

Opening Statement of the British Columbia Civil Liberties Association
Cullen Commission of Inquiry into Money Laundering in BC
February 18, 2020

Introduction

1. The British Columbia Civil Liberties Association (“BCCLA”) wishes to thank the Commissioner and the staff at the Cullen Commission of Inquiry into Money Laundering in British Columbia (the “Commission” or the “Inquiry”) for the opportunity to make this submission.
2. The BCCLA is a non-profit, non-partisan, unaffiliated advocacy group, incorporated in British Columbia in 1963 pursuant to the British Columbia *Societies Act*. The objects of the BCCLA include the promotion, defense, sustainment and extension of civil liberties and human rights throughout British Columbia and Canada. As one of Canada’s oldest and most active civil liberties organizations, the BCCLA works in furtherance of its objectives through public education, position papers, and legal action, including launching complaints with the government or other administrative agencies, appearing in court as a plaintiff or applicant and intervening in legal matters that raise civil liberties issues.
3. The BCCLA has a long-standing, genuine, and continuing concern for the rights of the citizens in British Columbia and Canada to liberty, democracy and freedom. The BCCLA has expertise in a myriad 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, all of which intersect with the subject matter of this Inquiry. The BCCLA will bring this expertise to its role as a participant in the Inquiry to provide a much-needed civil liberties-based perspective to the issues that arise when investigating and addressing money laundering in this province. In particular, the BCCLA will address the proper balancing of rights and freedoms in the context of governmental and private sector efforts to combat money laundering. This perspective is crucial; the BCCLA intends to be a voice for the citizens of the province who cannot speak for themselves at this Inquiry.

4. The BCCLA supports efforts to combat money laundering in British Columbia, recognizing that, left unchecked, money laundering has significant social and political consequences. However, the recommendations proposed to date call for significant expansions of police and regulatory powers and the over-collection of private information, without evidence demonstrating that these changes would be effective in combatting money laundering. The risk to British Columbians is profound – time and time again, we have seen that unfettered police powers lead to abuse. For example, without proper checks and balances, flawed laws empower governments and police forces to use civil forfeiture laws to benefit their bottom lines, rather than to combat crime. Massive data collection, retention and information sharing programs place Canadian’s private information at risk. Programs that track and collect more and more sensitive information can also be weaponized to unlawfully monitor immigrants, activists, and entire neighborhoods. In considering effective strategies for combatting money laundering in British Columbia, the implications for the rights and liberties of Canadians *must* form part of the analysis.

Commission’s Mandate

5. This Commission has a broad and deep mandate. That mandate includes the authority to make findings of fact regarding the nature and extent of money laundering in British Columbia, to examine the scope and effectiveness of the anti-money laundering powers, duties and functions exercised by various regulatory authorities and sectors, and to make recommendations respecting solutions to address money laundering.
6. Within the Commission’s mandate is the review and consideration of four reports dealing with money laundering commissioned by the Provincial Government (the “Provincial Reports”). The Provincial Reports contain several recommendations for an anti-money laundering (“AML”) regime.
7. In reviewing the numerous recommendations found in the Provincial Reports, certain common threads emerge that have potentially grave implications for the privacy rights and civil liberties of Canadians. Broadly speaking, these threads are:

- Recommendations to increase the amount and types of data collected by public and private sector institutions, and to increase the sharing of personal and confidential data amongst public and private institutions;
- Recommendations to increase the presence and powers of police and regulatory investigators within the gaming industry; and
- Recommendations for invasive remedies such as civil forfeiture and the introduction of unexplained wealth orders (“UWOs”).

8. In the submissions that follow, the BCCLA has highlighted some of the implications for the privacy rights and civil liberties of Canadians that arise from these types of recommendations. These submissions are not exhaustive. The BCCLA submits that AML measures should not be recommended or implemented without serious consideration of, and independent research into, the efficacy of such measures and their potential harms. Furthermore, the BCCLA submits that there must be checks and balances in place for *all* measures that are recommended to ensure that they operate in a manner that does not unduly infringe on the rights and liberties of Canadians. The BCCLA will advocate for the protection of the rights and liberties of ordinary Canadians in developing criminal justice and regulatory responses to money-laundering in British Columbia.

Collection of Information and Data-Sharing Amongst Agencies

9. The BCCLA wishes to ensure that federal and provincial reporting requirements related to money laundering do not result in the over-collection and retention of highly confidential personal information by multiple agencies in a manner that is not sufficiently protective of the right to privacy. The BCCLA is critical of expanding the government and other agencies’ ability to collect and retain sensitive information without a warrant or judicial process.
10. In 2015, the BCCLA made submissions to the federal Standing Committee on Finance regarding the Financial Transactions Reports and Analysis Center (“FINTRAC”) and the issue of terrorist financing in Canada and abroad. The BCCLA spoke about the troubling over-collection and retention of personal information (consistently found in audits of FINTRAC by the Office of the Privacy Commissioner of Canada) and advocated for a review

of FINTRAC's efficacy in combatting money laundering and terrorist financing. The BCCLA holds these same concerns today.

