minister Bill Morneau to Minister Carole James – Aug 3, 2018	March 8, 2021
<a href="#">0702</a>	Terms of Reference on Real Estate Working Group	March 8, 2021
<a href="#">0703</a>	Report – Work Stream 1 feasibility study – Dec 9, 2020	March 8, 2021
<a href="#">0704</a>	Work Stream 2 – Regulatory Gaps, Compliance, Standards and Education	March 8, 2021
<a href="#">0705</a>	Work Stream 3 – Improving Enforcement and Prosecution	March 8, 2021
<a href="#">0706</a>	Final Report to Finance Ministers – January 2021	March 8, 2021
	<b>LEN MEILLEUR (March 10, 2021)</b>	
<a href="#">0707</a>	AML Strategy – Has it worked? – Talking points – Len Meilleur	March 10, 2021
<a href="#">0708</a>	Slide deck with notes – Ministry of Attorney General GPEB Update October 26, 2017	March 10, 2021
<a href="#">0709</a>	Email from Robert Stewart, Re: GM Delegation Letters – Nov 9, 2018 (with attachment)	March 10, 2021
<a href="#">0710</a>	GPEB Organization Chart – Jan 26, 2015	March 10, 2021
<a href="#">0711</a>	Table of Response Plan	March 10, 2021
<a href="#">0712</a>	Email from Len Meilleur to Bill McCrea, re: Personal Notes of Len Meilleur – June 4, 2013 (with attachment)	March 10, 2021
	<b>CANADA MORTGAGE AND HOUSING CORPORATION PANEL: DR. WAHID ABDALLAH &amp; ALBERTUS PEREBOOM (March 11, 2021)</b>	
<a href="#">0713</a>	Curriculum Vitae – Bert Pereboom	March 11, 2021
<a href="#">0714</a>	Curriculum Vitae – Wahid Abdallah	March 11, 2021
<a href="#">0715</a>	Scoring and Flagging ML Risks in Real Estate – Bert Pereboom – May 9, 2019	March 11, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0716</a>	Money Laundering in the Canadian Real Estate Market; Overview and key challenges for professionals and stakeholders – Bert Pereboom – Dec 2020	March 11, 2021
<a href="#">0717</a>	Scoring and Flagging ML Risks in BC Real Estate – Bert Pereboom – Oct 2019	March 11, 2021
<a href="#">0718</a>	Detecting Money Laundering in the Real Estate Sector – Joras Ferwerda and Brigitte Unger	March 11, 2021
<a href="#">0719</a>	Defining a Housing Market Integrity Index: A Methodology and Application to Quebec’s Housing Market – Draft – 19 Feb 2021	March 11, 2021
	<b>STATS CANADA PANEL: JONATHAN BARON &amp; ELLEN BEKKERING (March 11, 2021)</b>	
<a href="#">0720</a>	Resume – Jon Baron	March 11, 2021
<a href="#">0721</a>	Curriculum Vitae – Ellen Bekkering	March 11, 2021
<a href="#">0722</a>	Curriculum Vitae – Jean-Philippe Deschamps-Laporte	March 11, 2021
<a href="#">0723</a>	Curriculum Vitae – Haig McCarrell	March 11, 2021
<a href="#">0724</a>	Presentation to Commission Counsel on Working Group Feasibility Study – March 11, 2021	March 11, 2021
<a href="#">0725</a>	Work Stream 1 – Data Collection and Sharing Work Stream Report Executive Summary – Sept 7, 2020	March 11, 2021
<a href="#">0726</a>	BC-Canada Working Group on Real Estate – Data Work Stream – Data Holdings Template	March 11, 2021
<a href="#">0727</a>	AML Work Stream Update – Work Stream 3 – Data Collection and Sharing – Feb 26, 2020	March 11, 2021
<a href="#">0728</a>	Data Collection and Sharing Work Stream Status Update – August 26, 2019	March 11, 2021
	<b>ADDITIONAL DOCUMENT (March 12, 2021)</b>	
<a href="#">0729</a>	Affidavit of Adam Ross	March 12, 2021
	<b>FINTRAC PANEL: DONNA ACHIMOV, BARRY MACKILLOP &amp; ANNETTE RYAN (March 12, 2021)</b>	
<a href="#">0730</a>	Curriculum Vitae – Donna Achimov	March 12, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0731</a>	Curriculum Vitae – Barry MacKillop	March 12, 2021
<a href="#">0732</a>	Curriculum Vitae – Annette Ryan	March 12, 2021
<a href="#">0733</a>	FINTRAC Annual Report – November 17, 2020	March 12, 2021
<a href="#">0734</a>	Unredacted Release Package: ATIP 2015-00129	March 12, 2021
<a href="#">0735</a>	Reporting Entity Sector Profiles Money laundering and terrorist financing vulnerability assessments – Mar 31, 2014	March 12, 2021
<a href="#">0736</a>	FINTRAC’s Engagement and Compliance Activities in the Real Estate Sector	March 12, 2021
<a href="#">0737</a>	FINTRAC’s meeting with the representatives of the Canadian Real Estate Association – Aug 23, 2017	March 12, 2021
<a href="#">0738</a>	FINTRAC Real Estate Sector Presentation – Toronto Real Estate Board Toronto – Apr 26, 2018	March 12, 2021
<a href="#">0739</a>	FINTRAC’s Compliance Sector BC Real Estate Brokerages Welcome Letter Template	March 12, 2021
<a href="#">0740</a>	Sample FINTRAC Letter, Re: Compliance Examination Findings	March 12, 2021
<a href="#">0741</a>	Fulfilling request from Cullen Commission – RSU input	March 12, 2021
<a href="#">0742</a>	Dataset – Financial transaction report counts by postal code and activity sector – dated March 3, 2021	March 12, 2021
<a href="#">0743</a>	Excel spreadsheet re BCREA request for information	March 12, 2021
<a href="#">0744</a>	This exhibit was previously marked as Exhibit 346	
	<b>LAND TITLE &amp; SURVEY AUTHORITY PANEL: LARRY BLASCHUK, REUBEN DANAKODY, CARLOS MACDONALD &amp; GREGORY STEVES (March 12, 2021)</b>	
<a href="#">0745</a>	Curriculum Vitae – Larry Blaschuk	March 12, 2021
<a href="#">0746</a>	Curriculum Vitae – Reuben Danakody	March 12, 2021
<a href="#">0747</a>	Resume – Carlos MacDonald	March 12, 2021
<a href="#">0748</a>	Curriculum Vitae – Greg Steves	March 12, 2021
<a href="#">0749</a>	Presentation -The Land Title and Survey Authority of BC – Feb 26, 2020	March 12, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0750</a>	Mock up – State of Title Certificate	March 12, 2021
<a href="#">0751</a>	Mock up – Form A – Freehold Transfer	March 12, 2021
<a href="#">0752</a>	Mock up – Form B – Mortgage	March 12, 2021
<a href="#">0753</a>	Mock up – Title Search	March 12, 2021
<a href="#">0754</a>	Mock up – Form 17 – Charge, Notation or Filing	March 12, 2021
<a href="#">0755</a>	Mock up – Form 5 – Claim of Lien	March 12, 2021
<a href="#">0756</a>	Land Owner Transparency Registry Presentation – 2020	March 12, 2021
	<b>CALVIN CHRUSTIE (March 29, 2021)</b>	
<a href="#">0757</a>	Transnational Organized Crime – FSOC Major Projects	March 29, 2021
<a href="#">0758</a>	Overview of FSOC Bulk Cash/ Money Pick up Contracts – FISOC – January 18, 2018	March 29, 2021
<a href="#">0759</a>	Casino Summary & Proposal – IPOC – December 2011	March 29, 2021
<a href="#">0760</a>	Casino – Investigational Planning & Report – IPOC – Jan 30, 2012	March 29, 2021
<a href="#">0761</a>	GPEB Meeting Highlights – Anti–Money Laundering Workshop: Exploring Common Ground – June 25, 2015	March 29, 2021
<a href="#">0762</a>	Email from Cal Chrustie to Len Meilleur et al. re: June 4, 2015 Anti Money Laundering Workshop – June 6, 2015	March 29, 2021
<a href="#">0763</a>	Emails between Cal Chrustie and Ross Alderson Re: Meeting – July 21–22, 2015	March 29, 2021
<a href="#">0764</a>	Email chain re: Illegal Gaming Houses – July 23, 2015	March 29, 2021
	<b>AFFIDAVITS – REAL ESTATE SECTOR (March 30, 2021)</b>	
<a href="#">0765</a>	Affidavit 2 of Karen Best	March 30, 2021
<a href="#">0766</a>	Affidavit of Jian Wei Liang	March 30, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>MUNICIPAL POLICING PANEL: DEPUTY CHIEF BRETT CROSBY-JONES, INSP. MIKE HEARD, INSP. CHRIS MULLIN &amp; DEPUTY CHIEF LAURENCE RANKIN (March 30, 2021)</b>	
<a href="#">0767</a>	Biography – Deputy Chief Brett Crosby-Jones	March 30, 2021
<a href="#">0768</a>	Biography – Inspector Michael Heard	March 30, 2021
<a href="#">0769</a>	Curriculum Vitae – Inspector Christopher Mullin	March 30, 2021
<a href="#">0770</a>	Bio update of Inspector Christopher Mullin	March 30, 2021
<a href="#">0771</a>	Curriculum Vitae – Deputy Chief Laurence Rankin	March 30, 2021
<a href="#">0772</a>	Biography – Deputy Chief Laurence Rankin	March 30, 2021
<a href="#">0773</a>	Federal/Provincial/Territorial Meeting, Ministers Responsible for Justice and Public Safety – Nov 14-16, 2018	March 30, 2021
	<b>OVERVIEW REPORTS: LUXURY GOODS SECTOR (March 31, 2021)</b>	
<a href="#">0774</a>	Overview Report: Luxury Goods	March 31, 2021
<a href="#">0775</a>	Overview Report: Motor Vehicle Sales Authority of British Columbia	March 31, 2021
	<b>AFFIDAVITS – LUXURY GOODS SECTOR (March 31, 2021)</b>	
<a href="#">0776</a>	Affidavit 1 of Beatrice Sturtevant	March 31, 2021
<a href="#">0777</a>	Affidavit 1 of Marko Goluzza	March 31, 2021
<a href="#">0778</a>	Affidavit 1 of Norman Shields	March 31, 2021
<a href="#">0779</a>	Affidavit 1 of Michelle Lee	March 31, 2021
	<b>AFFIDAVITS – LUXURY GOODS SECTOR (March 31, 2021)</b>	
<a href="#">0780</a>	Affidavit 3 of Daryl Tottenham	March 31, 2021
<a href="#">0781</a>	Affidavit 1 of Anna Fitzgerald	March 31, 2021
<a href="#">0782</a>	Affidavit 1 of Robin Jomha	March 31, 2021
<a href="#">0783</a>	Affidavit 2 of Robert Kroeker	March 31, 2021
<a href="#">0784</a>	Affidavit 2 of Cathy Cuglietta	March 31, 2021
<a href="#">0785</a>	Affidavit 1 of Richard Block	March 31, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>PROVINCIAL POLICING PANEL: CLAYTON PECKNOLD, WAYNE RIDEOUT &amp; TOM STEENVOORDEN (April 6, 2021)</b>	
<a href="#">0786</a>	Curriculum Vitae – Wayne Rideout	April 6, 2021
<a href="#">0787</a>	Biography – Tom Steenvoorden	April 6, 2021
<a href="#">0788</a>	Provincial Police Service Agreement, April 2012	April 6, 2021
<a href="#">0789</a>	Police Resources in BC 2019	April 6, 2021
<a href="#">0790</a>	Email from L. Wanamaker to C. Pecknold re fwd: German Money Laundering, Dec. 15, 2018	April 6, 2021
<a href="#">0791</a>	Briefing Note to Minister Farnworth, Organized Crime Priorities, April 30, 2018	April 6, 2021
<a href="#">0792</a>	Letter from ADM Butterworth-Carr to Asst. Commissioner Stubbs, Re Federal RCMP Reporting Requirements, May 23, 2019	April 6, 2021
<a href="#">0793</a>	RCMP, Financial Crime Resources in “E” Division, August 31, 2020	April 6, 2021
<a href="#">0794</a>	Appendix B – Response to Request 11 of Cullen Commission’s May 4, 2020 Request	April 6, 2021
<a href="#">0795</a>	RCMP Narrative re Proposals, prepared by Supt. Taylor	April 6, 2021
<a href="#">0796</a>	RCMP Proposal for Financial Crime Unit, November 9, 2016	April 6, 2021
<a href="#">0797</a>	Business Case for Financial Crime Unit, Appendix D – Examples of Cases Affected by Federal Re-engineering, November, 2016	April 6, 2021
<a href="#">0798</a>	Letter from ADM Pecknold to Deputy Commissioner Butterworth-Carr, Nov. 22 2017	April 6, 2021
<a href="#">0799</a>	Joint Briefing Note – Issue: Government has directed the PPSG, Ministry of Finance, and the Ministry of AG to examine options to combat money laundering in British Columbia, February 7, 2018	April 6, 2021
<a href="#">0800</a>	Ministry of Public Safety and Solicitor General Policing and Security Branch – Decision Note, June 7, 2019	April 6, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0801</a>	Briefing Note – Current state of police response to money laundering in BC, Feb. 10, 2020	April 6, 2021
	<b>DOUG LEPARD (April 7, 2021)</b>	
<a href="#">0802</a>	Curriculum Vitae – Doug LePard	April 7, 2021
<a href="#">0803</a>	Review of the Joint Illegal gaming Investigation Team (JIGIT) – D. LePard, C. Tait – Nov 2020	April 7, 2021
<a href="#">0804</a>	Draft Proposal for a Provincial Financial Integrity/ Crime Unit – Jan 22, 2018	April 7, 2021
<a href="#">0805</a>	Final Draft – Concept Paper: Designated Provincial Financial Crimes Unit – Feb 15, 2019	April 7, 2021
<a href="#">0806</a>	CFSEU-BC Proposal for Proceeds of Crime / Asset Forfeiture Team – Dec 2018	April 7, 2021
	<b>JOINT ILLEGAL GAMING INVESTIGATION TEAM PANEL: S/SGT. JOEL HUSSEY &amp; SUPT. STEPHEN COCKS (April 7, 2021)</b>	
<a href="#">0807</a>	Curriculum Vitae – Joel Hussey	April 7, 2021
<a href="#">0808</a>	Curriculum Vitae – Stephen Cocks	April 7, 2021
<a href="#">0809</a>	Slide deck – The Combined Forces Special Enforcement Unit BC JIGIT – April 7, 2021	April 7, 2021
<a href="#">0810</a>	Email chain re money exchange receipts	April 7, 2021
<a href="#">0811</a>	Organizational Charts, “E” Division Criminal Operations Combined Forces Special Enforcement in BC, 2010-2017	April 7, 2021
<a href="#">0812</a>	Draft RCMP Investigational Planning and Report, Jan 19, 2017	April 7, 2021
<a href="#">0813</a>	MOF Briefing Document, title: Police Presence in BC Casinos – Start Date January 28, 2017, Jan 24, 2017	April 7, 2021
<a href="#">0814</a>	Baccarat, Business Plan for Richmond Private Clubhouse	April 7, 2021
<a href="#">0815</a>	Email exchange between Ross Alderson and Joes Hussey and others, re: [patron name] – Jul 6, 2017	April 7, 2021
<a href="#">0816</a>	Email from Ross Alderson to Paul Dadwal, re Interview summary – Nov 2, 2016	April 7, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0817</a>	Email from Ross Alderson to Ken Ackles, re: Intel – Sept 22, 2016	April 7, 2021
<a href="#">0818</a>	Presentation – Money Laundering Enforcement CFSEU-BC JIGIT – April 7, 2021	April 7, 2021
<a href="#">0819</a>	Responses from CFSEU for Cullen Commission Requests 4(2)(A),(B) and (C)	April 7, 2021
<a href="#">0820</a>	Media Protocol for JIGIT subsequent to Section 8, of the Operation and Funding Agreement between the Minister of PSSG and MOF, February 7, 2017	April 7, 2021
<a href="#">0821</a>	A Resourcing Overview of Major Money Laundering Investigations in BC, prepared by RCMP E-Division in partnership with CFSEU-BC's Strategic Research Office	April 7, 2021
	<b>BARRY BAXTER (April 8, 2021)</b>	
<a href="#">0822</a>	Public Safety Canada Report: 2010–2011 Evaluation of the Integrated Proceeds of Crime Initiative – Final Report – March 30, 2011	April 8, 2021
<a href="#">0823</a>	Media Excerpts: Money Laundering in Casinos – various, 2011	April 8, 2021
<a href="#">0824</a>	Presentation – Reducing Reliance on Cash in BC Casinos & More – April 18, 2013	April 8, 2021
	<b>ENFORCEMENT PANEL (April 9, 2021)</b>	
<a href="#">0825</a>	Curriculum Vitae – Garry W.G. Clement	April 9, 2021
<a href="#">0826</a>	Curriculum Vitae – Dr. Arthur John Cockfield	April 9, 2021
<a href="#">0827</a>	Curriculum Vitae – Dr. Christian Leuprecht	April 9, 2021
<a href="#">0828</a>	Collaborative Report, Detect, Disrupt and Deter: Domestic and Global Financial Crime – A Roadmap for British Columbia – March 2021	April 9, 2021
<a href="#">0829</a>	A matter of Trust: Integrating Privacy and Public Safety in the 21st Century – Nov 2010	April 9, 2021
<a href="#">0830</a>	The high price of Chinese money laundering in Canada, by Arthur Cockfield, February 9, 2019	April 9, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
	<b>DR. PETER GERMAN (April 12 &amp; 13, 2021)</b>	
<a href="#">0831</a>	Biography – Peter German	April 12, 2021
<a href="#">0832</a>	Dirty Money Report by Peter German March 31, 2018	April 12, 2021
<a href="#">0833</a>	“Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing”, by Peter German, QC, March 31, 2019	April 12, 2021
<a href="#">0834</a>	A pdf of the website of Peter German & Associates	April 13, 2021
<a href="#">0835</a>	Response to Report – Dirty Money in Our Casinos by P. German – March 31, 2018 submitted by Ross Alderson	April 13, 2021
<a href="#">0836</a>	BC Center for Substance Abuse – August 21, 2020 submission	April 13, 2021
<a href="#">0837</a>	Letter from Douglas Scott to Peter German – Feb 22, 2021	April 13, 2021
	<b>CFSEU-BC/JIGIT/CIFA-BC PANEL: MELANIE PADDON &amp; SGT. BEN ROBINSON (April 14, 2021)</b>	
<a href="#">0838</a>	Curriculum Vitae – Ben Robinson	April 14, 2021
<a href="#">0839</a>	Project Athena and CIFA-BC, Presentation	April 14, 2021
<a href="#">0840</a>	Project Athena Stakeholders Meeting October 24, 2016	April 14, 2021
<a href="#">0841</a>	GPEB Briefing Notes – Bank drafts and source of funds update – Project Athena, Dec 28, 2018	April 14, 2021
<a href="#">0842</a>	Luxury Vehicle Sub Group (undated)	April 14, 2021
<a href="#">0843</a>	Luxury Vehicle – Case Scenario	April 14, 2021
<a href="#">0844</a>	Project Athena High End Luxury Vehicle Working Group, Minutes, Jan 22, 2020	April 14, 2021
<a href="#">0845</a>	Ben Robinson – Response, Jun 11, 2020	April 14, 2021
<a href="#">0846</a>	Investigational Planning and Report, Project ATHENA, Feb 13, 2020	April 14, 2021
<a href="#">0847</a>	CIFA-BC Framework revised April 9, 2021	April 14, 2021
<a href="#">0848</a>	Memo to ADM Policing – CIFA-BC, Oct 2, 2020	April 14, 2021
<a href="#">0849</a>	Letter from Minister Blair to Attorney General Eby, Dec 10, 2020	April 14, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0850</a>	Email exchanges Ross Alderson re Persons of Interests February 18 and 19, 2021	April 14, 2021
<a href="#">0851</a>	Email from Ben Robinson re Toyota Corolla February 16, 2017	April 14, 2021
<a href="#">0852</a>	Email from Ben Robinson re Intel and Interview	April 14, 2021
<a href="#">0853</a>	Email from Paul Dadwal re JIGIT New Systems – May 19, 2016	April 14, 2021
	<b>FSOC ML TEAMS / IMET PANEL: INSP. TONY FARAHBACKCHIAN &amp; S/SGT. KURT BEDFORD (April 15, 2021)</b>	
<a href="#">0854</a>	Curriculum Vitae – Tony Farahbackhchian	April 15, 2021
<a href="#">0855</a>	Curriculum Vitae – Kurt Bedford	April 15, 2021
<a href="#">0856</a>	Presentation – FSOC Financial Integrity Program Group 1 – Undated	April 15, 2021
<a href="#">0857</a>	Integrated Market Enforcement Team – 2018 Performance Improvement Action Plan RCMP – June 31, 2018	April 15, 2021
<a href="#">0858</a>	IMET Performance Improvement Action Plan – 2019 IMET HR Modernization phase 1 – Undated	April 15, 2021
<a href="#">0859</a>	“E” Division Criminal Operations Chart – March 15, 2021	April 15, 2021
<a href="#">0860</a>	RCMP: Definition revision of the Federal Policing Priorities – October 12, 2018	April 15, 2021
<a href="#">0861</a>	Letter from Michael Duheme re: Directive on Proceeds of Crime and Money Laundering in All Future Federal policing Serious and Organized Crime Investigations – Feb 4, 2020	April 15, 2021
	<b>RCMP E-DIV &amp; HQ: SUPT. BRENT TAYLOR (April 16, 2021)</b>	
<a href="#">0862</a>	Curriculum Vitae – Supt. Brent Taylor	April 16, 2021
<a href="#">0863</a>	Presentation – Briefing for the Cullen Inquiry, Supt. Taylor	April 16, 2021
<a href="#">0864</a>	Assessment of Proceeds of Crime Responsibilities within FSOC, July 29, 2015	April 16, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0865</a>	RCMP FPCO POC Review, 2013 to 2017 – NHQ (undated)	April 16, 2021
<a href="#">0866</a>	RCMP Federal Policing Projects Review, Jan. 2017 to Dec. 2018 – NHQ	April 16, 2021
	<b>RCMP E-DIV &amp; HQ: SUPT. PETER PAYNE (April 16, 2021)</b>	
<a href="#">0867</a>	Curriculum Vitae – Peter Payne	April 16, 2021
<a href="#">0868</a>	Presentation – Money Laundering/Proceeds of Crime – RCMP Federal Policing Perspective, April 2021	April 16, 2021
<a href="#">0869</a>	RCMP Major Projects Prioritization Matrix, Jan 01, 2020	April 16, 2021
<a href="#">0870</a>	Major Project Prioritization Process, Jan 01, 2015	April 16, 2021
<a href="#">0871</a>	RCMP AML Strategy, Nov 10, 2015	April 16, 2021
<a href="#">0872</a>	2021 IMLIT Way Forward – IMLIT	April 16, 2021
	<b>SAM MACLEOD (April 19, 2021)</b>	
<a href="#">0873</a>	Ministry of Attorney General & GPEB Briefing Note re: Bank drafts and source of funds update – Dec 28, 2018	April 19, 2021
<a href="#">0874</a>	Ministry of Attorney General, GPEB & BCLC Joint Briefing Note – 2019	April 19, 2021
<a href="#">0875</a>	Ministry of Attorney General & GPEB Briefing Note re: Options for new regulator structure in response to Dr. German’s recommendations – Dec 5, 2018	April 19, 2021
<a href="#">0876</a>	Ministry of Attorney General & GPEB Briefing note: Establish a more effective and flexible regulatory model for gambling in BC – Oct 18, 2019	April 19, 2021
<a href="#">0877</a>	GPEB Briefing Note for decision of David Eby – Oct 22, 2019	April 19, 2021
<a href="#">0878</a>	Office of the Auditor General of Ontario, Value-for-Money Audit: Alcohol and Gaming Commission of Ontario – December 2020	April 19, 2021
<a href="#">0879</a>	Letter from Sam MacLeod re: Source of Funds Declaration Identification Threshold – Dec 4, 2018	April 19, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0880</a>	Deputy Minister's Committee on Anti-Money Laundering meeting minutes – May 2, 2019	April 19, 2021
<a href="#">0881</a>	Letter from Sam MacLeod re: Suspension of BCLC directive – August 9, 2018	April 19, 2021
<a href="#">0882</a>	Letter from Sam MacLeod re Source of Funds Declaration policy – Nov 27, 2018	April 19, 2021
<a href="#">0883</a>	Letter from Sam MacLeod re: source of funds policy – Jan 16, 2019	April 19, 2021
	<b>KEVIN BEGG (April 21, 2021)</b>	
<a href="#">0884</a>	Establishment of the Organized Crime Agency of BC – Attorney General – Briefing #3 – Feb 23, 1999	April 21, 2021
<a href="#">0885</a>	Email exchange between Kevin Begg and Al MacIntyre, re IIGET File 05-661 Loansharking Investigation – February 25, 2005	April 21, 2021
<a href="#">0886</a>	Email from Al MacIntyre to Dick Bent, re River Rock Casino – A Policing Response – September 18, 2006	April 21, 2021
	<b>LORI WANAMAKER (April 22, 2021)</b>	
<a href="#">0887</a>	Email from Michael Graydon to Lori Wanamaker- May 15, 2012	April 22, 2021
	<b>SHIRLEY BOND (April 22, 2021)</b>	
<a href="#">0888</a>	Advice to Minister, Confidential Issues Note, Anti-Money Laundering Review, August 24, 2011	April 22, 2021
	<b>MIKE DE JONG (April 23, 2021)</b>	
<a href="#">0889</a>	Advice to Minister, Draft GCPE-FIN Issue Note, re GPEB Release of Section 86 reports – Sept 30, 2014	April 23, 2021
<a href="#">0890</a>	Letter of Expectations between MOF and The Chair of the BCLC for 2014/15	April 23, 2021
<a href="#">0891</a>	Letter from Michael de Jong to Bud Smith, re 2015/16 Mandate Letter, Feb 05, 2015	April 23, 2021
<a href="#">0892</a>	Mandate Letter to BCLC for the 2016/2017 fiscal year, Jan 29, 2016	April 23, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0893</a>	Mandate Letter to BCLC, for the 2017/2018 fiscal year, December 2016	April 23, 2021
<a href="#">0894</a>	BCLC Briefing June 2013	April 23, 2021
<a href="#">0895</a>	Letter from Michael de Jong to David Eby in response to Eby's letter to Susan Anton, re ML in BC Casinos, undated	April 23, 2021
<a href="#">0896</a>	Advice to Minister, Estimates Note – Apr 22, 2015	April 23, 2021
<a href="#">0897</a>	Meeting – Backgrounder – Minister meeting with BCLC Chair, re BCLC 2016/17 Priorities, Sept 28, 2015, Cliff: 345743	April 23, 2021
<a href="#">0898</a>	Meeting – Backgrounder – Minister meeting with BCLC Chair, re BCLC 2016/17 Priorities, Sept 28, 2015, Cliff: 346075	April 23, 2021
<a href="#">0899</a>	Confidential Information Note, re AML – Aug 24, 2015	April 23, 2021
<a href="#">0900</a>	Letter from Michael de Jong, providing BCLC with direction on phase three of the AML strategy – Oct 1, 2015	April 23, 2021
<a href="#">0901</a>	MOF Briefing Document, Title: Enhanced Compliance and Enforcement on Gambling Activities – Oct 9, 2015	April 23, 2021
<a href="#">0902</a>	Letter from Mike Morris re JIGIT, Mar 10, 2016	April 23, 2021
<a href="#">0903</a>	Email exchange between Brittney Speed and Len Meilleur, re: AML Strategy language – draft BCLC mandate letter – Nov 19, 2015	April 23, 2021
	<b>DAVID EBY (April 26, 2021)</b>	
<a href="#">0904</a>	Binder of briefing documents prepared by ADM and presented to Minister Eby – Aug 2017	April 26, 2021
<a href="#">0905</a>	BCLC Briefing – J July 31, 2017	April 26, 2021
<a href="#">0906</a>	Provincial AML Strategy by John Mazure and Len Meilleur – Aug 2017	April 26, 2021
<a href="#">0907</a>	Provincial AML Strategy (Part II) by John Mazure and Len Meilleur	April 26, 2021
<a href="#">0908</a>	PowerPoint deck related to AG Minster Briefing – Oct 26, 2017	April 26, 2021

<b>Exhibit #</b>	<b>Descriptions</b>	<b>Entered On</b>
<a href="#">0909</a>	BCLC Briefing Note for David Eby, re Status update on JIGIT – Jul 27, 2017	April 26, 2021
<a href="#">0910</a>	GPEB Briefing note for Decision for Honourable David Eby – Sept 11, 2017	April 26, 2021
<a href="#">0911</a>	Email chain, re AG File No. 546040 – Jan 26, 2018	April 26, 2021
<a href="#">0912</a>	Letter from David Eby to Bill Blair – Jan 29, 2019	April 26, 2021
<a href="#">0913</a>	Internal Memo to Len Meilleur from Parminder Basi, re COMM-8611 Follow up – Cash Buy-Ins Conducted at River Rock Casino Cages – Feb 15, 2016	April 26, 2021
<a href="#">0914</a>	Internal Memo to Len Meilleur from Parminder Basi, re COMM-8939 BCLC Directive Impact on Cash Buy-Ins and New Money PGF Deposits – Aug 9, 2017	April 26, 2021
<a href="#">0915</a>	Vancouver Real Estate a Buyers’ Market – For Mainland China: Study, by Sam Cooper – Nov 2, 2015	April 26, 2021
<a href="#">0916</a>	BCLC Briefing Note for David Eby, re BCLC – AML and Countering Terrorist Financing Program – Jul 27, 2017	April 26, 2021
<a href="#">0917</a>	Resignation letter of Bud Smith – Aug 2, 2017	April 26, 2021
<a href="#">0918</a>	Letter from David Eby to Richard Fyfe and Douglas Scott directing recommendations of Dr. German be implemented, Jun 27, 2018	April 26, 2021
<a href="#">0919</a>	GPEB briefing note for decision of David Eby, re Mandate and governance model for a new independent provincial gambling regulator – Aug 27, 2019	April 26, 2021
<a href="#">0920</a>	AML Secretariat Briefing Note for decision of David Eby, re Analysis of Dr. Peter German’s recommendations related to casino reporting obligations to FinTRAC – Jan 24, 2020	April 26, 2021
<a href="#">0921</a>	GPEB briefing note, re Short term funding mechanism for the remaining two years of JIGIT’s initial five-year mandate – Oct 5, 2018	April 26, 2021
	<b>CHERYL WENEZENKI-YOLLAND (April 27, 2021)</b>	
<a href="#">0922</a>	Affidavit 1 of Cheryl Wenezenki-Yolland	April 27, 2021

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<a href="#">0923</a>	Email chain, re Sanctions on high limit players – Aug 7, 2015	April 27, 2021
<a href="#">0924</a>	Responsible Gambling Standards for the BC Gambling Industry – Feb 2010	April 27, 2021
	<b>RICH COLEMAN (April 28, 2021)</b>	
<a href="#">0925</a>	Directive to BCLC published in the British Columbia Gazette, June 26, 2003	April 28, 2021
<a href="#">0926</a>	CBC News – Loansharking alleged at B.C. Casinos – Jun 25, 2004	April 28, 2021
<a href="#">0927</a>	Advice to Minister, Issues Note, re large Cash Transaction Reporting – Feb 23, 2012	April 28, 2021
<a href="#">0928</a>	Advice to Minister, Confidential Issues Note, re Anti-Money Laundering Strategy Update – Feb 23, 2012	April 28, 2021
<a href="#">0929</a>	Advice to Minister, Issues Note, re Gaming Review: AML Measures at BC Facilities – Feb 23, 2012	April 28, 2021
<a href="#">0930</a>	Advice to Minister, Issues Note, re BCLC’s Anti-Money Laundering Measures – Feb 23, 2012	April 28, 2021
<a href="#">0931</a>	Advice to Minister Estimates Note, re Anti Money-Laundering and FINTRAC Compliance – Jun 14, 2013	April 28, 2021
<a href="#">0932</a>	Incident Report #IN20100024262 - Loan Sharking – Jun 21, 2010	April 28, 2021
<a href="#">0933</a>	Vancouver Sun article – We Can’t fight casino money laundering: RCMP report, by Chad Skelton – Aug 12, 2010	April 28, 2021
<a href="#">0934</a>	BCLC Minutes from the Board Meeting – Jul 23, 2010	April 28, 2021
<a href="#">0935</a>	BCLC Board Meeting July 23, 2010 Presentation regarding AML and FINTRAC	April 28, 2021
<a href="#">0936</a>	Email from Mike Hiller, re Form 86 BCLC 2010-0024262 – Jun 22, 2010	April 28, 2021
<a href="#">0937</a>	GPEB report of findings – Failure to Report – Paragon Gaming (dba) Edgewater Casino – Oct 4, 2010	April 28, 2021

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<a href="#">0953</a>	Report to the Commission of Inquiry into Money Laundering in British Columbia, Canada, by Gary Hughes – April 9, 2021	May 3, 2021
<a href="#">0954</a>	Enhanced Customer Due Diligence Guideline – Sept 2020	May 3, 2021
	<b>MELINDA MURRAY (May 5, 2021)</b>	
<a href="#">0955</a>	Criminal Property Forfeiture Act	May 5, 2021
<a href="#">0956</a>	Bill 58 – The Criminal Property Forfeiture Amendment Act	May 5, 2021
<a href="#">0957</a>	CBC News – How Crime Pays for Police, by Ian Froese – Nov 30, 2019	May 5, 2021
	<b>JASON SHARMAN (May 6, 2021)</b>	
<a href="#">0958</a>	Curriculum Vitae – Jason Sharman	May 6, 2021
<a href="#">0959</a>	Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment, by Jason Sharman	May 6, 2021
<a href="#">0960</a>	Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime – Feb 7, 2018	May 6, 2021
<a href="#">0961</a>	A study on Methods of Transferring Assets Outside China by Chinese Corruptors and Monitoring Methods for this Problem – Bank of China – Jun 2008	May 6, 2021
<a href="#">0962</a>	Why We Fail to Catch Money Launderers 99.9 Percent of the Time, by Kevin Comeau – May 7, 2019	May 6, 2021
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<a href="#">0965</a>	Bergström, M., Legal Perspectives on Money Laundering (Research Handbook on Transnational Crime, 2019)	May 7, 2021
<a href="#">0966</a>	Report on the European Union Anti-Money Laundering Regulation – Draft, by Maria Bergstrom	May 7, 2021
<a href="#">0967</a>	Bergström, M., Money Laundering (Research Handbook on EU Criminal Law, 2016)	May 7, 2021
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<a href="#">0969</a>	Report for the Cullen Commission, prepared by Stefan Cassella	May 10, 2021
<a href="#">0970</a>	Addendum – Civil Forfeiture Law in the United States	May 10, 2021
<a href="#">0971</a>	Policing for Profit – The Abuse of Civil Asset Forfeiture 3rd Edition – Dec 2020	May 10, 2021
	<b>STEPHANIE BROOKER (May 11, 2021)</b>	
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<a href="#">0973</a>	The Role of FinCEN, the US Financial Intelligence Unit, in the US Anti-Money Laundering Regime and Overview of the US Anti-Money Laundering Structure and Authorities, by Stephanie Brooker	May 11, 2021
	<b>CRAIG HAMILTON (May 12, 2021)</b>	
<a href="#">0974</a>	Curriculum Vitae – Craig Hamilton	May 12, 2021
<a href="#">0975</a>	Anti-Money Laundering and counter-terrorist financing measures New Zealand – Mutual Evaluation Report – April 2021	May 12, 2021
<a href="#">0976</a>	Dashboard – CPRA (Criminal Proceeds (Recovery) Act 2009) – April 30, 2021	May 12, 2021

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<a href="#">0981</a>	Profile of Francien Rense	May 13, 2021
<a href="#">0982</a>	Understanding Bank De-risking and Its Effects on Financial Inclusion, by Tracey Durner and Liat Shetret – Nov 2015	May 13, 2021
<a href="#">0983</a>	Opinion of the European Banking Authority on the risks of money laundering and terrorist financing affecting the European Union’s financial sector – March 3, 2021	May 13, 2021
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<a href="#">0985</a>	List of publications authored by Rolf van Wegberg	May 14, 2021
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<a href="#">0987</a>	“Bitcoin Money Laundering: mixed results?” by Rolf van Wegberg, Jan-Jaap Oerlemans and Oskar van Deventer – 2018	May 14, 2021
<a href="#">0988</a>	Using Police Reports to Monitor Money Laundering Developments. Continuity and Change in 12 Years of Dutch Money Laundering Crime Pattern and Analyses – March 2019	May 14, 2021
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<a href="#">0991</a>	Exhibit A to the Affidavit 1 of Annette Ryan – FINTRAC CBCR Reports Data	May 14, 2021

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<a href="#">1015</a>	Overview Report: Money Laundering and Proceeds of Crime Prosecutions in British Columbia	May 14, 2021
<a href="#">1016</a>	Overview Report: Basel AML Index: 9th Public Edition	May 14, 2021
<a href="#">1017</a>	Overview Report: Criminal Intelligence Service of Canada National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud (2020)	May 14, 2021
<a href="#">1018</a>	Affidavit 2 of Cheryl Wenezenki-Yolland	May 14, 2021

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<a href="#">1021</a>	Overview Report: Miscellaneous Documents	May 14, 2021
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<a href="#">1023</a>	Affidavit 1 of Gary Bass	May 14, 2021
<a href="#">1024</a>	CBC Interview with Rich Coleman – Jan 10, 2011	May 14, 2021
	<b>ROSS ALDERSON (September 9 &amp; 10, 2021)</b>	
<a href="#">1025</a>	Affidavit of Ross Alderson	September 9, 2021
<a href="#">1026</a>	Unredacted copy of exhibits to Ross Alderson's affidavit not public by order of the Commissioner	September 9, 2021
<a href="#">1027</a>	Copy of an envelope in which Mr. Alderson's affidavit was delivered to the Commission	September 9, 2021
<a href="#">1028</a>	GPEB Audit of River Rock HL Rooms note by Ross Alderson	September 9, 2021
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<a href="#">1030</a>	Email from Kevin Sweeney re For Comment, GPEB PIA – November 7, 2016	September 10, 2021
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	<b>ROBERT BOYLE (September 13, 2021)</b>	
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<a href="#">1038</a>	Report on AML Practices by Ernst & Young LLP – April 28, 2021	September 13, 2021
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<a href="#">1040</a>	Affidavit 2 of Bill Lang	September 14, 2021
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<a href="#">1051</a>	Affidavit of Blair Morrison	September 14, 2021
<a href="#">1052</a>	Overview Report: Paul Jin Debt Enforcement Against BC Real Estate	September 14, 2021
	<b>ROBERT BOYLE (September 14, 2021)</b>	
<a href="#">1053</a>	Hunter Litigation Memo to B. Boyle re HLC Draft Questions for EY re AML Practices – Point in Time Review – Feb 19, 2021	September 14, 2021

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<a href="#">1054</a>	Email re 100% known Play_ BCLC – March 11, 2021 and attachment	September 14, 2021
<a href="#">1055</a>	Email re SOW – Appendix A – April 19, 2021	September 14, 2021
	<b>ADDITIONAL DOCUMENTS (Marked by written direction of the Commissioner)</b>	
<a href="#">1056</a>	Affidavit 2 of Douglas Scott	September 27, 2021
<a href="#">1057</a>	Affidavit 2 of Joseph Emile Leonard Meilleur	September 27, 2021
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<a href="#">1059</a>	Affidavit 4 of Joseph Emile Leonard Meilleur	September 27, 2021
<a href="#">1060</a>	Overview Report: 2012 & 2013 Gaming Policy and Enforcement Branch Organizational Charts	October 1, 2021
<a href="#">1061</a>	FATF – Canada 1st Regular Follow-up Report & Technical Compliance Re-Rating – October 2021	October 8, 2021
<a href="#">1062</a>	Affidavit 3 of Bradley Rudnicki	October 8, 2021
<a href="#">1063</a>	Affidavit 4 of Bradley Rudnicki	October 8, 2021

Appendix I  
**Constitutionality of Possible Changes to the  
British Columbia *Civil Forfeiture Act***

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

### **Constitutionality of possible changes to the British Columbia *Civil Forfeiture***

#### *Act :*

- **Unexplained wealth orders**
- **Information sharing**
- **Combining law enforcement and civil forfeiture  
personnel**

Opinion of The Honourable Thomas A. Cromwell C.C.

Requested by the Commission of Inquiry into Money Laundering in British Columbia

February 9, 2021

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## I. Introduction

[1] This is my opinion as to whether three potential changes to British Columbia’s civil forfeiture scheme would be within provincial legislative competence<sup>1</sup> and compliant with the *Charter*.<sup>2</sup>

[2] The three potential changes are:

- Providing the Director of Civil Forfeiture with authority to apply for, and the courts with the authority to issue, “unexplained wealth orders”;
- Enabling the Director of Civil Forfeiture to share information obtained in the exercise of his or her information gathering powers with criminal law enforcement agencies, tax authorities and regulators; and
- Embedding a provincial civil forfeiture office within a provincial law enforcement agency or giving a provincial law enforcement agency a mandate to pursue civil asset forfeiture.

[3] An introductory word about the first of these changes—the unexplained wealth order—will be helpful. The “unexplained wealth order” (or “UWO”) would add to the information gathering tools in the *Civil Forfeiture Act*<sup>3</sup> and introduce an evidentiary shortcut in civil forfeiture proceedings. These orders, like those provided for in Part 8 of the United Kingdom *Proceeds of Crime Act 2002*<sup>4</sup>, would authorize the director to apply to the court for an order requiring persons to provide information about the acquisition and ownership of property that may be subject to forfeiture. Failure to comply with the order would give rise to a presumption that the property is subject to forfeiture.

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<sup>1</sup> i.e. whether they would conform with the division of legislative powers under the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK) (“*Constitution Act, 1867*”).

<sup>2</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitutional Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (“*Charter*”).

<sup>3</sup> *Civil Forfeiture Act*, SBC 2005, c 29 (“*CFA*”).

<sup>4</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362.

## **II. Overview of opinion**

### **A. Unexplained wealth orders**

[4] If the unexplained wealth order becomes part of the *CFA*, its constitutionality cannot be assessed apart from that of the *CFA* as a whole. In my opinion, with one exception, the current *CFA* provisions are validly enacted provincial legislation under British Columbia’s jurisdiction over property and civil rights within the province. The UWO provisions, viewed on their own and as part of the larger *CFA* scheme, would also, in my opinion, be validly enacted provincial legislation under the same head of power.