11. The BCCLA opposes expanding the number of entities that are required to report to FINTRAC and further opposes increasing the scope of information that FINTRAC is able to collect. Adding more reporting entities will inevitably capture a greater number of innocent transactions and the personal information of innocent individuals. If more entities are required to act as *de facto* agents of the state, collecting information solely for the purpose of reporting it, the government will acquire vast amounts of personal information for investigatory purposes without having ever shown reasonable grounds for obtaining this information. These recommendations pose a significant threat to privacy rights, as they will lead to the over-collection and retention of personal information. Further, the BCCLA is concerned that the recommendation to have FINTRAC flag transactions with a "foreign component" could lead to profiling and discrimination.
12. The BCCLA also opposes the recommendations aimed at expanding FINTRAC's powers to disclose data to other agencies. The sharing of data, including proprietary confidential data, creates a serious risk that the confidential, personal information of Canadians will be compromised when their information is shared.
13. Similar concerns arise with the recommendation to create a Transaction Analysis Team to review all Suspicious Transaction Reports (STRs), leading to the sharing of sensitive information amongst numerous entities (Gaming Policy and Enforcement Branch, Designated Policing Unit, Joint Illegal Gaming Investigation Team and British Columbia Lottery Corporation).
14. The BCCLA submits that these types of recommendations fail to consider the serious privacy implications of mass data-sharing between agencies and fails to provide appropriate measures to safeguard the personal information of Canadians. The BCCLA is also concerned that no credible, verifiable evidence has yet been produced which suggests that a data-sharing framework would be effective in combatting money laundering.

15. Canadians have the right to know how and why their personal information is being used by an organization or a public body. Organizations and public bodies that collect personal information must secure it against unauthorized access, and releasing or sharing personal information is only permitted in very particular circumstances and with required lawful authority. These basic privacy rights of Canadians must be respected and upheld when considering measures for an AML regime.

Expansion of Police and Regulatory Powers

16. The BCCLA is also concerned with the recommendations in the Provincial Reports advocating for increased police presence and powers. The BCCLA has consistently highlighted the potential for abuse when police powers are indiscriminately expanded. The BCCLA submits that it is critical to ensure that policing units, including the proposed Designated Policing Unit (“DPU”) to police casinos and related gaming activity, are not created or expanded unnecessarily, and that they do not operate in a rights-infringing manner.

17. The BCCLA submits that if the creation of a DPU is to be considered, further independent research should be conducted to provide a better picture of its potential role and impact. The scope of such research on a DPU should include:

- independent research on its efficacy and the potential impact on affected communities;
- independent research on the overlap and potentially duplicative nature of the DPU’s work and the work of other entities, such as the Joint Illegal Gaming Investigation Team (“JIGIT”), and local law enforcement; and
- consultation with the Information and Privacy Commissioner to create a policy on data collection, protection and retention.

18. With respect to JIGIT, the BCCLA advocates for a comprehensive and independent review of JIGIT to ensure it is operating properly, successfully and legally prior to considering whether JIGIT should be provided with continued support and funding. Any such review should fully consider whether JIGIT is fulfilling a genuine need and whether this unit is the most effective, accountable and rights-protective means of addressing that need. In that regard, the BCCLA has several concerns regarding JIGIT's operations. Chief amongst these concerns is JIGIT's

use of both law enforcement personnel and regulatory investigators to fulfill its mandate. The BCCLA is concerned that the potential for blurring the distinct roles and responsibilities of police and regulatory investigators may result in the infringement of civil rights for members of the public who are subject to JIGIT investigations, as well as failures of oversight and accountability.

19. The BCCLA supports the recommendation for a new independent regulator with clearly defined roles and responsibilities that are fully transparent to the public. The BCCLA is supportive of the creation of the regulator as an independent government agency. In the BCCLA's view, any investigatory powers of a new regulator should be purely regulatory in nature; the BCCLA is opposed to regulatory investigators being designated as Special Provincial Constables without adequate consideration for the risk to individual civil liberties and the rights of the public who are subject to an investigation.

Civil Forfeiture and Unexplained Wealth Orders

20. The BCCLA is also troubled by recommendations for the increased use of civil forfeiture. The BCCLA has long been an opponent of civil asset forfeiture laws, pursuant to which an individual who has not been charged or convicted of a crime can lose their property to the government. The BCCLA has spoken out against the incentives the legislation creates for government abuse and the barriers ordinary people face representing themselves in civil forfeiture cases.
21. The BCCLA submits that the proposed introduction of UWOs in Canada is also deeply concerning. The implementation of UWOs would be fraught with serious civil liberties implications, including an erosion of privacy rights, doing away with the presumption of innocence and subverting the rights that shield Canadians from unreasonable search and seizure.
22. The BCCLA is staunchly against the reverse-onus scheme under which UWOs operate in which the onus would lie on a property-owner to prove to the government that they bought their property using legitimate sources of income. The reverse-onus scheme of UWOs would

permit the province to exercise coercive state powers and obtain court orders against people without any evidence of wrongdoing. In addition to these implications, the BCCLA submits that there is no sufficient evidence on the efficacy of UWOs to support their introduction in British Columbia. The BCCLA urges the Commission to give due consideration to the grave effects that measures such as UWOs would have on individuals and society.

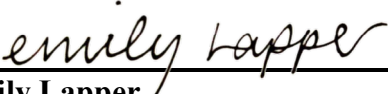
Conclusion

23. The BCCLA recognizes that the possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. However, developing an effective AML regime cannot simply reflect calls for more invasive powers, broader disclosures of sensitive, highly prejudicial information, and more resources for policing and FINTRAC. The implications for the rights and liberties of Canadians must form a part of the analysis.


24. The BCCLA again wishes to thank the Commission for the opportunity to make this submission.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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