[5] The exception is the so-called “future use” aspect in relation to the instruments of criminal activity provisions. The Supreme Court of British Columbia has ruled this aspect of the scheme to be beyond provincial legislative competence. If that ruling is correct, the UWO provisions cannot validly operate in relation to the investigation of alleged “future use” cases.

[6] Turning to *Charter* compliance, provisions modeled on the UK UWO scheme would not constitute unjustified infringements of any right guaranteed by the *Charter*. However, the use of these powers would give rise to a number of *Charter* issues, which would, in some respects, limit their usefulness.

### **B. Information sharing**

[7] In general, there is no constitutional impediment to a civil forfeiture office sharing information with other provincial regulatory bodies and agencies for valid provincial purposes. However, *Charter*, and perhaps division of powers issues, will arise if the British Columbia Civil Forfeiture Office (“CFO”) uses its investigative powers for the predominant purpose of investigating penal liability. For example, sharing compelled information with law enforcement for the purposes of a criminal investigation and prosecution likely breaches s. 7 of the *Charter* and likely engages s. 8 of the *Charter*.

### **C. Combining law enforcement and civil forfeiture personnel**

[8] A critical element of both the division of powers and the *Charter* analyses concerns whether the civil forfeiture scheme and the powers it confers on the director are limited to

pursuing the valid provincial objectives of a civil forfeiture scheme and not directed to the investigation or prosecution of criminal offences. There is a serious risk that embedding a provincial civil forfeiture office in a law enforcement agency would blur this important distinction of purpose and, as a result, risk a finding that the scheme exists in fact, if not in form, for a criminal law, rather than purely civil forfeiture, purpose. This risk, in turn, opens the legislation to challenges on division of powers grounds and its operation to *Charter* challenges. The risk is even more serious in the case of giving a law enforcement agency a civil asset forfeiture mandate.

### III. Analysis

#### A. Division of powers analysis

##### 1. Introduction

[9] Provincial legislation may be “unconstitutional” in the division of powers sense in three ways but only one of them is relevant here.<sup>5</sup> We are concerned solely with the question of whether provincial legislation comes within one or more of the classes of subjects over which provinces have legislative authority. If it does not, the legislation is *ultra vires* (beyond the power of) the province; if it does, the legislation is *intra vires* (within the power of) the province.

[10] To answer this question, we must focus first on whether the existing *CFA*, of which the UWO provisions would form a part, is within provincial legislative competence. If it is, the next question is whether adding the UWO provisions or the potential information sharing and embedding schemes would alter that conclusion. We must consider both the impact of the addition of new features on the constitutionality of the whole scheme, as well as whether any aspects of the new features are themselves constitutionally suspect.

[11] I will first turn to the question of whether the existing scheme is valid provincial legislation and then address whether the potential additional features would alter the division of powers analysis.

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<sup>5</sup> The other two are: (a) interjurisdictional immunity, the application of which makes a provincial law inapplicable to the extent that it intrudes into the essential core of a federal legislation power; and (b) paramountcy, the application of which makes a provincial law inoperative to the extent that it conflicts with a validly enacted federal law.

## 2. Constitutional validity of the current CFA

### a) *Analytical method*

[12] The *Constitution Act, 1867*, in ss. 91 and 92, assigns exclusive, legislative authority to Parliament and the provincial legislatures, respectively, in relation to “Matters coming within the Classes of Subjects” set out in those sections. Following this basic structure, the analysis to determine whether a law or parts of a law fall within federal or provincial legislative jurisdiction follows two main steps. First, one characterizes the law to determine the “matter” to which it relates, its so-called “pith and substance.” Then, one classifies the law by determining which of the “classes of subjects” set out in either s. 91 or s. 92 that “matter” comes within. While this analytical method is simple to state, it can be challenging to apply: the justices of the Supreme Court of Canada recently split three ways over how best to describe the pith and substance of a challenged law.<sup>6</sup>

[13] The constitutional analysis may be focused on the whole legislative scheme or only parts of it. In the latter situation, provisions that are found to be unconstitutional are severed, leaving the remaining provisions intact. However, severance will not be possible if the unconstitutional provisions are inextricably bound up with the constitutional ones such that the legislature would not have enacted one without the other.<sup>7</sup>

### b) *Characterization of the CFA—determining the law’s “pith and substance”*

#### (i) General principles

[14] As explained earlier, the first step is to determine the “matter” of the law. This has been described as the law’s “pith and substance,” “the matter to which it essentially relates” or its “dominant purpose or true character.” In more everyday language, one asks, “What is the essence of what the law does and how does it do it?”<sup>8</sup>

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<sup>6</sup> *Reference Re Genetic Non-Discrimination Act*, 2020 SCC 17.

<sup>7</sup> *Attorney-General for Alberta v Attorney –General for Canada*, [1947] AC 503 (PC Can) at p 518, cited with approval in *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at para 18.

<sup>8</sup> *RJR-MacDonald Inc v Canada (Attorney General)*, [1995] 3 SCR 199 at para 29; *Canadian Western Bank v Alberta*, 2007 SCC 22; *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at para 16.

[15] Both the law’s purpose and its legal and practical effects play a part in this analysis.<sup>9</sup> It is the purpose and effects of the law, not its form, that determine its true character. The means by which the law sets out to accomplish its purpose are relevant, but must not be confused with its purpose.<sup>10</sup> Where the challenged provisions are part of a larger legislative scheme, one considers the pith and substance of the challenged provisions in the context of that larger scheme.<sup>11</sup> This is because the nature of the larger scheme may influence the assessment of the purpose and/or effects of the challenged provisions.

[16] The law’s “dominant purpose” is decisive in the pith and substance analysis; the law’s secondary objectives and effects have no impact on its characterization or on its constitutionality.<sup>12</sup> Thus, where “the matter” of legislation is squarely within federal or provincial legislative authority, it may have substantial effects on matters that, considered on their own, would be outside that legislative authority. This point is often expressed by saying that “incidental effects”, that is, effects that may be of significant practical importance but are collateral and secondary to the mandate of the enacting legislature, do not alter the constitutionality of an otherwise valid law.<sup>13</sup>

[17] Canadian constitutional law recognizes the so-called “double aspect doctrine.” This doctrine holds that a matter may, for one purpose and in one aspect, fall within federal jurisdiction while for another purpose, and in another aspect, it may fall within provincial competence. Standards for driving are a good example. Parliament can enact the offence of dangerous driving or criminal negligence causing death under its power in relation to criminal law, while the provinces can regulate driving within their borders, including by creating the provincial offence of careless driving under provincial authority in relation to property and civil rights.<sup>14</sup>

[18] The potential for overlap inherent in this approach is addressed through the constitutional doctrines of pith and substance, interjurisdictional immunity and federal paramountcy. Overlap

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<sup>9</sup> *Reference Re Securities Act*, 2011 SCC 66 at paras 63-64.

<sup>10</sup> See e.g. *Reference re Genetic Non-discrimination Act*, 2020 SCC 17 at paras 116 and 221.

<sup>11</sup> *Kirkbi AG v Ritvick Holdings Inc*, 2005 SCC 65; by analogy, see also *R v Comeau*, 2018 SCC 15 at para 113.

<sup>12</sup> *Global Securities Corp v British Columbia (Securities Commission)*, [2000] 1 SCR 494 at para 23.

<sup>13</sup> *Canadian Western Bank v Alberta*, 2007 SCC 22 at para 28.

<sup>14</sup> *Canadian Western Bank v Alberta*, 2007 SCC 22 at para 30.

that has only incidental effects is resolved by the pith and substance analysis. Overlap that impairs the core of the other order of government’s legislative authority is addressed by interjurisdictional immunity with the result that the impairing law is inapplicable to the extent of that impairment. Overlap that results in a conflict between a provincial and a federal law is addressed through federal paramountcy with the result that the provincial law is inoperative to the extent of the conflict. As noted earlier, I do not consider either interjurisdictional immunity or federal paramountcy to be relevant to the constitutional issues on which you have asked for my opinion.

(ii) The purposes and effects of the *CFA*

[19] We turn, then, to the “pith and substance” of the *CFA* by looking at its purpose and effects. The British Columbia Court of Appeal has held the *CFA* has three purposes: (a) to take the profit out of unlawful activity; (b) to prevent the use of property for unlawfully acquiring wealth or causing bodily injury; and (c) to compensate victims of crime and fund crime prevention and remediation.<sup>15</sup>

[20] In broad terms, the *CFA*’s effects mirror these purposes.

[21] The focus of the *CFA* is forfeiture to government of property that is “proceeds of unlawful activity” or “an instrument of unlawful activity.”<sup>16</sup> The *CFA* defines “property” to mean “a parcel of real property or tangible or intangible personal property,” including cash.<sup>17</sup> The term “proceeds of unlawful activity” refers to various types of interests in property and an “instrument of unlawful activity” is defined to mean property used or likely to be used to engage in unlawful activity. Thus, the effects of forfeiture of such property furthers the first two purposes of the *CFA*, taking the profit out of unlawful activity and preventing the use of property to acquire wealth or cause bodily harm.

[22] Part 6 of the *CFA* furthers the third purpose, compensating victims of crime and funding crime prevention and remediation. The proceeds of forfeiture are paid into the civil forfeiture

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<sup>15</sup> *British Columbia (Director of Civil Forfeiture) v Onn*, 2009 BCCA 402 at para 14; see also *British Columbia (Director of Civil Forfeiture) v Wolff*, 2012 BCCA 473 at para 16.

<sup>16</sup> *CFA*, s. 3.

<sup>17</sup> *CFA*, s. 1(1).

account and the director may make payments out of it to, among other things, compensate eligible victims and to fund crime prevention and remediation.

[23] An application for forfeiture may be made “only with respect to property or an interest in property located in British Columbia.”<sup>18</sup> This focus on property within the Province is further evidenced by the fact that proceedings for forfeiture orders under Part 2 and for other court orders (such as interim preservation orders) under Part 3 are proceedings *in rem* and not *in personam*.<sup>19</sup> This means that the object of the proceeding is to make a determination of rights to the property that is conclusive against the world, regardless of who the owner is or who else might have an interest in it.<sup>20</sup> In short, the whole scheme is directed to forfeit, to the provincial government, property in the province that is either the proceeds of crime or an instrument of unlawful activity and to devoting the value of that property to compensating victims of crime and funding crime prevention and remediation.

[24] The *CFA* contains a number of procedural provisions that, among other things, confer discretion on the court to dispense with or mitigate the effects of forfeiture where it would be in the interests of justice to do so, and establish rules concerning the burden and standard of proof for proceedings under the Act. It also provides for various interim preservation orders and for the director’s authority to provide notices to persons to produce information, including about accounts and account holders at financial institutions. All of these provisions are ancillary, and aim to further the *CFA*’s three purposes as articulated by the Court of Appeal.

(iii) Conclusion on pith and substance of the *CFA*

[25] The British Columbia courts have held that the pith and substance of the *CFA* is a property-based regime for the forfeiture and redistribution of property found to be tainted by crime for purposes related to the suppression of crime, including by preventing the use of

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<sup>18</sup> *CFA*, s. 3(3).

<sup>19</sup> *CFA*, s. 15.01(2).

<sup>20</sup> *Law v Hansen* (1895), 25 SCR 69 at p 73.

property to unlawfully acquire wealth or cause bodily injury, and to compensating victims of crime and funding crime prevention and remediation.<sup>21</sup>

[26] This closely tracks the conclusion reached by the Supreme Court of Canada in relation to the pith and substance of the Ontario *Civil Remedies Act, 2001*<sup>22</sup>, legislation that in substance is similar to British Columbia’s *CFA*. The Court described the pith and substance of that legislation as creating “a property-based authority to seize money and other things shown on a balance of probabilities to be tainted by crime and thereafter to allocate the proceeds to compensating victims of and remedying the societal effects of criminality. The practical (and intended) effect is also to take the profit out of crime and to deter its present and would-be perpetrators.”<sup>23</sup>

[27] These statements capture the pith and substance or “the matter” of the *CFA*.

[28] However, I note my conclusion about the pith and substance of the *CFA*—and its classification (below)—might be different if the CFO were sharing information with criminal law enforcement agencies or tax authorities for the purposes of prosecutions under the *Criminal Code*<sup>24</sup> or *Income Tax Act*<sup>25</sup> or if the CFO is embedded in a provincial law enforcement agency or such an agency is given a civil forfeiture mandate. In *R v Jarvis*<sup>26</sup>, which is discussed further below in relation to *Charter* compliance, the Court held there was a distinction, for *Charter* purposes, between obtaining information in order to assess tax liability and obtaining information for the purposes of determining penal liability. The distinction turns on the “predominant purpose” for which the information is obtained. To determine the predominant purpose for which information is obtained, one must look to all factors that bear upon the nature of the inquiry. Apart from a clear decision to pursue a criminal investigation, no one factor is determinative.<sup>27</sup>

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<sup>21</sup> *British Columbia (Director of Civil Forfeiture) v Onn*, 2009 BCCA 402 at para 14; *British Columbia (Director of Civil Forfeiture) v Wolff*, 2012 BCCA 473 at para 16; *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCSC 880 at para 1399.

<sup>22</sup> *Civil Remedies Act, 2001*, SO 2001, c 28 (“*CRA*”).

<sup>23</sup> *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at para 23.

<sup>24</sup> *Criminal Code*, RSC 1985, c C-46.

<sup>25</sup> *Income Tax Act*, RSC 1985, c 1 (5th Supp) (“*ITA*”).

<sup>26</sup> *R v Jarvis*, 2002 SCC 73.

<sup>27</sup> The following factors may be considered: (a) did authorities have reasonable grounds to lay charges or could a decision have been made to proceed with a criminal investigation; (b) was the authorities’ general conduct consistent with a criminal investigation; (c) did the regulator transfer his or her file to the investigators; (d) was the

[29] This has implications for the division of powers analysis as well. If the predominant purpose of the CFO in gathering information were to assist law enforcement agencies in their criminal investigations, then the information gathering process by the CFO might be characterized as a criminal investigation.<sup>28</sup> If the CFO is embedded in a law enforcement agency or such an agency has a civil forfeiture mandate, then the characterization as a criminal investigation may be even more likely.

c) *Classification: assigning the “matter” to one the classes of subjects set out in ss. 91 and 92*

(i) Introduction

[30] I now turn to the question of whether the matter to which the law relates—its “pith and substance”—falls within one of the classes of subjects established under ss. 91 and 92 of the *Constitution Act, 1867*.<sup>29</sup> The focus of our concern is whether the *CFA* falls within provincial legislative authority over “property and civil rights in the province” under s. 92(13) or within federal legislative authority over “the criminal law except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters” under s. 91(27).

[31] In classifying the matter, we must remember that “a matter” may have a dual aspect, that is, it may have aspects that are both federal and provincial.<sup>30</sup> This allows the concurrent operation of federal and provincial laws each of which pursues objectives that are, in pith and substance, within their respective jurisdictions. Moreover, even where a matter may at first appear to fall within the legislative competence of one level of government, it may be assigned to a head of power of the other level where the matter is closely connected or integral to that head of power. For example, labour relations (generally a matter of property and civil rights within the

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regulator acting as an agent for the investigators; (e) did the investigators appear to intend to use the regulator as their agent; (f) was the evidence relevant to taxpayer liability generally or only to penal liability; and (g) were there other circumstances or factors suggesting an audit became a criminal investigation?

<sup>28</sup> *R v Jarvis*, 2002 SCC 73.

<sup>29</sup> The language in quotations comes from the opening words of ss. 91 and 92. Parliament has exclusive legislative authority “in relation to all matters not coming within” the classes of subjects assigned to the provinces by s. 92 and this authority extends “to all matters coming within the classes of subjects” set out in s. 91. The provincial legislatures have exclusive legislative authority “in relation to matters coming with the classes of subjects” set out in s. 92.

<sup>30</sup> *Reference re Securities Act*, 2011 SCC 66 at para 66.

province) may be integral to the operation of an interprovincial undertaking and therefore fall within federal legislative competence.<sup>31</sup>

[32] As discussed in more detail below, I conclude that the *CFA*, with the possible exception of the “future use” provisions, is within provincial legislative jurisdiction and that adding the UWO provisions would not alter that conclusion.

(ii) Criminal law and property and civil rights

[33] The two main contending heads of legislative power are the federal criminal law power and the provincial power in relation to property and civil rights in the province. A brief word about each, and about the relationship between them, is in order.

[34] Federal legislative power in relation to criminal law applies, as a general rule, to matters with a valid criminal law purpose (such as the public peace, order, security, health and morality) to which a prohibition and penalty are attached. The federal power extends to criminal procedure that regulates many aspects of criminal law enforcement such as arrest, search and seizure of evidence, the regulation of electronic surveillance and the forfeiture of stolen property.<sup>32</sup>

[35] Provincial legislative power in relation to property and civil rights within the province is “a broad, multi-faceted power difficult to summarize concisely.”<sup>33</sup> Under this power, the provinces have authority to enact laws that govern relationships between individuals and their property (real, personal and intangible) as well as individuals and each other and their “civil rights.”<sup>34</sup> Peter Hogg describes the power as “...a compendious description of the entire body of private law which governs the relationships between subject and subject, as opposed to the law which governs the relationships between the subject and the institutions of government.”<sup>35</sup>

[36] A matter does not fall within property and civil rights simply because property is the subject-matter of the law. Classification of the challenged law turns not on its subject matter, but

<sup>31</sup> See e.g. *Bell Canada v Quebec (Commission de la Santé et de la Sécurité du Travail)*, [1981] 1 SCR 749.

<sup>32</sup> See e.g. *Reference re Firearms Act (Can.)*, 2000 SCC 31 at paras 28 and 31; with respect to forfeiture of stolen property see *Industrial Acceptance Corp. Ltd. v The Queen*, [1953] 2 SCR 273.

<sup>33</sup> *Ward v Canada (Attorney General)*, 2002 SCC 17 at para 42.

<sup>34</sup> See also *Laderoute v Alberta*, [2019] AJ No 457, quoting G Régimbald and D Newman, *The Law of the Canadian Constitution*, 2nd ed (Markham, Ont: LexisNexis Canada Inc, 2017) at p 244.

<sup>35</sup> PW Hogg, *Constitutional Law of Canada*, 5th ed Supp (Toronto: Thomson Reuters, loose-leaf updated to November 2018) at p 21-2.

on its “true nature and purpose.”<sup>36</sup> Moreover, there are no “sharp lines” between criminal law and property and civil rights: food, drugs and obscene materials are all items of property but they are also legitimate subjects of criminal laws.<sup>37</sup> As a further example, forfeiture of property used in the commission of a criminal offence has been recognized as an integral aspect of the criminal law.<sup>38</sup>

[37] The Supreme Court’s decision in *Johnson v AG for Alberta* provides a nice illustration of the at-times fine distinctions that determine the dividing line between criminal law and property and civil rights.<sup>39</sup> Alberta’s *Slot Machine Act*<sup>40</sup> provided that no slot machine was capable of ownership or of being the subject of property rights in the Province. The law also authorized confiscation of such machines unless, at an inquiry before a justice of the peace, the court was satisfied that the machine was not a slot machine within the meaning of the Act. The legislation defined slot machine in a way that nearly mirrored the *Criminal Code* definition.

[38] The Court closely divided on how to characterize and classify the legislation. Kellock and Cartwright JJ. held that it related to the prohibition and punishment of keeping contrivances for playing games of chance and was therefore federal criminal law and *ultra vires* the province. Locke J. reasoned that, in essence, the Act was directed against gambling and was therefore properly characterized as criminal law. Estey J., in dissent, was of the view that the legislation was directed to prevention rather than punishment and was therefore within provincial legislative competence. Kerwin and Taschereau JJ., also in dissent, thought that the legislation concerned property and therefore was within provincial jurisdiction as a matter of property and civil rights within the province. For his part, Rand J. avoided characterization and classification by dealing with the case under the federal paramountcy doctrine, finding that the provincial law was inoperative because “the machines or devices struck at by the statute are the same as those dealt with in similar manner” by the *Criminal Code*.

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<sup>36</sup> See e.g. *Switzman v Elbling and AG Quebec*, [1957] SCR 285, *per* Nolan J. at p 314.

<sup>37</sup> *Ward v Canada (Attorney General)*, 2002 SCC 17 at para 50.

<sup>38</sup> *Industrial Acceptance Corp. Ltd. v The Queen*, [1953] 2 SCR 273.

<sup>39</sup> *Johnson v AG for Alberta*, [1954] SCR 127.

<sup>40</sup> *Slot Machine Act*, RSA 1935, c 333.

[39] One dividing line is clear. A provincial law cannot authorize an inquiry into specific individuals in respect of specific criminal offences.<sup>41</sup> The question in every case must be whether or not the primary purpose of the inquiry is an investigation of whether a specific crime was committed.<sup>42</sup> Or, as Estey J. put it in his concurring judgment in *Di Iorio v Warden of the Montreal Jail*, “where the object is in substance a circumvention of the prescribed criminal procedure by the use of the enquiry technique..., the provincial action will be invalid as being in violation of either the criminal procedure validly enacted by the authority of s. 91(27), or the substantive criminal law, or both.”<sup>43</sup>

d) *Is the CFA valid provincial legislation in relation to property and civil rights in the province?*

(i) The jurisprudence

[40] There is strong support for the view that the current *CFA*, with the exception of one aspect, is within provincial legislative authority in relation to property and civil rights. That support consists of the judgment of the Supreme Court of Canada in *Chatterjee v Ontario (Attorney General)*<sup>44</sup> and the decision of the Supreme Court of British Columbia in *British Columbia (Director of Civil forfeiture) v Nguyen*.<sup>45</sup> The exception to provincial authority arises from *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*<sup>46</sup>

[41] The leading case on the constitutionality of provincial civil forfeiture schemes is *Chatterjee*, which concerned aspects of the Ontario scheme.

[42] In issue was whether ss. 1 to 6 and 16 to 17 of the Ontario *Civil Remedies Act, 2001* were *intra vires* the Province. Sections 1 to 6 provided for applications to the Superior Court for

<sup>41</sup> *Starr v Houlden*, [1990] 1 SCR 1366.

<sup>42</sup> *Starr v Houlden*, [1990] 1 SCR 1366; see also *Di Iorio v Warden of the Montreal Jail*, [1978] 1 SCR 152 at p 201.

<sup>43</sup> *Di Iorio v Warden of the Montreal Jail*, [1978] 1 SCR 152 at p 258.

<sup>44</sup> *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19.

<sup>45</sup> *British Columbia (Director of Civil forfeiture) v Nguyen*, 2013 BCSC 1610, aff'd 2014 BCCA 460. And see *British Columbia (Director of Civil Forfeiture) v Wolff*, 2012 BCCA 473 at paras 15-17, where the Court of Appeal noted that the constitutionality of the *CFA* had not yet been determined by a British Columbia court, but cited *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 and noted that the Court of Appeal confirmed the objectives of the *CFA* in terms similar to those stated in s. 1 of the *Civil Remedies Act, 2001*, which were accepted by the Court in *Chatterjee*.

<sup>46</sup> *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCSC 880.

forfeiture orders for the proceeds of crime and for orders to disclose information required for the administration of the Act. In addition, these provisions permitted the provincial Minister of Finance to make payments from funds forfeited to compensate victims of unlawful activity, to assist victims of unlawful activity or to compensate the province, municipalities and prescribed public bodies for pecuniary losses suffered as a result of unlawful activity, including costs incurred in remedying the effects of the unlawful activity. Sections 16 and 17 provided that the standard of proof under the *CRA* was on the balance of probabilities and that proof that a person has been convicted of an offence was proof that the person committed it.

[43] The appellant Chatterjee argued that to the extent these provisions provided for forfeiture of the proceeds of federal offences, they were in pith and substance criminal law and therefore beyond the legislative competence of the Province. In essence, the appellant argued that “forfeiture, in the context of property tainted by crime, is punishment.”<sup>47</sup>

[44] A unanimous Supreme Court rejected this contention. Having set out the *CRA*’s pith and substance as noted above, the Court concluded that its dominant feature was in relation to the provincial legislative authority over property and civil rights in the province (s. 92(16)) although it incidentally affected the federal power in relation to criminal law and procedure (s. 91(27)). As Binnie J. put it on behalf of the Court:

... the *CRA* method of attack on crime is to authorize *in rem* forfeiture of its proceeds and differs from both the traditional criminal law which ordinarily couples a prohibition with a penalty ... and criminal procedure which in general refers to the means by which an allegation of a particular criminal offence is proven against a particular offender.

The Constitution permits a province to enact measures to deter criminality and to deal with its financial consequence so long as those measures are taken in relation to a head of provincial competence and do not compromise the proper functioning of the *Criminal Code* including the sentencing provisions.<sup>48</sup>

[45] The Court concluded that this was the case with Ontario’s *CRA*.

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<sup>47</sup> *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at para 38.

<sup>48</sup> *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at paras 3 and 40.

[46] This conclusion, strictly speaking, relates only to the *CRA*'s provisions relating to proceeds of crime and burden and standard of proof.<sup>49</sup> However, the reasoning supporting the conclusion suggests that British Columbia has considerable latitude under its property and civil rights jurisdiction to legislate in relation to deterring crime and dealing with its financial consequences, provided, of course that those are its true and dominant purposes and effects.

[47] The constitutionality of the *CFA* is also supported by the decision of the Supreme Court of British Columbia in *British Columbia (Director of Civil forfeiture) v Nguyen*.<sup>50</sup> The Court rejected a division of powers challenge to ss. 15 to 22.1 of the *CFA*, provisions that cover the *in rem* nature of the proceedings, presumptions of fact and the standard of proof, among other things. There was no dispute that, following *Chatterjee*, the pith and substance of the *CFA* fell within provincial legislative competence. The challenge in *Nguyen* was that there was an operational conflict between the *CFA* and the *Criminal Code* in relation to how evidence in forfeiture cases is collected and in respect of procedures, burdens and presumptions. The Court rejected this challenge, concluding there was “no evidence of any incidental effects that create operational conflicts with federal criminal law and procedure.”<sup>51</sup>

(ii) Conclusion

[48] Based on these authorities, there are strong grounds for concluding that the *CFA* is generally valid provincial legislation enacted under British Columbia's legislative authority in relation to property and civil rights in the province.

[49] I turn now to the exception I noted earlier relating to the constitutionality of the *CFA*'s “future use” of “instruments of unlawful activity” provisions. In *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, there was a challenge to the instrument of unlawful activity provisions. The Court concluded that the “future use” provisions were in pith and substance criminal law and therefore *ultra vires* the Province.

[50] An instrument of unlawful activity is property that has been used (the so-called “past use” provision) or is likely to be used (the so-called “future use” provision) to engage in unlawful

<sup>49</sup> *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at para 55.

<sup>50</sup> The Court of Appeal did not consider the constitutional issue.

<sup>51</sup> *British Columbia (Director of Civil Forfeiture) v Nguyen*, 2013 BCSC 1610 at para 43.

activity. That unlawful activity must be one that resulted (or may result) in the acquisition of property or caused (or is likely to cause) serious bodily harm to a person and includes property realized from the disposition of such property.<sup>52</sup> The submission in *Angel Acres* was that these past and future use provisions are in pith and substance criminal law because they constitute *in personam* criminal proceedings rather than *in rem* civil proceedings like the other forfeiture provisions.

[51] The Court concluded that, to the extent the *CFA* permits forfeiture of property that is found to be an instrument of future crime, it is *ultra vires* the Province. The future use provisions, in the Court’s view, “target the potential actions of an individual or group of individuals based upon propensity to offend. As such, they are punitive in their practical essence and in their legal effect, either by creating a new offence based upon the propensity to commit a criminal act or by further penalizing an unlawful act that has been previously punished.”<sup>53</sup>

[52] While there are arguments to be made as to the soundness of this conclusion, it should be accepted as the law in British Columbia unless reversed on appeal.<sup>54</sup>

[53] On the basis of this state of the authorities, I conclude that the overall scheme of the *CFA* is *intra vires* the Province with the exception of the “future use” instruments of unlawful activity provisions with which *Angel Acres* was concerned.

[54] The question therefore becomes whether adding enhanced investigative tools, such as UWOs, to the scheme would change the conclusion that the scheme is, in pith and substance, in relation to property and civil rights in the province. For reasons I will explain, my view is that it would not.

### 3. The impact on the division of powers analysis of adding UWOs to the civil forfeiture scheme

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<sup>52</sup> *CFA*, s. 1.

<sup>53</sup> *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCSC 880 at para 1497.

<sup>54</sup> Note that the finding of unconstitutionality was stayed with a judge of the Court of Appeal finding that the appeal from that finding raised a serious issue: *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCCA 290 at para 21.

a) *Introduction*

[55] The *CFA* confers some information gathering powers on the director and according to the case law, the discovery process under the *Supreme Court Civil Rules* applies to proceedings under the Act.<sup>55</sup> It is also likely that information gathering processes within the inherent jurisdiction of a superior court, such as “Norwich orders” are available.<sup>56</sup> You have not asked for my opinion concerning any division of powers or *Charter* issues that might arise in relation to the use of the civil discovery process in support of a civil forfeiture proceeding.

b) *Overview of UWO provisions*

[56] The focus of your inquiry relates to whether there would be division of powers or *Charter* concerns if the director had access to an information gathering device modelled on the UK UWO scheme. It will be useful first to provide a brief description of that device.

[57] Mrs. Justice Lang of the Queen’s Bench Division of the High Court of Justice recently set out the background and an overview of the UK UWO scheme in *National Crime Agency v Baker et al.*<sup>57</sup> The following summary is drawn from her analysis.

[58] UWOs were introduced by the *Criminal Finances Act 2017*<sup>58</sup> and inserted into Part 8 of *Proceeds of Crime Act 2002*<sup>59</sup> at ss. 362A to 362R (relating to England, Wales and Northern

<sup>55</sup> *British Columbia (Director of Civil Forfeiture) v Day*, 2019 BCCA 160; *Director of Civil Forfeiture v Shoquist*, 2011 BCSC 1199; *British Columbia (Director of Civil Forfeiture) v Huynh*, 2012 BCSC 740; *British Columbia (Director of Civil Forfeiture) v Cronin*, 2016 BCSC 284 at paras 13-14. Also, in *Director of Civil Forfeiture v Lloydsmith*, 2014 BCCA 72, while the Court of Appeal does not directly address this point, the Court assumes the civil rules, including discovery, apply to civil forfeiture proceedings. See also *British Columbia (Director of Civil Forfeiture) v Crowley*, 2013 BCCA 89. I note, however, that although the full panoply of civil discovery rules apply to an action brought by the director, if the director commences proceedings by petition, then the less extensive discovery applying in petitions under the *Supreme Court Civil Rules* would apply: *CFA*, s. 15.01(1).

<sup>56</sup> Norwich orders are used to compel non-parties to disclose information or documents in their possession required by a claimant: *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 at paras 31 and 73, citing *Norwich Pharmacal Co v Customs and Excise Commissioners*, [1974] AC 133 (HL) at p 175. In British Columbia, they are issued under the court’s inherent jurisdiction: *Kenney v Loewen*, 1999 CanLII 6110 (BC SC); *British Columbia (Director of Civil Forfeiture) v Hells Angels Motorcycle Corporation*, 2014 BCCA 207 at para 26. While there are no cases addressing Norwich orders under *CFA* proceedings, the court’s inherent jurisdiction to manage its processes has been accepted in the civil forfeiture context: *British Columbia (Director of Civil Forfeiture) v Kingdon*, 2011 BCSC 1501; *British Columbia (Director of Civil Forfeiture) v PacNet Services Ltd.*, 2019 BCSC 70 at para 102; *Director of Civil Forfeiture v Doe*, 2010 BCSC 940 at para 21; *British Columbia (Director of Civil Forfeiture) v Crowley*, 2013 BCCA 89 at para 78. Norwich orders in civil forfeiture proceedings have been issued in Ontario. See for example, *Attorney General of Ontario v Two Financial Institutions*, 2010 ONSC 47. In the *CRA*, the rules of civil procedure apply expressly: *CRA*, s. 15.6(3).

<sup>57</sup> *National Crime Agency v Baker et al.*, [2020] EWHC 822 at paras 10-12.

<sup>58</sup> *Criminal Finances Act 2017*, 2017, c 22.

Ireland) and 396A-396U (relating to Scotland). Part 8 comprises a “toolkit” of investigative powers. UWOs are one of a number of investigation tools available to the National Crime Agency (or other designated enforcement authority). According to the Home Office’s Explanatory Notes<sup>60</sup>:

12. The Act creates unexplained wealth orders (UWOs) that require a person who is suspected of involvement in or association with serious criminality to explain the origin of assets that appear to be disproportionate to their known income. A failure to provide a full response would give rise to a presumption that the property was recoverable, in order to assist any subsequent civil recovery action. A person could also be convicted of a criminal offence, if they make false or misleading statements in response to a UWO. Law enforcement agencies often have reasonable grounds to suspect that identified assets of such persons are the proceeds of serious crime. However, they are often unable to freeze or recover the assets under the previous provisions in POCA due to an inability to obtain evidence (often due to the inability to rely on full cooperation from other jurisdictions to obtain evidence).

13. The Act also allows for this power to be applied to “politically exposed persons”, that is, politicians or officials from outside the European Economic Area or those associated with them. A UWO made in relation to a non-EEA PEP would not require suspicion of serious criminality. This measure reflects the concern about those involved in corruption overseas, laundering the proceeds of crime in the UK; and the fact that it may be difficult for law enforcement agencies to satisfy the evidential standard at the outset of an investigation given that all relevant information may be outside of the jurisdiction.

[59] A number of other jurisdictions have unexplained wealth provisions, including Australia and Ireland.<sup>61</sup> While “unexplained wealth” does not have the same meaning across jurisdictions, the common element in UWO laws is a presumption, arising from non-compliance with the order, that a person’s property constitutes proceeds of crime. This, in effect, compels persons to explain the provenance of their wealth.<sup>62</sup>

[60] A more detailed description of the UK UWO device follows.

<sup>59</sup> *Proceeds of Crime Act 2002*, 2002, c 29, as amended by *Criminal Finances Act 2017*, 2017, c 22.

<sup>60</sup> Home Office, *Explanatory Notes Criminal Finances Act 2017* at paras 12–13.

<sup>61</sup> See e.g. T Keatinge, A Moiseienko and H Wood, *Unexplained Wealth Orders: UK Experience and Lessons for British Columbia* (Royal United Services Institute, October 2020), Cullen Commission Exhibit 382, pp 20-26.

<sup>62</sup> T Keatinge, A Moiseienko and H Wood, *Unexplained Wealth Orders: UK Experience and Lessons for British Columbia* (Royal United Services Institute, October 2020), Cullen Commission Exhibit 382, pp 20-21; Testimony of Anton Moiseienko, Cullen Commission Transcript, December 15, 2020, pp 15-16.

c) *Detailed review of the statutory scheme*

(i) What is an UWO?

[61] An UWO is an order of a superior court requiring the respondent to provide a statement setting out the nature and extent of that person’s interest in specified property, explaining how it was acquired, setting out the details of any trust arrangement and “other information in connection with the property as may be so specified.”<sup>63</sup> The order may also require the respondent to produce documents “of a kind specified or described in the order.”<sup>64</sup> The order will set out how, and within what period of time, the respondent is to provide the statement.<sup>65</sup>

(ii) How is the UWO obtained?

[62] An “enforcement authority” (which I assume if the device were adopted in British Columbia, would be the Civil Forfeiture Office) may apply without notice to the superior court (the Supreme Court of British Columbia) for an UWO. The application must specify or describe the property in respect of which the order is sought and the person whom the enforcement authority thinks holds the property.<sup>66</sup>

[63] To grant the order, the Court must be “satisfied” that:

- There is “reasonable cause to believe” that the respondent holds the property; it does not matter if there are other persons who also hold the property;<sup>67</sup>
- There is reasonable cause to believe the value of the property (or if there is more than one item, the total value of all items) is greater than £50,000 [say CAD \$86,000];<sup>68</sup>
- The respondent is a “politically exposed person”<sup>69</sup> (or a family member or known close associate) or there are “reasonable grounds for suspecting” that the respondent,

<sup>63</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362A(3).

<sup>64</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362A(5).

<sup>65</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362A(4) and 362A(6).

<sup>66</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362A(2) and 362I(1).

<sup>67</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362B(2) and 362(5)(a).

<sup>68</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362B(2)(b).

or person connected with the respondent, is or has been involved in serious crime in the jurisdiction or elsewhere;<sup>70</sup> and

- There are “reasonable grounds for suspecting” that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.<sup>71</sup>

(iii) What is the effect of compliance with the UWO?

[64] If there is compliance (or purported compliance) with the UWO and there is no freezing order in effect (as to which see below), the “enforcement authority” may, at any time, determine what, if any, “enforcement or investigatory proceedings” it considers ought to be taken in relation to the property.<sup>72</sup> For our purposes, the “enforcement authority” would be the CFO. If a freezing order is in effect, then the “enforcement authority” must make that determination within 60 days from the day the respondent complies with the order.<sup>73</sup>

[65] In the UK legislation, “enforcement or investigatory proceedings” include three types of proceedings: confiscation proceedings under Part 2 or 4 of the *Proceeds of Crime Act 2002*; proceedings that may be taken under the UWO provisions; and civil recovery proceedings.

[66] Confiscation orders, which are made following conviction and relate to the amount of the benefit the defendant is determined to have derived from the conduct concerned, may be made if the enforcement authority is also a “prosecuting authority” under the Parts 2 or 4 of the *Proceeds of Crime Act 2002*.<sup>74</sup> As I understand it, these orders are very roughly equivalent to orders that may be made under the Canadian *Criminal Code* and other federal statutes. I will assume that they would not form part of potential provincial legislation.

<sup>69</sup> “Politically exposed person” is defined in s. 362B(7), and, adjusted for the Canadian context, would mean a person who is (a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than Canada; (b) a family member or (c) a close associate or (d) otherwise connected with of such a person.

<sup>70</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362B(4). “Serious crime” is defined in s. 362B(9) to include offences specified in Part 1 of Schedule 1 of the *Serious Crimes Act 2007*, 2007, c 27, which include such offences as drug trafficking, people trafficking, terrorism, firearms offences, armed robbery, money laundering, fraud, etc. “Connected” person is as defined in s. 1122 of the *Corporation Tax Act 2010*, 2010, c 4.

<sup>71</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362B(3).

<sup>72</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362D(5).

<sup>73</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362D(2) and (3).

<sup>74</sup> *Proceeds of Crime Act 2002*, 2002, c 29, Parts 2 and 4 and s. 362D(8).

[67] With respect to proceedings under the UWO provisions, the main proceeding would be in relation to interim freezing orders that I will discuss shortly.

[68] With respect to civil recovery proceedings, I will assume that these are the proceedings authorized under the *CFA*.

[69] In purporting to comply with an UWO, it is an offence to make a false or misleading statement knowingly or recklessly.<sup>75</sup> The respondent’s statement made in response to an UWO is not admissible in criminal proceedings, with some exceptions such as perjury prosecutions or if the person gives evidence inconsistent with the statement in a prosecution for another offence.<sup>76</sup> It is admissible in subsequent civil proceedings. The UWO requirement to disclose information overrides any restrictions that would otherwise apply to disclosure. But there are certain protections for privileged material.<sup>77</sup>

(iv) What are the consequences of non-compliance?

[70] If the respondent fails without reasonable excuse to comply, or purport to comply, with UWO requirements, the property is presumed to be recoverable property unless the contrary is shown.<sup>78</sup> For our purposes, I will assume that the presumption that property is “recoverable property” would, in potential provincial legislation, be a presumption that the property was “proceeds of unlawful activity” within the meaning of the *CFA*.<sup>79</sup> The UK UWO scheme only applies to proceeds of crime.<sup>80</sup> Unlike in the *CFA*, there is no concept of “instruments of crime.”

d) *The impact on the pith and substance analysis of adding UWO provisions to the CFA*

(i) Assumptions

[71] Following your instructions, I have assumed for the purposes of formulating my opinion that:

<sup>75</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362E(1).

<sup>76</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362F(1) and 362F(2).

<sup>77</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362G(1) and 362F(2).

<sup>78</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362C(1), 362C(2) and 362C(5).

<sup>79</sup> If the Commissioner intends to recommend a UWO power that would apply to instruments of unlawful activity, then he would have to look at a more express declaration of what can be ordered under an UWO than what is in s. 362A(3)(d) of the *Proceeds of Crime Act 2002*, 2002, c 29: “other information in connection with the property as may be so specified.”

<sup>80</sup> Testimony of Helena Wood, Cullen Commission Transcripts, December 15, 2020, p 37.

- Provincial legislation would be directed to politically exposed persons and those involved in serious crime;
- The enforcement authority for the legislation would be the provincial CFO;
- References to forfeiture proceedings in the legislation would be to the processes under the *CFA*, as amended; and
- The UWO scheme would be directed to obtaining information about the nature of the respondent's interest in the property and how it was acquired. It follows that the UWO scheme adapted to British Columbia would be directed to inquiries concerning whether property was the proceeds of unlawful activity but not whether it was an instrument of unlawful activity.

(ii) Purpose of UWO provisions

[72] As discussed in detail earlier, the first step in the division of powers analysis is to determine the “matter” or the “pith and substance” of the challenged provisions by considering their purpose and effects.

[73] The Home Office Explanatory Notes state that the purpose of the UWO provisions is to facilitate obtaining evidence that property is the proceeds of unlawful activity. The focus of the information that may be compelled by means of an UWO is the nature of the respondent's interest in, and how he or she came to acquire, the property. It is true that the UWO may also require a statement “setting out such other information in connection with the property as may be so specified” but it is doubtful that this provision permits compelled statements about the use of the property. As noted, I have assumed that, adapted to the *CFA*, the UWO scheme would assist in determining whether property was the proceeds of unlawful activity, but not in determining whether the property was an instrument of unlawful activity.<sup>81</sup>

[74] Thus, the UWO scheme is essentially an investigative tool aimed at discovering whether property is the proceeds of unlawful activity. The legislative scheme largely confirms this

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<sup>81</sup> In the *CFA*, the term “unlawful activity” has a broad definition. In short, it means that the conduct constitutes a provincial or federal offence or, if committed outside Canada, an offence that would be an offence in the Province if committed here: see *CFA*, s. 1.

purpose. The UWO provisions allow the authorities to obtain a court order that requires the respondent to explain the source of the property and failure to do so (or to purport to do so) gives rise to the presumption that the property is proceeds of unlawful activity unless the contrary is proved.

[75] I have considered the fact that the UWO scheme focuses on the conduct of individuals as much as on the status of the property. This is because one of the requirements that must be met before the UWO may be issued is that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property. This brings to the fore the question of how the respondent came to acquire the property which, in turn, will often devolve to the question of whether the respondent acquired it by means of unlawful activity. To this extent, the legislation may be seen as authorizing the investigation of criminal activity by a specific person by means of compelling that person to provide statements about how he or she could have obtained the property legally.

[76] However, I do not think that this moves the purpose of the scheme away from the provincial objectives of civil forfeiture into the realm of federal criminal law and procedure. The key is that the legislation limits the use of the information obtained to deciding what investigatory and enforcement proceedings may be initiated or continued in relation to the property. Also to note is that the UK scheme provides that statements a person makes in response to a UWO cannot be used as evidence against that person in criminal proceedings. Similar protection would apply in Canada by virtue of s. 13 of the *Charter* and, in fact, more extensive protection is likely provided in relation to use of the evidence as I will discuss in the *Charter* section of my opinion. Also, although provincial legislation cannot provide assurance about the subsequent use of statements compelled by provincial as well as by federal legislation, because the rules of evidence in criminal matters are within the legislative authority of Parliament, s. 5 of the federal *Canada Evidence Act*<sup>82</sup> affords protection against the use in matters to which it applies, including of course criminal matters. All of this is consistent with the purpose of the UWO being focused on obtaining evidence that property is the proceeds of unlawful activity and the nature of the respondent's interest in it.

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<sup>82</sup> *Canada Evidence Act*, RSC 1985, c C-5.

## (iii) Effects of the UWO provisions

[77] The scheme has two main effects.

[78] First, the UWO requires individuals to provide evidence that may help to establish that property is the proceeds of unlawful activity. The specified matters which may be required by the order are directed exclusively to the proceeds of unlawful activity: the required statement may relate to the “nature and extent” of the person’s interest in the property; an explanation of how the person obtained it; and, if held by trustees, the details of the trust. These types of information are directed to the question of how the property was acquired and by whom, which are relevant only to the questions of whether the property is the proceeds of unlawful activity and whether the person being examined acquired it by means of unlawful activity. While the UK provision also authorizes the court to order the respondent to set out “such other information in connection with the property as may be” specified in the order, this broad provision would have to be interpreted to limit the court’s authority to order disclosure of matters consistent with the overall purpose of the scheme.

[79] Second, the person’s failure or refusal to comply with the UWO gives rise to a presumption that the person’s interest in the property is “recoverable property” unless the contrary is proved.<sup>83</sup> Transplanted to the *CFA*, the presumption would be that the property is the proceeds of unlawful activity.

## (iv) Pith and substance of the UWO provisions

[80] In my view, the pith and substance of the UWO provisions is that they compel persons to disclose how they acquired property and other information “in connection with the property” for the purpose of facilitating proof that the property is the proceeds of unlawful activity as well as the nature and extent of the person’s interest in it.<sup>84</sup>

<sup>83</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362C(2).

<sup>84</sup> However, in Australia, federal and state UWO provisions generally do not tie the UWO to a specific property. Rather, the legislation stipulates there must be reasonable grounds to suspect a person’s total wealth exceeds the value of wealth lawfully acquired: see e.g. *Criminal Property Confiscation Act 2000* (Western Australia); *Criminal Property Forfeiture Act 2002* (Northern Territory); *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* (Commonwealth). Detaching the inquiry from specific property could be constitutionally problematic in Canada.

(v) Characterization of the UWO provisions and the impact of their addition to the *CFA*

[81] While I cannot give an unqualified view, my opinion is that the UWO provisions (excepting in relation to politically exposed persons, see further below) are properly classified as falling within provincial legislative authority over property and civil rights in the province. The provisions further the same valid provincial objectives as the larger *CFA* scheme; they are concerned with obtaining evidence about property for the purpose of initiating or pursuing forfeiture proceedings under the *CFA* and only for those purposes. As the Supreme Court of Canada put it in *Chatterjee*:

The Constitution permits a province to enact measures to deter criminality and to deal with its financial consequence so long as those measures are taken in relation to a head of provincial competence and do not compromise the proper functioning of the *Criminal Code* including the sentencing provisions.

[82] The UWO provisions would form part of, and share the purposes of, the overall scheme to deter criminality and to deal with its financial consequences. Taken on their own or considered as part of the larger *CFA* scheme, they are within the legislative competence of the Province to enact under its authority over property and civil rights in the province.

[83] I must qualify this opinion in two respects.

[84] First, as noted earlier, the Supreme Court of British Columbia has ruled that the “future use” provisions relating to instruments of unlawful activity are *ultra vires* the Province because they fall under Parliament’s authority in relation to criminal law and procedure. It would follow from this that the UWO provisions, if employed in relation to the future use provisions, would similarly be *ultra vires* the Province. They would be directed to the same criminal law purpose as the Supreme Court of British Columbia determined was that of the future use provisions. However, I have assumed that the UWO provisions would be used only to obtain evidence about whether the property was the proceeds of crime and not in relation to whether it was an instrument of criminal activity. If that were the case, any division of powers issue with respect to the “future use” provisions would not affect the UWO provisions.

[85] Second, the UWO provisions are likely to be challenged as being in relation to criminal law and procedure. The basis of the challenge would likely be that the provisions seek to establish that a specific individual committed some unlawful act in connection with acquisition of property. I think, however, that such a challenge is unlikely to succeed. The test set out in the jurisprudence from the Supreme Court of Canada is whether the purpose of the proceeding is solely to investigate whether a specific crime has been committed.<sup>85</sup> This is not, in my view, the case with the UWO provisions. To paraphrase the words of the Court in another leading case on the point, “there is neither an accuser or an accused. The purpose ... is not the prosecution or punishment of an accused.”<sup>86</sup> Here, the investigative powers conferred by the UWO are directed to the forfeiture of property within the province to further valid provincial objectives.

[86] Provincial regulatory schemes and the criminal law are often interrelated and provincial statutes do not invade federal power over criminal law merely because their purposes are to target conduct that is also captured by the *Criminal Code*.<sup>87</sup> Deterrence can be a purpose of provincial law.<sup>88</sup> Moreover, the civil consequences of a criminal act are generally not considered “punishment” so as to bring a matter within the exclusive jurisdiction of Parliament.<sup>89</sup> The Supreme Court has repeatedly upheld provincial schemes that overlapped with the federal power over criminal law, such as provincial drunk driving programs<sup>90</sup>, provincial dangerous driving prohibitions<sup>91</sup>, automatic suspension of driving licences after a *Criminal Code* conviction<sup>92</sup>, laws aimed at regulating “disorderly houses”<sup>93</sup> and powers of coroners to investigate a death.<sup>94</sup> The Court has consistently supported provincial jurisdiction over matters of crime prevention and personal safety.

<sup>85</sup> See e.g. *Starr v Houlden*, [1990] SCR 1366.

<sup>86</sup> *Faber v The Queen*, [1976] 2 SCR 9 at p 33.

<sup>87</sup> *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46: the province’s purpose in enacting the Automatic Roadside Prohibition (“ARP”) scheme was not to oust the criminal law, but rather to prevent death and serious injury on public roads by removing drunk drivers and deterring impaired driving. The pith and substance of the ARP scheme was the licensing of drivers, the enhancement of traffic safety and the deterrence of persons from driving while impaired by alcohol. Provinces have an important role in ensuring highway safety, which includes regulating who is able to drive and removing dangerous drivers from the roads.

<sup>88</sup> *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46.

<sup>89</sup> *Ross v Registrar of Motor Vehicles et al.*, [1975] 1 SCR 5.

<sup>90</sup> *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46.

<sup>91</sup> *O’Grady v Sparling*, [1960] SCR 804; *R v Mann*, [1966] SCR 238.

<sup>92</sup> *Ross v Registrar of Motor Vehicles et al.*, [1975] 1 SCR 5.

<sup>93</sup> *Bédard v Dawson*, [1823] SCR 681.

<sup>94</sup> *R v Colarusso*, [1994] 1 SCR 20.

(vi) Politically exposed persons

[87] However, if UWOs were applied to “politically exposed persons” as is done in the UK, then such provisions might be *ultra vires* the Province. If the definition of “politically exposed persons” applies to people who are, or have been, entrusted with prominent public functions by an international organization or by a State other than Canada, then to the extent these people are foreign nationals (i.e. “aliens”), provincial legislation in respect of them might be found to be in relation the exclusive federal power in relation to “naturalization and aliens” under s. 91(25).<sup>95</sup> There is also the possibility that extending the UWO scheme to such persons would run afoul of the prerogative powers of the Crown in Right of Canada to conduct foreign relations.<sup>96</sup> This is not a division of powers issue, but concerns a power accorded by the common law to Canada.<sup>97</sup> The power to conduct foreign relations is the “residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown.”<sup>98</sup>

(vii) Conclusion

[88] With the qualifications mentioned, my opinion is that a UWO scheme similar to that in the UK could be enacted by the Province under its authority to legislate in relation to property and civil rights in the province.

B. Charter compliance

1. Introduction

[89] Many provincial legislative schemes include investigative powers to further their purposes. For example, restaurants are subject to public health inspections, work places are inspected by occupational health and safety officers and home owner and developer compliance

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<sup>95</sup> *Morgan et al v AG (PEI) et al*, [1976] 2 SCR 349 at pp 355-356; *Law Society of British Columbia v Mangat*, 2001 SCC 67 at para 33; *Union Colliery v Bryden* [1899] UKPC 58; PW Hogg, *Constitutional Law of Canada*, 5th ed Supp (Toronto: Thomson Reuters, loose-leaf updated to November 2018) at p 26-4; but see *Li v British Columbia*, 2019 BCSC 1819, upholding the *Foreign Buyers Tax* as being legislation in relation to property ownership in the province.

<sup>96</sup> *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at paras 33 – 35, citing *Reference as to the Effect of the Exercise of the Royal Prerogative of Mercy Upon Deportation Proceedings*, [1933] SCR 269 at p 272, per Duff CJ, quoting AV Dicey, *Introduction to the Study of the Law of the Constitution* (8th ed 1915) at p 420.

<sup>97</sup> *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 34.

<sup>98</sup> *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 34;

with building codes or zoning regulations is tested by inspection of their premises.<sup>99</sup> Similarly, compliance with minimum wage, employment equity and human rights legislation empowers the regulator to inspect an employer’s files and records. Powers of this nature are subject to *Charter* review, but have often been upheld by the courts.

[90] The question I address here is what limits, if any, does the *Charter* place on investigative powers that could be conferred on a civil forfeiture office. In relation to these powers, four broad categories of *Charter* issues arise.

[91] The first is whether the *Charter* applies at all to the powers in question. This depends on whether the challenged provision or activity is in popular parlance, “government action,” or to track the language of s. 32(1)(b) of the *Charter*, whether the actor is the “legislature [or] government of each province.” In general, powers of a public character conferred by statute are subject to the *Charter*<sup>100</sup> and I am confident that this is the case with respect any powers conferred by statute as part of a civil forfeiture scheme.<sup>101</sup>

[92] However, to say that the *Charter* applies because there is government action does not mean that all of the rights conferred by the *Charter* apply to civil forfeiture investigatory powers. The various sections of the *Charter* apply in particular and limited contexts and so the second category of issues concerns which *Charter* rights are implicated by civil forfeiture.

[93] Some generally will not apply. For example, the rights under s. 11 apply to persons “charged with an offence” and will therefore generally not apply to a person whose property is the subject of civil forfeiture proceedings. There are, however, two situations in which s. 11

<sup>99</sup> *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425 at pp 506-507.

<sup>100</sup> See e.g. *Greater Vancouver Transportation Authority v Canadian Federation of Students – British Columbia Component*, 2009 SCC 31 at paras 14-16: under s. 32, the *Charter* applies to not only Parliament, the legislatures and the government themselves, but also to all matters within the authority of these entities and there are two ways to determine whether the *Charter* applies to an entity’s activities: (a) by enquiring into the nature of the entity; or (b) by enquiring into the nature of its activities.

<sup>101</sup> Jurisprudence in British Columbia, Alberta and Ontario confirms the *Charter* applies in civil forfeiture proceedings: *Angel Acres Recreation and Festival Property Ltd. v British Columbia (Attorney General)*, 2019 BCSC 1421; *British Columbia (Director of Civil Forfeiture) v Huynh*, 2013 BCSC 980; *British Columbia (Director of Civil Forfeiture) v Thandi*, 2018 BCSC 215; *Director of Civil Forfeiture v Lloydsmith*, 2014 BCCA 72; *Alberta (Justice and Attorney General) v Petros*, 2011 ABQB 541; *Alberta (Minister of Justice and Attorney General) v Squire*, 2012 ABQB 194; *Alberta (Justice) v Wong*, 2012 ABQB 498; *Feuerhelm v Alberta (Justice and Attorney General)*, 2017 ABQB 709; *Ontario (Attorney General) v \$78,000 in Canadian Currency*, 2003 CanLII 16953 (ON SC); *AG Ontario and \$164,300 in Currency*, 2019 ONSC 2024.

rights will be engaged even though the person is not, in normal parlance, “charged with an offence.” The first situation is where the proceedings against the person are criminal in nature and the second is where the proceedings may result in the imposition of “true penal consequences” on the person who is the subject of those proceedings.<sup>102</sup>

[94] Whether proceedings are criminal in nature depends not on the “nature of the act which gave rise to the proceedings, but the nature of the proceedings themselves.”<sup>103</sup> If the proceedings to enforce the prohibition and impose a penalty lack the conventional characteristics of a criminal prosecution (such as summons or arrest, the laying of an information or trial in a court of criminal jurisdiction), they will be considered administrative or regulatory and not criminal in nature.<sup>104</sup> Turning to whether the proceedings impose a true penal consequence, this test will always be satisfied by the possibility of imprisonment being imposed.<sup>105</sup> It may also be satisfied by a fine or other monetary penalty, but only, as the Court explained in *Martineau v Canada (Minister of National Revenue)*, if the fine or penalty, “by its magnitude,” is imposed to redress “a wrong done to society at large, as opposed to the purpose of maintaining the effectiveness” of a discrete regulatory or disciplinary regime.<sup>106</sup>

[95] In my opinion, a person who is the subject of civil forfeiture proceedings is not a “person charged with an offence” within the meaning of s. 11 of the *Charter* and therefore does not benefit from any of the protections set out in that section. There is no “charge,” the proceedings are not “criminal in nature” and civil forfeiture is not a “true penal consequence.”<sup>107</sup>

[96] However, there is much more scope for application of ss. 7 and 8 of the *Charter*.

[97] The rights under s. 7 of the *Charter* are engaged where a person’s right to “life, liberty [or] security of the person” are affected. State action in relation to a person’s interest in property does not, in general, do so. However, compulsion to testify or to provide documentary information likely will engage the liberty interest under s 7. Once the liberty interest is engaged,

<sup>102</sup> *R v Wigglesworth*, [1987] 2 SCR 541 at pp 560-561, per Wilson J.

<sup>103</sup> *R v Shubley*, [1990] 1 SCR 3 at pp 18-19; *Martineau v Canada (Minister of National Revenue)*, 2004 SCC 81.

<sup>104</sup> *Martineau v Canada (Minister of National Revenue)*, 2004 SCC 81 at para 45.

<sup>105</sup> *R v Wigglesworth*, [1987] 2 SCR 541.

<sup>106</sup> *Martineau v Canada (Minister of National Revenue)*, 2004 SCC 81 at para 60; see also *Guindon v Canada*, 2015 SCC 41; *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46.

<sup>107</sup> *Ontario (Attorney General) v Chatterjee*, 2007 ONCA 406 at paras 39-44; This issue was not addressed by the subsequent appeal to the Supreme Court of Canada.

the authorizing statute is open to challenge on the basis of arbitrariness, overbreadth and disproportionality.<sup>108</sup> Compulsion in relation to providing evidence also opens the door to claims to protection under s. 7 for subsequent derivative use immunity of the evidence provided.<sup>109</sup>

[98] The s. 8 right to be free of unreasonable search and seizure is also likely to apply given the broad definition of search and seizure adopted by the jurisprudence.

[99] Thus, as we shall see, the main *Charter* issues in connection with the investigative powers available in the civil forfeiture process are ss. 7 and 8.

[100] The third type of issue is whether the *Charter* invalidates the statute conferring the power or simply imposes conditions or requirements for the *Charter*-compliant exercise of the power. For example, in *British Columbia Securities Commission v Branch*, the Supreme Court held that the general rule under the *Charter* is that witnesses may be compelled to testify but must receive immunity against the use of the evidence for other purposes.<sup>110</sup> Thus, the statutory provision compelling the witness to answer was valid, but the *Charter* required that the witness have protection against subsequent use.

[101] If the *Charter* applies, and a particular *Charter* right is implicated, the fourth type of issue arises: what *Charter* standard will apply to assess whether the power and the manner of its exercise in the particular case were *Charter* compliant? As the Supreme Court put it in *R v Fitzpatrick*:

... the context of a *Charter* claim is crucial in determining the extent of the right asserted;... In particular, in *Wholesale Travel, supra*, at p. 226, Cory J. held that “a *Charter* right may have different scope and implications in a regulatory context than in a truly criminal one”, and that “constitutional standards developed in the criminal context cannot be applied automatically to regulatory offences”.<sup>111</sup>

[102] As the Supreme Court observed in *Chatterjee*, there will often be overlap between measures enacted pursuant to the provincial power over property and civil rights and those taken pursuant to the federal power over criminal law and procedure.<sup>112</sup> This overlap tends to give rise

<sup>108</sup> *Canada (Attorney General) v Bedford*, 2013 SCC 72.

<sup>109</sup> *R v S(RJ)*, [1995] 1 SCR 451; *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3.

<sup>110</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3.

<sup>111</sup> *R v Fitzpatrick*, [1995] 4 SCR 154.

<sup>112</sup> *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at para 29.

to questions about the true purpose of investigative powers. This question of purpose is an important factor in determining what *Charter* standard applies to a particular investigative power as well as to the manner of its exercise. For example, more robust *Charter* standards will likely apply if the predominant purpose of an investigation is to determine penal liability.<sup>113</sup> On the other hand, the jurisprudence recognizes less exacting standards, for example, with respect to searches that are not part of a criminal investigation.<sup>114</sup> These questions of overlap and purpose also have implications for information sharing between regulatory investigators and the police.<sup>115</sup> To put it at a high level of generality, provincial investigative powers cannot be used to do an “end run” around the *Charter* protections that apply in a criminal investigation, nor can they be used for purposes other than carrying out the legislative objectives of the provincial scheme.

## 2. Overview of actual and potential investigative powers

[103] If the *CFA* included provisions modeled on the UK UWO scheme, the following would be the result:

- The director could apply to the Supreme Court, *ex parte*, for an order requiring a respondent to provide a statement about his or her interest in property, explaining how he or she obtained it, details of any trust which holds the property and “such other information in connection with the property as may be so specified.”<sup>116</sup> The order would have to specify the form and manner in which the statement is to be given and the place it is to be given, or if to be made in writing, the address to which it is to be sent.<sup>117</sup> It would also require the respondent to produce documents of a kind specified or described in the order.<sup>118</sup> It would be an offence for the respondent to make a statement that the person knows to be, or is reckless as to whether it is, false or misleading. There would be no stipulated sanction for non-compliance (although non-compliance gives rise to the presumption to be discussed below).

<sup>113</sup> *R v Jarvis*, 2002 SCC 73.

<sup>114</sup> See e.g. *R v Daley*, 2001 ABCA 155; *Byers v Clancy*, 1992 CanLII 257 (BC SC); *Wong v Insurance Corp. of British Columbia*, 1993 CanLII 685 (BC SC); *Oughton v ICBC*, 2004 BCSC 1567.

<sup>115</sup> *R v Colarusso*, [1994] 1 SCR 20: lawful seizure of blood samples by a provincial coroner but turning the sample over to police for the purposes of a criminal investigation constituted an unreasonable search and seizure.

<sup>116</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 362A(3) and (5).

<sup>117</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362A(4).

<sup>118</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362A(5).

Presumably the court's contempt power could be invoked for wilful failure to comply with the court's order; and

- When a court makes an UWO, it could also make an interim freezing order if it considered it necessary to do so for the purpose of avoiding the risk of any recovery order (i.e. forfeiture order) being frustrated. The order may include the appointment of a receiver.<sup>119</sup>

[104] The director has taken the position that the CFO does not have independent investigation authority.<sup>120</sup> However, while the director cannot investigate crime, ss. 11.01 and 22.02 of the *CFA* give him or her access to information gathering powers roughly equivalent to, and potentially in some respects more robust than, those provided for in the UK UWO scheme.<sup>121</sup>

[105] Similar to the UWO legislation, s. 11.01 of the *CFA* provides that the director may apply to the Supreme Court of British Columbia, *ex parte*, for an order requiring a person to disclose information about a suspect property. The wording of the provision is broad, referring to an order to produce “information or records in the custody or control of the person” that are “reasonably required...to exercise the director's powers or perform the director's functions and duties”, whereas in the UK UWO scheme the compelled statement is expressly limited to a statement about the respondent's interest in the property. To grant an order under s. 11.01, the court must be satisfied that the information or records are reasonably required by the director in order to exercise his or her powers or perform his or her functions and duties under the Act. In contrast, to issue an UWO, the High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.<sup>122</sup>

[106] Section 22.02 of the *CFA* gives the director additional information gathering powers that have no equivalent in the UK UWO legislation. Without a court order, but with “reason to believe” that property is proceeds of unlawful activity or is an instrument of unlawful activity in British Columbia, the director may require a financial institution holding the property, or a

<sup>119</sup> *Proceeds of Crime Act 2002*, 2002 c 29, ss. 362J and 362N.

<sup>120</sup> Civil Forfeiture Office Information Policy dated July 1, 2006.

<sup>121</sup> *CFA*, ss. 11.01 and 22.02 have not yet been judicially considered.

<sup>122</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362B(3).

person with a registered interest in the property, to produce information about any accounts in which the property is held or about the person’s interest in the property. With respect to a person with an interest in the suspect property, the wording of the provision is broad and allows the director to issue a notice to the person to provide “information or particulars.”

[107] Once a forfeiture proceeding is commenced, the director is entitled to the benefit of the civil discovery process, including testimony under oath and document production from the respondent, as well as third parties (via Norwich orders).

[108] As discussed further below, under the UK legislation, if a respondent fails to comply with a UWO, the property is presumed to be recoverable property for the subsequent forfeiture proceedings. There is no such consequence for non-compliance with an order or notice issued under ss. 11.01 or 22.02.

[109] The Commission’s experts from the Royal United Services Institute testified that UWOs in the UK, as opposed to how they are used in Australia and Ireland, are primarily an information gathering tool. They also opined that the *Proceeds of Crime Act 2002* has existing disclosure provisions that are more effective (or could be made more effective) for gathering information than UWOs.<sup>123</sup>

### 3. Charter compliance analysis

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<sup>123</sup> Testimony of Anton Moiseienko, Cullen Commission Transcripts, December 15, 2020 at pp 84-86 and 111. Part 8 of the *Proceeds of Crime Act 2002*, 2002 c 29, deals with civil forfeiture investigations. Under Part 8, an appropriate officer (it depends on the type of investigation, but generally, a National Crime Agency officer, an accredited financial investigator, a constable, a Serious Fraud Office officer, an officer of Revenue and Customs or an immigration officer: s. 378 of Part 8) may apply *ex parte* to a judge for a production order requiring a person subject to a confiscation, civil recovery, exploitation proceeds or money laundering investigation, to either produce “material” or give the agency access to the material: *Proceeds of Crime Act 2002*, 2002 c 29, ss. 345-346 and 351. The term “material” is not defined, but on their face, these provisions appear equivalent to the power of the director to apply for a production order under s. 11.01 of the *CFA*. However, under the *Proceeds of Crime Act 2002* a judge may also issue an order to grant entry in relation to a production order: *Proceeds of Crime Act 2002*, 2002 c 29, s. 347. Part 8 also allows an agency to apply *ex parte* for search and seizure warrants in relation to an investigation: *Proceeds of Crime Act 2002*, 2002 c 29, ss. 352-353 and 356. There is no equivalent provision in the *CFA*. Part 8 of the *Proceeds of Crime Act 2002* allows the relevant authority to apply to a judge *ex parte* for a disclosure order in relation to an investigation: *Proceeds of Crime Act 2002*, 2002 c 29, ss. 357 and 362. A disclosure order authorizes an appropriate officer to require any person the officer considers has information relevant to the investigations to answer questions, provide information specified in the notice and/or produce documents. The UK disclosure order scheme has some elements of an order under s. 11.01 of the *CFA* and a notice to produce information under s. 22.02, but applies much more broadly in that any person who has relevant information can be required to disclose information or documents.

a) *Compelled statements and document production*

[110] There is no question that the *Charter* applies to statutory powers to compel statements and produce documents as well as to the manner of exercise of those powers.<sup>124</sup> There are two main *Charter* issues.

(i) Self-incrimination

[111] The *Charter*'s protections against self-incrimination will not result in the compelled statement and document provisions of the UWO scheme being struck down as contrary to the *Charter*. However, the *Charter* does have important implications for those powers.

[112] Persons who are not “charged with an offence” do not have the s. 11 right to immunity from compulsion to testify in the proceedings against them.<sup>125</sup> However, the principle against self-incrimination is a principle of fundamental justice that is engaged under s. 7 of the *Charter* when any person's life, liberty or security of the person is implicated.

[113] Compelled testimony or statements generally engage the compelled person's liberty interest because failure to comply with the requirement to provide a statement could lead to incarceration.<sup>126</sup> However, such compulsion, if for a valid public purpose, will be consistent with the principles of fundamental justice so long as the witness receives protection against the subsequent use of the evidence in proceedings against him or her in which his or her s. 7 rights are implicated. Thus, while UWO provisions giving the director powers of compulsion for the purposes of the forfeiture scheme will generally be *Charter* compliant, the *Charter* nonetheless has two implications for the operation of those powers.

[114] First, in *Branch*, the Supreme Court of Canada held that although compulsion is generally permitted, the courts may grant exemptions from compulsion to testify where the predominant

<sup>124</sup> *Angel Acres Recreation and Festival Property Ltd. v British Columbia (Attorney General)*, 2019 BCSC 1421; *British Columbia (Director of Civil Forfeiture) v Huynh*, 2013 BCSC 980; *British Columbia (Director of Civil Forfeiture) v Thandi*, 2018 BCSC 215; *Director of Civil Forfeiture v Lloydsmith*, 2014 BCCA 72; *Alberta (Justice and Attorney General) v Petros*, 2011 ABQB 541; *Alberta (Minister of Justice and Attorney General) v Squire*, 2012 ABQB 194; *Alberta (Justice) v Wong*, 2012 ABQB 498; *Feuerhelm v Alberta (Justice and Attorney General)*, 2017 ABQB 709; *Ontario (Attorney General) v \$78,000 in Canadian Currency*, 2003 CanLII 16953 (ON SC); *AG Ontario and \$164,300 in Currency*, 2019 ONSC 2024.

<sup>125</sup> *Charter*, s. 11(c).

<sup>126</sup> *Thomson Newspapers v Canada*, [1990] 1 SCR 42; *Stelco v Canada*, [1990] 1 SCR 617.

purpose for seeking the evidence is to obtain incriminating evidence against the person compelled to testify and not some other legitimate public purpose. This makes it critical to ensure that the compulsion powers under the UWO are not being used to obtain incriminating evidence for determining penal liability.

[115] The Court’s subsequent decision in *Jarvis* provides further guidance as to how to determine the predominant purpose of an inquiry. One must look to all factors that bear upon the nature of the inquiry. Apart from a clear intention to pursue a criminal investigation, no one factor is determinative. Factors include whether the authorities’ general conduct was consistent with a criminal investigation and whether the authorities were acting as agents for the criminal investigators.

[116] It follows from this that, while in general, compelled statement provisions modeled on the UWO scheme would be *Charter* compliant, the courts have the authority to grant exemptions from compulsion if the dominant purpose of the compulsion in a particular case is to determine penal liability.

[117] The second *Charter* implication concerns the use of the compelled statement. The *Charter* requires that the respondent receive “derivative use immunity”—that is protection against not only the use of the information provided as evidence against him or her in subsequent proceedings, but also protection against the use in subsequent proceedings of any further information derived from it. The leading case is *Branch*. The British Columbia Securities Commission served summonses on two officers of a company under investigation requiring them to attend for examination on oath and to produce all information and records in their possession relating to the company.<sup>127</sup> The officers failed to appear and the Securities Commission sought a contempt order. The Supreme Court of Canada held that the compulsion was lawful but that the principle against self-incrimination was a principle of fundamental justice protected by s. 7 that means persons compelled to testify have derivative use immunity in addition to the use immunity guaranteed by s. 13 of the *Charter*.<sup>128</sup>

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<sup>127</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3.

<sup>128</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3, citing *R v S(RJ)*, [1995] 1 SCR 451.

[118] The protections against subsequent use of compelled statements in the UK UWO provisions do not meet these *Charter* standards. The UK provisions simply provide that the respondent's statements cannot (with exceptions for perjury and related offences) be used against him or her in criminal proceedings. Following *Branch*, the Canadian *Charter* requires, in addition, that evidence discovered as a result of the compelled statement not be used against that person in criminal proceedings. Provincial legislation cannot confer this sort of immunity in a criminal proceeding<sup>129</sup> but it would not be necessary for provincial legislation to purport to do so given the holding in *Branch* that the *Charter* imposes this protection.

[119] Neither the UK legislation nor our *Charter* protect compelled statements from being used in subsequent civil proceedings. However, if inclined to recommend adoption of a UWO scheme for British Columbia, the Commissioner may wish to consider whether it would be fairer to provide explicit protection against the subsequent civil use of statements compelled in civil forfeiture proceedings.

[120] Compelled production of documents will often give rise to different considerations than those relating to testimonial compulsion. For example, documents brought into existence without compulsion, containing communications made before there was any such compulsion and independent of it, do not engage the s. 7 principle.<sup>130</sup> Moreover, if a witness is compelled to testify, then his or her documents are also compellable subject to a possible claim against their subsequent use.<sup>131</sup>

[121] There may be situations in which documentary evidence would not have been discovered without compulsion.<sup>132</sup> These situations may support a claim for derivative use immunity but generally would not support a claim for exemption from the obligation to produce the documents. However, if a witness is exempted from compulsory testimony as described earlier, the witness would also be exempted from producing documents or communications that came into being because of the attempt to compel testimony.<sup>133</sup>

<sup>129</sup> See e.g. *Klein v Bell*, [1955] SCR 309; *Marshall v The Queen*, [1961] SCR 123.

<sup>130</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 at paras 43, 48.

<sup>131</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 at paras 42, 48; *R v S(RJ)*, [1995] 1 SCR 451.

<sup>132</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 at paras 43-44.

<sup>133</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 at paras 41-48.

## (ii) Search and seizure

[122] Section 8 of the *Charter* provides that “[e]veryone has the right to be secure against unreasonable search or seizure.” The *Charter* standard for most searches in the criminal context is that the search must be authorized in advance by an impartial judicial officer, be based on reasonable and probable grounds to believe that relevant evidence will be found in the place to be searched and the search itself be conducted reasonably.<sup>134</sup> However, even in the criminal law context, there are exceptions to this general standard. For example, searches incident to arrest are generally permitted if grounds to arrest exist<sup>135</sup> and sniffer dog searches are permitted on the basis of reasonable suspicion.<sup>136</sup> Outside of the criminal context, less exacting s. 8 standards are routinely applied.<sup>137</sup>

[123] For example, in *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*<sup>138</sup>, the majority of the Supreme Court of Canada held an order to produce documents under the *Combines Investigation Act*<sup>139</sup> was not an unreasonable seizure. The stringent standards usually applicable to criminal investigations were inappropriate to determine the reasonableness of resort to the order to produce.<sup>140</sup> As the discovery of violations of the Act will often require access to information as to the internal affairs of business organisations, the power to compel production of documents was important to the overall effectiveness of the investigative machinery established by the Act and did not constitute an unreasonable intrusion on privacy. Business records and documents would normally be the only records and documents that could lawfully be demanded. There was only a relatively low expectation of privacy in respect of these documents since they were used or

<sup>134</sup> *Hunter v Southam Inc.*, [1984] 2 SCR 145.

<sup>135</sup> *R v Fearon*, 2014 SCC 77.

<sup>136</sup> *R v Chehil*, 2013 SCC 49.

<sup>137</sup> See e.g. *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425 at pp 506-507, per La Forest J; *R v Jarvis*, 2002 SCC 73 at para 72; *143471 Canada Inc. v Quebec (Attorney General)*; *Tabah v Quebec (Attorney General)*, [1994] 2 SCR 339 at p 378, per Cory J.; *Comité paritaire de l'industrie de la chemise v Potash*; *Comité paritaire de l'industrie de la chemise v Selection Milton*, [1994] 2 SCR 406 at pp 420-421; *R v Fitzpatrick*, [1995] 4 SCR 154 at para 49; *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627 at pp 649-650.

<sup>138</sup> *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425.

<sup>139</sup> *Combines Investigation Act*, RSC 1970, c C-23.

<sup>140</sup> *Hunter v Southam Inc.*, [1984] 2 SCR 145.

produced in the course of activities which, although lawful, were subject to state regulation as a matter of course.

[124] As Dickson J. wrote for the Court in *Hunter v Southam Inc.*, assessing whether the law authorizing a search or seizure is reasonable requires determining whether in a particular situation, the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals (which in *Southam*, was law enforcement).<sup>141</sup> The Court in *Goodwin v British Columbia (Superintendent of Motor Vehicles)* identified a number of relevant considerations including the purpose and nature of the provincial scheme, the mechanism of the seizure and the availability of judicial oversight.<sup>142</sup>

[125] In line with these principles, statutory regulatory powers compelling production of business, tax and similar records generally are not subject to the requirements of prior authorization or objective grounds for suspicion.<sup>143</sup> The Supreme Court of Canada has also upheld powers, without requiring warrants or objective grounds for suspicion, to inspect businesses for regulatory compliance.<sup>144</sup> To comply with s. 8 in this context, investigators need show only that they acted in good faith in pursuit of legitimate regulatory objectives.<sup>145</sup> Such powers, the Court has stated, are necessary for the effective regulation of industrial and economic activity.<sup>146</sup> Requiring warrants and probable grounds would frustrate government's ability to protect the vulnerable and regulate in the public interest.<sup>147</sup>

<sup>141</sup> *Hunter v Southam Inc.*, [1984] 2 SCR 145 at pp 159-160.

<sup>142</sup> *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46.

<sup>143</sup> See *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425; *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627; *R v Jarvis*, 2002 SCC 73; *R v Ling*, 2002 SCC 74; *R v Fitzpatrick*, [1995] 4 SCR 154 at paras 49-51; *British Columbia (Securities Commission) v Branch*, [1995] 2 SCR 3 at paras 51-64.

<sup>144</sup> *Comité paritaire de l'industrie de la chemise v Potash; Comité paritaire de l'industrie de la chemise v Selection Milton*, [1994] 2 SCR 406.

<sup>145</sup> *Comité paritaire de l'industrie de la chemise v Potash; Comité paritaire de l'industrie de la chemise v Selection Milton*, [1994] 2 SCR 406 at pp 422-423; *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425 at pp 531-532.

<sup>146</sup> *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425.

<sup>147</sup> *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425 at p 526. See also *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627 at p 648, per Wilson J. Not all regulatory searches are exempt from the *Southam* requirements. The Supreme Court noted in *Thomson Newspapers*, for example, that prior authorization on probable grounds was required in *Southam* because

[126] *R v Colarusso* illustrates how different *Charter* standards will apply to searches and seizures depending on their purpose. The issue concerned (among other things) the coroner taking blood and urine samples pursuant to his statutory powers. Given that the power was exercised in furtherance of the coroner’s “essential non-criminal” role to investigate deaths and decide whether an inquest was required, the seizure did not engage the *Southam* requirements and did not violate s. 8.<sup>148</sup> However, the police obtaining the samples from the coroner for the purposes of a criminal investigation did engage the usual, criminal law s. 8 protections.

[127] With these principles in mind, I turn to the compelled production of documents under the UK UWO scheme. In my opinion, compelled production of documents under the provisions modelled on the UK UWO scheme would be subject to s. 8 scrutiny but would not engage its criminal law standards.<sup>149</sup> If the CFO obtains documents or records from defendants or third parties, using its own statutory powers and for the purposes of implementing the civil forfeiture scheme, the compelled production will meet the s. 8 standard of reasonableness, as it did for example in *Thomson Newspapers*.<sup>150</sup>

[128] While not strictly within the scope of the opinion you have asked for, I should note that issues may arise in a forfeiture proceeding if the CFO relies on documents received from the police, which they obtained in the course of a criminal investigation. In that case, challenges to the propriety of the CFO’s use of those documents has focused on whether law enforcement

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authorities could acquire sensitive personal information as well as business documents: pp 520-521. See also *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627 at p 649, *per* Wilson J.; *Baron v Canada*, [1993] 1 SCR 416 at pp 444-445. Warrants and probable grounds are also presumptively required where the state’s “‘predominant purpose’ is to uncover evidence of ‘penal liability’” rather than monitor regulatory compliance: see *R v Jarvis*, 2002 SCC 73 at paras 2, 46, 88 and 99.

<sup>148</sup> *R v Colarusso*, [1994] 1 SCR 20.

<sup>149</sup> See e.g. *Ontario (Attorney General) v Chatterjee*, 2007 ONCA 406 (the appellant claimed the preservation order infringed his rights; he did not challenge the propriety of the roadside stop), the Court of Appeal held there was no s. 8 violation, but there was no *Charter* argument at the Supreme Court of Canada; *British Columbia (Director of Civil Forfeiture) v Johnson*, 2016 BCSC 1570 (breach of the Johnsons’ ss. 8 and 10(b) rights, but not of their s. 9 or 10(a) rights); *British Columbia (Director of Civil Forfeiture) v Huynh*, 2013 BCSC 980; *Ontario Attorney General v \$164,300.00 in Canadian Currency (In Rem)*, 2019 ONSC 2024; *AGO v \$68,870 Cdn Currency & \$3,700 US currency (In Rem)*, 2019 ONSC 6546; *Feuerhelm v Alberta (Justice and Attorney General)*, 2017 ABQB 709.

<sup>150</sup> *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425; *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627 (tax); *R v Jarvis*, 2002 SCC 73; *R v Ling*, 2002 SCC 74; [1995] 4 SCR 154 at paras 49-51; *British Columbia (Securities Commission) v Branch*, [1995] 2 SCR 3 at paras 51-64; *Comité paritaire de l’industrie de la chemise v Potash*; *Comité paritaire de l’industrie de la chemise v Selection Milton*, [1994] 2 SCR 406. I assume for the purpose of this opinion that document production under a UWO would be constrained by the purposes of the *CFA* and not extend to irrelevant documents or be a “fishing expedition.”

complied with the usual s. 8 requirements that apply in the course of criminal investigations when they obtained the documents.<sup>151</sup>

(iii) Preservation/freezing orders

[129] As noted earlier, both the *CFA* and the *UWO* scheme provide for orders preventing the disposition of, or otherwise dealing with, assets, the appointment of receivers, etc. I think it likely that imposing these sorts of freezing orders (called “preservation orders” in the *CFA*) constitutes a form of seizure and is therefore subject to s. 8. While there is authority to the contrary,<sup>152</sup> it likely has been superseded by the Supreme Court of Canada’s decision in *Quebec (Attorney General) v Laroche*.<sup>153</sup>

[130] In that case, a restraint order under s. 462.33 of the *Criminal Code* was held to be a “seizure” within the meaning of s. 8: it freezes property where there are reasonable and probable grounds to believe that a forfeiture order under other *Code* provisions should be made.<sup>154</sup> LeBel J., for the majority, reasoned that freezing the property reduces the person in possession to the status of caretaker or administrator of his or her own property and places the property under the legal and actual control of the criminal justice system.<sup>155</sup> To the same effect, in civil forfeiture proceedings in Alberta, s. 8 of the *Charter* has been held to apply to freezing orders (called “restraint orders” in the Alberta legislation).<sup>156</sup>

<sup>151</sup> See e.g. *Angel Acres Recreation and Festival Property Ltd. v British Columbia (Attorney General)*, 2019 BCSC 1421; *British Columbia (Director of Civil Forfeiture) v Huynh*, 2013 BCSC 980; *British Columbia (Director of Civil Forfeiture) v Thandi*, 2018 BCSC 215; *Alberta (Justice and Attorney General) v Petros*, 2011 ABQB 541; *Alberta (Minister of Justice and Attorney General) v Squire*, 2012 ABQB 194; *Alberta (Justice) v Wong*, 2012 ABQB 498; *Feuerhelm v Alberta (Justice and Attorney General)*, 2017 ABQB 709; *Ontario (Attorney General) v Chatterjee*, 2007 ONCA 406; *Ontario (Attorney General) v \$78,000 in Canadian Currency*, 2003 CanLII 16953 (ON SC); *AG Ontario and \$164,300 in Currency*, 2019 ONSC 2024.

<sup>152</sup> *British Columbia (Director of Civil Forfeiture) v Fischer*, 2010 BCSC 568 at para 36. And see *Director of Civil Forfeiture v Angel Acres*, 2007 BCSC 1648 at para 48. There is a stated case before the Supreme Court of British Columbia arising from the British Columbia Securities Commission in relation to whether the “freeze order” provisions of s. 151 of the *Securities Act* are contrary to s. 8: *BC Securities Commission v Bridgemark Financial Corp et al*, BCSC No. S1914058. A decision is outstanding, but may have some implications for *CFA* freezing orders.

<sup>153</sup> *Quebec (Attorney General) v Laroche*, 2002 SCC 72.

<sup>154</sup> *Quebec (Attorney General) v Laroche*, 2002 SCC 72.

<sup>155</sup> *Quebec (Attorney General) v Laroche*, 2002 SCC 72 at para 55.

<sup>156</sup> If is evidence obtained in breach of the *Charter*, s. 8 and is relied on for a restraint order, it can be excluded under s. 24(2): *Alberta (Justice and Attorney General) v Petros*, 2011 ABQB 541 at paras 62-66; *Alberta (Minister of Justice and Attorney General) v Wong*, 2012 ABQB 498 at paras 46-53; *Alberta (Minister of Justice and Attorney General) v Squire*, 2012 ABQB 194 at paras 71-75.

[131] If a freezing order constitutes a seizure and is therefore subject to s. 8, by what standards would the reasonableness of the seizure be assessed? The presumptive requirements from *Southam* are that the search or seizure be pre-authorized by an independent judicial officer, that reasonable and probable grounds exist<sup>157</sup> and that the search or seizure be conducted reasonably. But as we have seen, the criminal standards for s. 8 have been relaxed in relation to search and seizure powers in provincial regulatory schemes and there is no “hard and fast” test for reasonableness.

[132] Having regard to the considerations set out in *Goodwin*, my view is that the legislation authorizing interim preservation orders under s. 8 and the preliminary orders to preserve property under s. 11.02 do not infringe s. 8 of the *Charter*. My conclusion is based on the purpose and nature of the civil forfeiture scheme, the mechanism of seizure and the degree of its potential intrusiveness and the judicial oversight of the interim and preliminary preservation orders.<sup>158</sup>

[133] I turn to consider interim freezing orders under the UWO scheme. These orders may be made where the court makes an UWO if it considers it necessary to do so “for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.”<sup>159</sup> Thus, before making the interim freezing order, the court must be satisfied that the requirements for making an UWO exist. Some of the key requirements must be shown only to the standard of “reasonable grounds for suspecting”, such as that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property and that the respondent (or a person connected to the respondent) is or has been involved in serious crime.

[134] Based on the considerations set out in *Goodwin*, my view is that if amendments to the *CFA* are made to implement interim freezing orders as in the UK UWO scheme, this legislation is not likely to infringe s. 8 of the *Charter*. Evaluation of the purpose and nature of the regulatory scheme would be the same as considered above in relation to the *CFA* and preservation orders. The *Proceeds of Crime Act 2002*, ss. 362D, 362J and 362K provide for judicial oversight. The High Court issues the order and if there is non-compliance with the UWO, the Court must

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<sup>157</sup> Meaning reasonable and probable grounds to conclude there is a risk that property believed to be proceeds of crime will not remain available for possible forfeiture.

<sup>158</sup> *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 at para 57.

<sup>159</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362J.

discharge the order if a “relevant application” (restraint order, property freezing order or interim receiving order) has not been made within 48 hours, the relevant application is made within 48 hours but has been determined or otherwise disposed of or if there is notification from an enforcement authority that there are no further proceedings. If there is compliance with the UWO, then within 60 days of compliance (or purported compliance), the enforcement agency must determine what enforcement or investigatory proceedings, if any, ought to be taken. As with *CFA* preservation orders, the mechanism of seizure is of concern with respect to *Charter* compliance. However, for the same reasons as given above in relation to the *CFA* interim preservation orders, in my view, interim freezing orders would likely not infringe s. 8.

(iv) Presumption that the property is recoverable property

[135] In the UK, if the respondent fails to comply with the UWO, “the property is presumed to be recoverable property” for the purposes of forfeiture proceedings to the extent of the respondent’s interest in the property and if that interest exceeds a certain value threshold.<sup>160</sup> The presumption may be rebutted by proof of the contrary. In other words, if the respondent fails to comply with the UWO, the burden of proof on the balance of probabilities is placed on him or her to show that the property is not “recoverable property”, or in the British Columbian context, the proceeds of unlawful activity.<sup>161</sup> The presumption does not arise if the person “purports to comply” with the requirements of the UWO.<sup>162</sup> (I should note that the *CFA* contains a number of presumptions, but you have not asked my opinion in relation to them.<sup>163</sup>)

[136] There are two potential *Charter* issues with respect to this presumption. There is also a potential argument about the validity of this presumption because of its impact on judicial independence.<sup>164</sup>

<sup>160</sup> T Keatinge, A Moiseienko and H Wood, *Unexplained Wealth Orders: UK Experience and Lessons for British Columbia* (Royal United Services Institute, October 2020), Cullen Commission Exhibit 382 at pp 20-21; Testimony of Anton Moiseienko, Cullen Commission Transcript, December 15, 2020 at pp 15-16.

<sup>161</sup> *Proceeds of Crime Act 2002*, 2002, c 29, ss. 363C(2) and 363C(3).

<sup>162</sup> *Proceeds of Crime Act 2002*, 2002, c 29, s. 362C(5)(a).

<sup>163</sup> See e.g. *CFA*, ss. 17(2), 17(3), 19.01, 19.02, 19.03, 19.04(2), 19.04(3) and 19.05.

<sup>164</sup> Reverse onus provisions in civil forfeiture schemes have been unsuccessfully challenged on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms’ guarantees of the presumption of innocence and criminal procedural rights in Article 6, §§ 2-3: see e.g. *Arcuri et al v Italy*, ECtHR, App no 52024/99, Judgment of 5 July 2001; *Gogitidze et al v Georgia*, ECtHR, App No 36862/05, Judgment of 12 May 2015; *Nedyalkov and Others v Bulgaria*, ECtHR, App no 663/11, Judgment of 10 September 2013. The

[137] The first *Charter* issue relates to s. 7, but arises only if the presumption is found to engage the respondent’s life, liberty or security of the person. There is no specified penalty for failure to comply, but I have assumed that such failure could constitute contempt of court and be punished by imprisonment, thus engaging the liberty interest.

[138] If s. 7 is engaged, the presumption could be challenged as being contrary to the principle of fundamental justice that laws must not be arbitrary or overbroad.<sup>165</sup> An arbitrary law is one in which there is “no rational connection between the object of the law and the limit it imposes on life, liberty or security of the person.”<sup>166</sup> A law that is overbroad “takes away rights in a way that generally supports the object of the law, [but] goes too far by denying the rights of some individuals in a way that bears no relation to the object.”<sup>167</sup> With respect to both arbitrariness and overbreadth, one compares the effects of the law with its objects.

[139] The object of the presumption is to provide proof that property is the proceeds of crime. It could be argued that the provision is arbitrary, or at least overbroad, because there is no connection, at least in some cases in which the presumption would apply, between the respondent’s non-compliance with the UWO and whether or not the property is the proceeds of crime.

[140] There are difficulties with this argument, however. One is that the presumption itself does not engage the respondent’s liberty interest. Only the failure to comply with the UWO may do that. It may be that there is an insufficient causal connection between the presumption and any potential deprivation of the respondent’s liberty interest to engage s. 7. Put differently, there is no relationship between the limitation on liberty—that is, the risk of imprisonment for failure to comply—and the operation of the presumption.

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challenges failed because the countries’ civil forfeiture proceedings were not criminal in nature: *Arcuri et al v Italy*, ECtHR, App no 52024/99, Judgment of 5 July 2001; *Gogitidze et al v Georgia*, ECtHR, App No 36862/05, Judgment of 12 May 2015; *Nedyalkov and Others v Bulgaria*, ECtHR, App no 663/11, Judgment of 10 September 2013. The Commission’s expert, Anton Moiseienko, opined that the reverse onus provisions challenged in the European Court of Human Rights were stricter than the UK’s equivalent: Testimony of Anton Moiseienko, Cullen Commission Transcripts, December 15, 2020 at pp 128-131.

<sup>165</sup> See e.g. *Carter v Canada*, 2015 SCC 5 at para 71ff.

<sup>166</sup> *Carter v Canada*, 2015 SCC 5 at para 83.

<sup>167</sup> *Carter v Canada*, 2015 SCC 5 at para 85.

[141] Another difficulty is that the inference that the property is the proceeds of crime may not be irrational given what must be established to obtain the UWO. In brief, to issue the UWO, the court must be satisfied that there are reasonable grounds to believe that the respondent holds the property and reasonable grounds to suspect that the respondent or a person connected to the respondent has been involved in serious crime. In the face of those conclusions, the inference from the respondent's refusal to comply with the UWO that the property is the proceeds of crime may not be strong, but it perhaps may not be dismissed as completely irrational either.<sup>168</sup>

[142] A second potential *Charter* issue relates to s. 8. It is likely that a forfeiture of property as proceeds of crime is a "seizure" within the meaning of s. 8.<sup>169</sup> If so, the question arises whether a seizure based on the presumption is reasonable. One might say that the presumption arises based on mere suspicion that the property is proceeds of crime. If that is right, it could be argued that basing a forfeiture order on the presumption amounts to allowing a permanent change of ownership of property based on mere suspicion that the statutory requirements for forfeiture have been met.

[143] There is very little jurisprudence to assist in assessing the strength of these potential *Charter* arguments. In my opinion, the s. 7 argument is weak and unlikely to be accepted, but the chances of success of the s. 8 argument cannot be dismissed as speculative.

[144] Finally, I considered whether the UWO presumption would be contrary to the principle of judicial independence and impermissibly intrude into the jurisdiction of a s. 96 court. On the basis of *British Columbia v Imperial Tobacco Canada Ltd.* I do not think the presumption would be impermissible on that basis.<sup>170</sup> The appellants argued British Columbia's *Tobacco Damages and Health Care Costs Recovery Act*<sup>171</sup> violated the independence of the judiciary because it shifted the onuses of proof of some elements of a claim and limited the compellability of certain

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<sup>168</sup> See e.g. *Ewert v Canada*, 2018 SCC 30 at para 73.

<sup>169</sup> *Quebec (Attorney General) v Laroche*, 2002 SCC 72. There are no cases addressing whether forfeiture of property in the context of a scheme like the *CFA*, where there is not necessarily seizure prior to forfeiture (unlike in other regulatory schemes like the *Customs Act* or *Fisheries Act*, where seizure precedes forfeiture), is a seizure subject to s. 8. However, trial courts in British Columbia, Alberta and Ontario have applied s. 8 to evidence relied on for a civil forfeiture order (in these cases the director, or equivalent, was attempting to submit evidence obtained from police): see e.g. *British Columbia (Director of Civil Forfeiture) v Cronin*, 2016 BCSC 284; *Alberta (Justice and Attorney General) v Petros*, 2011 ABQB 541; *AG Ontario and \$164,300 in Currency*, 2019 ONSC 2024.

<sup>170</sup> *British Columbia v Imperial Tobacco Canada Ltd.*, 2005 SCC 49.

<sup>171</sup> *Tobacco Damages and Health Care Costs Recovery Act*, SBC 2000, c 30.

information.<sup>172</sup> The Supreme Court disagreed. In fact and appearance, the Act did not take away the court’s adjudicative role and a court retained the ability to exercise that role without interference. “Judicial independence can abide unconventional rules of civil procedure and evidence.”<sup>173</sup> Similarly, in the UWO regime, if the respondent fails to comply (or purport to comply) with the UWO, he or she has the onus to show that the property is not recoverable property.<sup>174</sup>

### C. Information sharing

#### 1. Introduction

[145] You have asked for my opinion on whether there are constitutional barriers to a provincial forfeiture office providing information obtained in the exercise of its investigative powers to: (a) criminal law enforcement agencies; (b) tax authorities; and (c) regulators.

[146] With respect to this last aspect of the question, there is no constitutional impediment to the CFO sharing information with other provincial regulatory bodies and agencies for valid provincial purposes. While not within the scope of my opinion, I simply note that there may be provincial statutory limitations on the sharing of such information.<sup>175</sup>

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<sup>172</sup> The presumptions which shifted the onuses of proof were in relation to aggregate claims to recover expenditures on disease caused by exposure to cigarettes in ss. 3.1(1) and 3(2) of the Act. Once the government proves (a) the defendant manufacturer breached a common law, equitable or statutory duty or obligation it owed to persons in British Columbia who have been or might become exposed to cigarettes, (b) exposure to cigarettes can cause or contribute to disease, and (c) during the manufacturer’s breach, cigarettes manufactured or promoted by the manufacturer were offered for sale in British Columbia, then the court will presume that: (a) the population that is the basis for the government’s aggregate claim would not have been exposed to cigarettes but for the manufacturer’s breach; and (b) such exposure caused or contributed to disease in a portion of the population that is the basis for the government’s aggregate claim.

<sup>173</sup> *British Columbia v Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para 56.

<sup>174</sup> *Proceeds of Crime Act 2002*, 2002 c 29, ss. 241-242, 266.

<sup>175</sup> The *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 (“*FOIPPA*”), governs disclosure of “personal information” by government. Schedule 1 defines “personal information” as recorded information about an identifiable individual other than contact information. Part 3 of *FOIPPA* is about protecting privacy. Key provisions include the following: (a) a public body must protect personal information in its custody or under its control by making reasonable security arrangements (s. 30); (b) if the head of a public body receives a request to disclose, produce or provide access to personal information from a foreign authority, then the minister responsible for *FOIPPA* must be notified (s. 30.2(2)); (c) an employee, officer or director of a public body cannot disclose personal information except as authorised under *FOIPPA* (s. 30.4); (d) a public body may use personal information only for the purpose for which the information was obtained or compiled or for a use consistent with that purpose (s. 32); and (e) a public body may disclose personal information only as permitted under ss. 31.1, 33.2 or 33.3 (s. 33). There are exceptions for disclosure inside and outside of Canada in certain circumstances: *FOIPPA*, ss. 33.1, 33.2,

[147] With respect to sharing information with criminal law enforcement agencies and tax authorities, there are potential constitutional difficulties falling into two categories.

- Information sharing with criminal law enforcement agencies and tax authorities for the purposes of prosecutions under the federal *Income Tax Act* could result in a different characterization of the legislative scheme for division of powers purposes. I have discussed this risk in the division of powers section of my opinion; and
- Information sharing with criminal law enforcement agencies would have to take account of the principles in *R v Jarvis*.<sup>176</sup> Application of those principles could result in a finding that the “predominant purpose” of the investigation by the CFO was the determination of penal liability with the result that law enforcement agencies could not use information received from the CFO at trial. Thus, a finding of a predominant purpose in relation to penal liability has implications for both the individual’s s. 7 and s. 8 *Charter* rights and would result in enhanced *Charter* protections that would not apply in the course of inquiries that were not undertaken for that predominant purpose. The predominant purpose for which the information was obtained is an important factor both in shaping the contours of the principle against self-incrimination under s. 7 and the applicability and content of the protection against unreasonable search and seizure under s. 8.

[148] I will first set out current and potential information sharing mechanisms, then turn to the key holdings of *Jarvis* and finally discuss their implications for ss. 7 and 8 of the *Charter*.

## 2. Current and potential information sharing

[149] The current *CFA* scheme is based on the CFO obtaining information from the police and regulatory agencies on which to base its forfeiture proceedings. The information sharing that is envisioned by the *CFA* and which has been put in place by virtue of powers conferred on the director to have access to information and to enter into information sharing arrangements is “one

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35 and 36. The *CFA* deals with *FOIPPA* concerns indirectly as it gives the director the right to access information in the possession of a public body, some of which would otherwise be subject to *FOIPPA*: *CFA*, ss. 22(5) and 22(7).

<sup>176</sup> *R v Jarvis*, 2002 SCC 73.

way” sharing: the information is “shared” by others with the director and not the other way around.

[150] As noted earlier, this sort of one-way information sharing does not give rise to any constitutional issues. Nonetheless, it will be helpful to summarize, briefly, the information sharing arrangements under the current *CFA*.

[151] The Act addresses information sharing in two ways. First, it provides that the director is entitled, despite any other enactment, to information in the custody of various “public bodies” prescribed by regulation. Second, the Act authorizes the director to enter into information sharing agreements with the full range of public bodies, both federal and provincial. Here are the details:

- Under s. 22(5): the director is entitled to request, and a public body designated by the Lieutenant Governor in Council must disclose to him or her on request, information that is: (a) in the custody or control of the public body; and (b) reasonably required by the director in order to exercise his or her powers or perform his or her functions and duties under the Act<sup>177</sup>; and
- Under s. 22(4) the director may, subject to the regulations, enter into information sharing agreements with Canada, a province or another jurisdiction in or outside Canada and a public body.<sup>178</sup>

[152] The director has entered into an agreement with a number of British Columbia municipal police forces for information sharing by those forces.<sup>179</sup> Briefly, the agreement is “one way” in that its purpose is to provide a framework for disclosure by the police to the director and is silent about the director sharing information with the police. It provides for sharing by the police with the director either on the initiative of the police or at the request for information by the director

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<sup>177</sup> Also, s. 22(6) provides: A public body that has custody or control of information to which the director is entitled under subsection (5) must, on request, disclose that information to the director. Public bodies prescribed by regulation are: the Ministry of Environment and Climate Change Strategy; Ministry of Finance; Insurance Corporation of British Columbia and BC Financial Services Authority: BC Reg 164/2006, s. 8.

<sup>178</sup> No regulation constrains this authority. “Public body” by virtue of s. 21(1) means a public body as defined in the *Freedom of Information and Protection of Privacy Act* and therefore includes a ministry of the British Columbia government, and agency board or commission, etc. listed in Schedule 2 of the *FOIPPA* and a local public body but does not include the offices of members or officers of the Legislature or the courts.

<sup>179</sup> Information Sharing Agreement dated 25 August 2006.

and says that the information is to be used by the director solely for the purpose of exercising his or her powers and performing his or duties and functions under the Act. There are provisions with respect to the protection of investigations and investigation techniques, confidential informants and solicitor-client privilege.

[153] The Province also has an agreement with the Government of Canada regarding information sharing between federal government and provincial institutions, including police forces and, in particular, the Co-ordinated Enforcement Unit of the Ministry of the Attorney General of British Columbia.<sup>180</sup> The purpose of the Agreement is to provide access to, and the use and disclosure of, information under the control of federal government institutions to British Columbia or a provincial institution. The Agreement stipulates that information disclosed pursuant to it will “only be used or disclosed for the purpose of administering or enforcing any law or carrying out a lawful investigation or for a subsequent use which is consistent therewith.” Although this agreement pre-dates the *CFA*, I understand that it governs the sharing of information by the Royal Canadian Mounted Police (“RCMP”) with the CFO. Note that, as with respect to the agreement with municipal police forces, the Agreement is a “one way” agreement in that it deals only with the sharing of information by federal government institutions with provincial institutions and not the reverse situation.<sup>181</sup>

[154] Given that all of these provisions and agreements are “one-way” in the sense that they deal only with others sharing their information with the director, I think they are constitutionally sound. The main questions are whether the police may lawfully turn over the information and the director may lawfully receive it. What case law there is affirms that the answer to both of these questions is “yes.”<sup>182</sup> As I noted above, the issues that may arise if evidence shared with the director by the police or others was illegally obtained are beyond the scope of the opinion that

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<sup>180</sup> Information Sharing Agreement dated 27 July 1983.

<sup>181</sup> Information Sharing Agreement dated 27 July 1983, s. 2.

<sup>182</sup> *Angel Acres Recreation and Festival Property Ltd. v British Columbia (Attorney General)*, 2019 BCSC 1421; *Director of Civil Forfeiture v Shoquist*, 2011 BCSC 1199 at para 41; See e.g. *Alberta (Justice and Attorney General) v Petros*, 2011 ABQB 541; *Alberta (Minister of Justice and Attorney General) v Squire*, 2012 ABQB 194; *Alberta (Justice) v Wong*, 2012 ABQB 498; *Feuerhelm v Alberta (Justice and Attorney General)*, 2017 ABQB 709; *Brown v Canada*, 2013 FCA 111 at para 16; *Klundert v Canada*, 2014 FCA 156 at para 10.

you have requested and in any event these issues would not go to the constitutionality of the existing information sharing arrangements but only to their application in specific cases.<sup>183</sup>

[155] In addition to these information sharing agreements, there are other agreements in place to facilitate cooperation and coordination between the CFO and police. I will return to these later in my opinion where I discuss embedding a civil forfeiture office within a provincial law enforcement agency or having such an agency with a civil asset forfeiture mandate.

[156] Turning to potential information sharing by the director with the police, the main question is whether there would be *Charter* issues if the CFO were given enhanced investigative powers such as those in the UK UWO scheme and shared the fruits of the use of those powers with the police. To take a specific example, I will assume that the CFO has obtained a UWO that requires a respondent to provide details about his or her acquisition of property and then wishes to share the respondent's response to the order with the police.

### 3. The importance of *Jarvis*

[157] As discussed above, the leading case addressing the intermingling of regulatory and criminal investigative powers is *R v Jarvis*, which concerned the sharing of information between the audit and prosecution arms of the Canada Revenue Agency ("CCRA").<sup>184</sup> The decision is both complex and important for the purposes of my opinion. I will therefore discuss it in detail.

[158] A CCRA auditor pursued a tip that the taxpayer had not reported the proceeds of sales of his late wife's art on his tax returns. The auditor obtained books and records and interviewed the taxpayer and his accountant. In assembling this information, the auditor used the so-called inspection power under s. 231.1(1) of the *Income Tax Act* to "inspect, audit or examine" a wide array of documents. The auditor then referred the entire file to the CCRA Special Investigations

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<sup>183</sup> The director may use information received from police in civil forfeiture proceedings subject to *Charter* scrutiny. As in a criminal trial, civil forfeiture defendants can allege the police obtained the information in violation of the *Charter* and seek a remedy under s. 24(2) for exclusion of that evidence in the civil forfeiture petition: *British Columbia (Director of Civil Forfeiture) v Huynh*, 2013 BCSC 980; *Director of Civil Forfeiture v Shoquist*, 2011 BCSC 1199; *Alberta (Justice and Attorney General) v Petros*, 2011 ABQB 541; *Alberta (Minister of Justice and Attorney General) v Squire*, 2012 ABQB 194; *Alberta (Justice) v Wong*, 2012 ABQB 498; *Feuerhelm v Alberta (Justice and Attorney General)*, 2017 ABQB 709.

<sup>184</sup> *R v Jarvis*, 2002 SCC 73.

Section, which began an investigation to determine whether prosecution for tax evasion was merited.

[159] Using the file material assembled by the auditor, the investigator obtained a search warrant and obtained additional information by way of “requirement letters” sent to various banks as provided for in s. 231.2(1) of the *ITA*. The taxpayer was charged with tax evasion.

[160] At trial, the trial judge ruled that the “audit” had at a certain point become a criminal investigation and that information obtained by the auditor after that point was obtained in violation of the taxpayer’s s. 7 rights and should be excluded from the trial evidence pursuant to s. 24(2) of the *Charter*. The judge also reviewed the search warrant and held that when the illegally obtained evidence was removed from the Information To Obtain, it no longer disclosed reasonable grounds for the search. The search was, therefore, not authorized by a warrant and the court excluded the evidence obtained as a result of it. The judge also concluded that the information obtained by the investigator by means of the “requirement letters” to the various banks was also illegally obtained and should be excluded. As a result of the exclusion of all of this evidence, the judge granted a directed verdict of acquittal.

[161] The main issues before the Supreme Court of Canada were whether there was a distinction between CCRA’s audit and investigation functions and, if so, what were the legal consequences of that distinction for the taxpayer. Note that the constitutionality of the provisions conferring the inspection and requirement powers was not in issue. Rather the case focused on the admissibility of the evidence obtained by the use of those powers at the trial for tax evasion.<sup>185</sup>

[162] The Court made three key holdings for our purposes.

[163] First, there is a distinction for *Charter* purposes between obtaining information in order to assess tax liability and obtaining information for the purposes of determining penal liability. The distinction turns on the “dominant purpose” for which the information is obtained.

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<sup>185</sup> The Court held in *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627, that s. 231.2 of the *Income Tax Act*, one of the sections conferring the powers in issue in *Jarvis*, did not infringe s. 8 of the *Charter*.

[164] Second, powers conferred for tax assessment purposes cannot be used for the dominant purpose of determining penal liability. As a matter of statutory interpretation, the inspection and requirement powers in the *ITA* are not available for use in an investigation to determine penal liability.

[165] Third, using compelled information for the dominant purpose of determining penal liability engages enhanced *Charter* protections for the target of the investigation.

[166] I will examine each of these three key holdings in turn and note their implications for information sharing by the CFO.

[167] To begin with the dominant purpose for which information is obtained, one must look to all factors that bear upon the nature of the inquiry. Apart from a clear decision to pursue a criminal investigation, no one factor is determinative. Even where reasonable grounds to suspect an offence exist, it will not always be true that the predominant purpose of an inquiry is the determination of penal liability. The following factors can be considered: (a) did authorities have reasonable grounds to lay charges or could a decision have been made to proceed with a criminal investigation; (b) was the authorities' general conduct consistent with a criminal investigation; (c) did the regulator transfer his or her file to the investigators; (d) was the regulator acting as an agent for the investigators; (e) did the investigators appear to intend to use the regulator as their agent; (f) was the evidence relevant to taxpayer liability generally or only to penal liability; and (g) were there other circumstances or factors suggesting an audit became a criminal investigation?

[168] The second key holding, as noted, is that powers conferred for tax assessment purposes cannot be used for the dominant purpose of determining penal liability. As Iacobucci and Major JJ. put it on behalf of the Court, “where the predominant purpose of a particular inquiry is the determination or penal liability, CCRA officials must relinquish the authority to use the inspection and requirement powers under ss. 231.1(1) and 231.2(1).”<sup>186</sup> This means that the auditor in *Jarvis* should not have shared the information that she assembled under the inspection power after the point at which the dominant purpose became determination of penal liability. It

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<sup>186</sup> *R v Jarvis*, 2002 SCC 73 at para 88.

further means that the investigator should not have used the requirement power to further his investigation for that purpose.

[169] Neither of these holdings affects the constitutionality of information sharing provisions provided of course that they do not expressly authorize sharing that is off-side the *Jarvis* principles. However, the distinction between audit and criminal investigation, coupled with the highly fact-specific, multi-factored test to determine whether the predominant purpose of an inquiry is to determine penal liability opens many lines of challenge to information assembled in the civil forfeiture process that is shared with law enforcement. Thus, sharing the information may give rise to concerns about the purpose for which the information was in fact obtained and give rise to disputes about whether the director's dominant purpose in obtaining the information was civil forfeiture. If a court concluded that this was not the director's dominant purpose in obtaining the information, then this would open arguments in both the forfeiture and criminal proceedings that the director's powers had been used for an improper purpose and that the evidence had therefore been illegally obtained. In deciding whether to recommend enhancement of the information sharing mandate of the director, the Commissioner may wish to consider the potential that such sharing has to prolong both forfeiture proceedings and criminal proceedings as a result of disputes of this nature.

[170] *Jarvis* tells us that the framework for assessing *Charter* breaches in a regulatory context is highly contextual. The result is that a bright-line "point in time" analysis, which requires an investigator to identify precisely when an inspection for regulatory compliance shifted to an investigation into possible offences under the regulatory scheme (i.e. became adversarial) is not necessarily determinative or even applicable.<sup>187</sup> Regulatory inspections (unlike tax audits) always take place, broadly speaking, in a "penal" or "adversarial" context because regulatory powers to ensure compliance always raise the spectre of charges under the scheme. Therefore, depending on the context, the regulatory inspection powers may always be penal in the sense of *Jarvis* and thus the pertinent question will be whether what was done was within the scope of those regulatory powers and for the purposes for which the regulatory powers were conferred.

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<sup>187</sup> *R v Mossman*, 2020 BCCA 299 at paras. 11-24. See also: *R v Rice*, 2009 BCCA 569; *R v Mission Western Developments Ltd.*, 2012 BCCA 167; *Workers' Compensation Board of British Columbia v Seattle Environmental Consulting Ltd.*, 2020 BCCA 365.

[171] *R v Nolet* provides a helpful example. The accused were subject to a warrantless search during a random roadside stop after the police found provincial regulatory violations.<sup>188</sup> The Court held that courts must conduct a step by step review of the interactions of the police and the accused from the initial stop onwards to determine whether, as the situation developed, the police stayed within their authority, having regard to the information they lawfully obtained at each stage of their inquiry. Although the accused challenged the search as unconstitutional on the basis of *Jarvis*, their reliance on *Jarvis* was misplaced.<sup>189</sup> The context was always penal so the issue was whether the statutory powers had been properly exercised for the purposes for which they were given.

[172] I now turn to the enhanced *Charter* protections engaged in inquiries with a dominant purpose of determining penal liability. The existence of this purpose affects the application of both ss. 7 and 8 to the conduct of those inquiries.

a) *Section 7*<sup>190</sup>

[173] The individual's liberty interest is engaged by the introduction of statutorily compelled information at his or her trial for a criminal offence, which in turn engages the principle of fundamental justice in relation to self-incrimination. This principle does not prevent the use of information in all contexts in which it is statutorily compelled.<sup>191</sup> However, "when the predominant purpose of a question or inquiry is the determination of penal liability, the 'full panoply' of *Charter* rights are engaged for the [individual's] protection."<sup>192</sup> This means that the powers given to compel documents and statements and to require financial records under ss. 231.1(1) and 231.2(1) of the *ITA* cannot be used for the purpose of advancing the criminal

<sup>188</sup> *R v Nolet*, 2010 SCC 24.

<sup>189</sup> *R v Nolet*, 2010 SCC 24 at paras 45-46.

<sup>190</sup> See also the section of this opinion discussing *Charter* compliance in relation to investigative powers (as opposed to information sharing).

<sup>191</sup> Examples include *R v Fitzpatrick*, [1995] 4 SCR 154, in which information obtained under the federal *Fisheries Act*, RSC 1985, c F-14, for a regulatory purpose could be used for a criminal prosecution under that statute. In contrast, a statement concerning an accident which was compelled by the BC *Motor Vehicle Act*, RSCBC 1979, c 288, was held not to be admissible at a criminal trial of the maker of the statement on charges arising from the accident in *R v White*, [1999] 2 SCR 417.

<sup>192</sup> *R v Jarvis*, 2002 SCC 73 at para 96.

investigation. These powers may continue to be used in an audit parallel to a criminal investigation provided that they are used for audit purposes.<sup>193</sup>

[174] I conclude that compelled statements in relation to civil forfeiture proceedings sought to be used in criminal proceedings will be subject to the “full panoply” of *Charter* rights. Both under the *CFA*, and particularly under the UWO scheme, the respondent can be required to provide “information” (in the case of the *CFA*, s. 11.01) or a “statement” (in the case of the UWO scheme). Both of these provisions contemplate that the respondent is required to disclose information that has not been previously recorded in a document for some other purpose.

[175] My view is that a lower threshold will apply to production of pre-existing documents unless their discovery is linked to the compulsion. This is because compelled production of documents does not impinge on the right to silence if the communications were made independently of, and before, the state compelled production.<sup>194</sup> Although at common law and under s. 7 in certain circumstances, compellability would impinge on the right to silence, this does not occur where documents contain communications not brought into existence by the exercise of state compulsion. In *Thomson Newspapers*, Sopinka J. illustrated this distinction between communications as follows:

It is a distinction that is made virtually every day in connection with police investigations. While suspects are entitled to remain silent, their documents may be seized by means of a search warrant under the *Criminal Code*. No right to remain silent or privilege against self-incrimination will avail to protect against seizure of the documents...<sup>195</sup>

[176] The production of documents itself can have communicative aspects, for example where possession of a document permits an inference of knowledge of the contents of the document or an inference of the truth of its contents.<sup>196</sup> In *Branch*, the Court held that the communicative aspects of document production may be of significance at the derivative evidence stage where a

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<sup>193</sup> *R v Jarvis*, 2002 SCC 73 at para 97.

<sup>194</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 at para 43.

<sup>195</sup> *Thomson Newspapers v Canada*, [1990] 1 SCR 425 at p 608.

<sup>196</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 at para 47.

witness seeks to exclude all evidence that would not have been obtained but for the compelled testimony.<sup>197</sup>

b) *Section 8*

[177] The Court in *Jarvis* held that taxpayers have a very low expectation of privacy with respect to the material and records they are obliged to keep under the *ITA* and which they are obliged to produce during the course of an audit. It follows that there is “nothing preventing auditors from passing to investigators their files containing validly obtained audit materials. ...[T]here is no principle of use immunity that prevents the investigators, in the exercise of their investigative function, from making use of evidence obtained through the proper exercise of the *CCRA*’s audit function. Nor, in respect of validly obtained audit information, is there any principle of derivative use immunity...”<sup>198</sup>

[178] These statements must, however, be understood in the context of two important facts that have implications for information sharing obtained in the course of civil forfeiture proceedings.

[179] First, the auditor in *Jarvis* did not use the inspection power while conducting an investigation, the predominant purpose of which was a determination of penal liability. However, the Court made clear that once that becomes the predominant purpose, the results of the audit inquiries cannot be used in pursuance of the investigation or prosecution.<sup>199</sup> This has two implications for civil forfeiture proceedings: civil forfeiture investigative procedures cannot be used for the dominant purpose of determining penal liability and once a criminal investigation has been started, information obtained after that date through the civil forfeiture process cannot be in pursuance of the investigation or prosecution.

[180] Second, the taxpayer had a low expectation of privacy with respect to the documents and records in issue in *Jarvis*. The s. 8 analysis might well be different if the material obtained in the civil forfeiture process was such that the respondent had a significant privacy interest, although this seems unlikely with respect to the sort of information about property and financial records that are likely to be relevant to a civil forfeiture proceeding.

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<sup>197</sup> *British Columbia Securities Commission v Branch*, [1995] 2 SCR 3 at para 48.

<sup>198</sup> *R v Jarvis*, 2002 SCC 73 at para 95.

<sup>199</sup> *R v Jarvis*, 2002 SCC 73 at paras 99, point 3 and 103.

#### 4. Conclusion on information sharing

[181] In summary, my opinion is:

- There are likely no constitutional barriers to a provincial civil forfeiture office providing information obtained using investigative tools provided for the purpose of civil forfeiture proceedings with other provincial regulators and tax authorities;
- Civil forfeiture offices cannot use their investigative powers for the predominant purpose of investigating penal liability;
- The sharing of compelled information for the purposes of a criminal investigation and prosecution likely breaches s. 7 of the *Charter*; and
- With respect to sharing information for the purposes of a criminal investigation in which there is a significant reasonable expectation of privacy, the sharing of such information also likely engages s. 8 of the *Charter* and will be subject to the *Southam* standard.

#### D. Combining law enforcement and civil forfeiture personnel

##### 1. Introduction

[182] You have asked whether there are constitutional impediments to: (a) constituting a provincial law enforcement agency with a mandate to pursue civil asset forfeiture; or (b) embedding a civil forfeiture office within a provincial law enforcement agency. In both scenarios, the critical question is whether the change in administrative setting and arrangements would change the purpose of the scheme. This is critical because the purpose of the scheme has significant weight in both the “pith and substance” analysis for division of powers purposes and in the *Charter* analysis concerning what standards will be applied to the exercise of the power.

[183] The CFO and the RCMP have a Memorandum of Understanding (“MOU”)<sup>200</sup> under which the CFO assigns one of its employees to the RCMP in the role of CFO RCMP Program

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<sup>200</sup> Memorandum of Understanding between The British Columbia Civil Forfeiture Office and the Royal Canadian Mounted Police “E” Division dated April 24, 2014.

Manager within the RCMP’s Federal Serious and Organized Crime Operations Support Group Asset Forfeiture Unit. There is also a secondment agreement between the British Columbia Ministry of Public Safety and Solicitor General and the Vancouver Police Board (“VPD”).<sup>201</sup> The VPD has an “informally assembled” asset forfeiture team whose role includes identifying, seizing and recommending forfeiture of criminal assets and prosecution of “persons associated therewith” and cooperating with other jurisdictions for such purposes. The seconded person is “retained by the VPD under a contract to perform services for the VPD.” The seconded person’s role is to review and assess VPD files forwarded to the asset forfeiture team for potential referral to the CFO. The person is not to “browse police information” for potential referrals to the CFO.

[184] I have taken these arrangements into account in formulating my opinion about the constitutionality of the current scheme.

[185] I note that the British Columbia courts have held that: (a) it is lawful for the director to collect information from the RCMP; (b) the director can use information received from the RCMP under the 1983 Information Sharing Agreement to commence and conduct proceedings under the *CFA*; and (c) the director has the authority to assign an employee to the CFO RCMP Program Manager position.<sup>202</sup>

## 2. Analysis

### a) *Division of Powers*

[186] For the civil forfeiture scheme to be within provincial legislative powers, its pith and substance must be in relation to property and civil rights within the province. As described in detail above, pith and substance depends on the law’s purposes and effects. The purposes and effects of the current *CFA* scheme are conceptually and practically distinct from federal legislative jurisdiction in relation to investigating crime and determining penal liability. The two scenarios on which you have asked my opinion involve a risk that the clarity of this distinction could be weakened or perhaps even lost.

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<sup>201</sup> Ministry of Public Safety and Solicitor General Secondment Agreement dated October 24, 2018.

<sup>202</sup> *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2010 BCCA 539; *Angel Acres Recreation and Festival Property Ltd. v British Columbia (Attorney General)*, 2019 BCSC 1421.

[187] If a civil forfeiture mandate were given to a criminal law enforcement agency, the lines between civil forfeiture and determining penal liability would inevitably be blurred. Different arms of the same agency would at times be simultaneously trying to determine if property was the proceeds, or an instrument, of crime and to determine penal liability. This in my view would make it more difficult to convince a court that the powers conferred for the purposes of the civil forfeiture scheme were not in fact being used for the purposes of determining penal liability. The same, in my view, could be said about embedding a civil forfeiture office within a criminal law enforcement agency.

[188] These risks could no doubt be mitigated. Confidentiality “walls” could be established around the work of the civil forfeiture arm and clear protocols put in place to avoid even the appearance that civil forfeiture powers were in fact being used for criminal investigation purposes. However, the blurring of the distinction between the two functions is at the least likely to lead to litigation. In my view, there is, at a minimum, a moderate risk that these changes could lead to a finding that the civil forfeiture scheme’s purposes and effects were not in relation to valid provincial objects.

*b) Charter implications*

[189] The *Charter* implications of these changes also depend on the risk that they would lead to a different conclusion about the dominant purpose for using civil forfeiture information gathering powers. The potential new arrangements would in my view increase the risk that those powers could be held to be for the dominant purposes of investigating and prosecuting crime.

[190] I have discussed the *Jarvis* case in detail earlier in my opinion. That case put in place a complex, multi-factored test for determining the dominant purpose for which information was gathered. It arose out of the fact that within the same overall organization, the CCRA, there were both audit and prosecution arms. The problem arose from the sharing of information acquired for audit purposes once a criminal investigation had been initiated. That same problem is likely to arise if civil forfeiture and criminal investigation functions exist side by side within the same organization.

[191] It is worth noting that the Supreme Court of British Columbia has expressed concern about the relationship between the RCMP and the CFO resulting from the MOU for the creation

of the CFO RCMP Program Manager position. The Court upheld the legality of the arrangement. However, it also expressed the view that “in some circumstances, the relationship between the police and the CFO with the attendant possibility of conflict arising from the intersection of criminal law substance and procedure and civil forfeiture law substance and procedure may require not only evidentiary oversight by the Court but also engage Charter scrutiny.”<sup>203</sup> These sorts of concerns will undoubtedly be more acute if the potential “embedding” arrangements are adopted.

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<sup>203</sup> *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCSC 880 at para 159.

## Abbreviations and Acronyms

ACAMS	Association of Certified Anti-Money Laundering Specialists
ACE	Anti-Money Laundering Action, Coordination and Enforcement Team (RCMP)
ADM	Assistant Deputy Minister
AGBC	Attorney General of British Columbia
AML	Anti-Money Laundering
AML/ATF	Anti-Money Laundering / Anti-Terrorist Financing
AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
AMP	Administrative Monetary Penalty
ATIP	Access to Information and Privacy
ATM	Automated Teller Machine
BCFSA	British Columbia Financial Services Authority
BCLC	British Columbia Lottery Corporation
BCREA	British Columbia Real Estate Association
CAMLO	Chief Anti-Money Laundering Officer (i.e., for a bank)
CBSA	Canada Border Services Agency
CDD	Customer Due Diligence

CDSA	<i>Controlled Drugs and Substances Act</i>
CEO	Chief Executive Officer
CFO	Civil Forfeiture Office
CFSEU	Combined Forces Special Enforcement Unit
CIFA-BC	Counter Illicit Finance Alliance of British Columbia
CISBC/YT	Criminal Intelligence Service British Columbia / Yukon Territory
CISC	Criminal Intelligence Service Canada
CIV	Client Identification and Verification
CMHC	Canada Mortgage and Housing Corporation
CMSBA	Canadian Money Services Business Association
CPA	Chartered Professional Accountant
<i>CPA Act</i>	<i>Chartered Professional Accountants Act</i>
CPA Canada	Chartered Professional Accountants of Canada
CPABC	Chartered Professional Accountants of British Columbia
CRA / CCRA	Canada Revenue Agency
EFT	Electronic Funds Transfer
FAMG	Forensic Accounting Management Group
FATF	Financial Action Task Force
FC3	Financial Crime Coordination Centre
FI	Financial Institution
FICOM	Financial Institutions Commission
FIIU	Financial Intelligence and Investigation Unit
FinCEN	US Financial Crimes Enforcement Network
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FIU	Financial Intelligence Unit
FREDA	Finance Real Estate and Data Analytics (Province of British Columbia)

FSOC	Federal Serious and Organized Crime (RCMP)
FTE	Full-Time Equivalent Employee
GPEB	Gaming Policy and Enforcement Branch
IIGET	Integrated Illegal Gaming Enforcement Team (RCMP)
IMET	Integrated Market Enforcement Team (RCMP)
IMLIT	Integrated Money Laundering Investigative Teams (RCMP)
IPOC	Integrated Proceeds of Crime Unit (RCMP)
IVTS	Informal Value Transfer System
JIGIT	Joint Illegal Gaming Investigation Team (RCMP)
KYC	Know Your Client / Customer
LCTR	Large Cash Transaction Report
LOTA	<i>Land Owner Transparency Act</i>
LOTR	Land Owner Transparency Registry
LSBC	Law Society of British Columbia
LTSA	Land Title and Survey Authority
MB	Managing Broker
MBA	<i>Mortgage Brokers Act</i>
MER	Mutual Evaluation Report (FATF)
ML	Money Laundering
MOU	Memorandum of Understanding
MSB	Money Services Business
OCABC	Organized Crime Agency of British Columbia
OSFI	Office of the Superintendent of Financial Institutions
OSRE	Office of the Superintendent of Real Estate
PCMLTFA	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>
PEP	Politically Exposed Person

PGF	Patron Gaming Fund
POC	Proceeds of Crime
PPP	Public-Private Partnership
PSB	Policing and Security Branch
RCMP	Royal Canadian Mounted Police
<i>REA</i>	<i>Real Estate Act</i>
RECBC	Real Estate Council of British Columbia
<i>REDMA</i>	<i>Real Estate Development Marketing Act</i>
<i>RESA</i>	<i>Real Estate Services Act</i>
STR	Suspicious Transaction Report
TBML	Trade-Based Money Laundering
TOR	Terms of Reference
VASP	Virtual Asset Service Provider
WLATM	White-Label Automated Teller Machine

