Commission of Inquiry into Money Laundering in British Columbia

Commissioner A. Cullen

REPLY SUBMISSIONS OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (GAMING SECTOR)

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PART I - OVERVIEW

1. The Province[1] provides the following submissions in reply to the submissions of other participants in the gaming sector. The Province has identified common themes in those submissions and responds to those themes in global terms. By way of overview, the Province's reply advances the following propositions, among others, in response to the other gaming participants' submissions:

a. The adoption of a risk-based approach to AML does not preclude the implementation of prescriptive AML components.

b. The level of proof required by BCLC to justify steps being taken to address the influx of suspicious cash has shifted over time. Early on, the lack of proof to the criminal standard was used by BCLC as a touchstone when discussing AML. By mid-2015 and onwards, actions were taken by BCLC despite the lack of proof to the criminal standard. That is, proof to the criminal standard is not necessary for AML action now, and it was not necessary in prior years.

c. The criticism levelled at GPEB for its alleged failure to share certain investigative and internal review work with BCLC does not account for GPEB's role as regulator and fails to recognize that, as a Level 2 Police Agency, there were limits on the law enforcement information GPEB was permitted to share.

d. The other gaming participants place undue reliance on the April 28, 2021 Ernst & Young LLP AML Practices Report written by Robert Boyle (the "AML Practices Report"), despite the fundamental flaws and limitations in the methodology underlying that report.

e. BCLC and its senior executives cast GPEB's mandate and powers as being greater than they were, while simultaneously minimizing the scope of BCLC's "conduct and manage" mandate as prescribed by the *GCA*.[2]

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[1] Unless otherwise stated, the Province's reply adopts and uses the defined terms as set out in its closing submissions in the main on the gaming sector.

[2] See e.g. Mr. Kroeker's closing submissions, ¶ 23, 25. The Province's response to this is set out in its submissions in the main at ¶ 28-38.

2. These submissions are intended to provide counterpoints to certain assertions made by other gaming sector participants, thereby ensuring that competing perspectives on the evidence are available to the Commissioner. There are undoubtedly divergent opinions on the historical events that gave rise to this Commission; however, the Province agrees with BCLC that "[w]ith the benefit of hindsight, all stakeholders could have done things differently".[3] The Province and industry stakeholders have shown in recent years that they are aligned in their willingness to work collaboratively to address any remaining money laundering vulnerabilities in British Columbia's gaming industry.

PART II – REPLY TO PARTICIPANTS' SUBMISSIONS

Risk-Based Approach v. Prescriptive Approach

3. There is frequent reference in the participants' closing submissions to BCLC's pursuit of, and preference for, a "risk-based approach" to AML.[4] To evaluate those submissions, it is necessary to be clear about what a "risk-based approach" to AML entails.[5] A logical starting point is the 2008 Financial Action Task Force ("FATF") guidance document entitled "[Risk-Based Approach] Guidance for Casinos" ("RBA Guidance").[6] One of the stated purposes of the RBA Guidance document is to support the development of a "common understanding" of what a risk-based approach involves.[7]

4. According to FATF, the two key premises of a "risk-based" approach to AML are: (1) the measures used are commensurate with the risk identified; and (2) that resources are directed so that the greatest risks receive the highest attention.[8] In its discussion of the purpose of this AML approach, FATF stated, in part, as follows:

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[3] BCLC's closing submissions, ¶ 5.
[4] See, Mr. Lightbody's closing submissions, ¶ 2, 4, 24, 29, 35, 37, 38, and 46; Mr. Kroeker's closing submissions, ¶ 16, 39, 40 and 41; Mr. Desmarais' closing submissions, ¶ 1; BCLC's closing submissions, ¶ 12, 29, 39, 56, 95, 100, 103, 107, 126-128.
[5] Several witnesses were asked about this concept, see: TR B. Desmarais 2/FEB/2021, p. 4, l. 7-p. 6, l. 1; TR M. de Jong 23/APR/2021, p. 11, l. 15-p. 13, l. 19, p. 34, l. 19-p. 37, l. 10, p. 146, l. 21-p. 149, l. 25; TR R. Kroeker 26/JAN/2021, p. 102, l. 3-p. 104, l. 16. See, Ex. 832, pp. 198-202, for a discussion of a "standards-based" approach.
[6] Ex. 490, Ex. 2. The Province observes that Ex. 2 of Mr. Kroeker's affidavit (Ex. 490) which is accessible on the Commission's website appears to be corrupted. For completeness, a copy of FATF's 2008 RBA Guidance for Casinos document is accessible here.
[7] Ex. 490, Ex. 2, ¶ 6.
[8] Ex. 490, Ex. 2, ¶ 20; TR B. Desmarais 2/FEB/2021, p. 3, l. 7-p. 4, l. 1.

> 23. The strategies to manage and mitigate the identified money laundering and terrorist financing risks are typically aimed at preventing the activity from occurring through a mixture of deterrence (e.g. appropriate CDD measures), detection (e.g. monitoring and suspicious transaction reporting), and record-keeping so as to facilitate investigations.
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> 24. Proportionate procedures should be designed based on assessed risk. Higher risk areas should be subject to enhanced procedures; this would include measures such as enhanced customer due diligence checks and enhanced transaction monitoring. It also follows that in instances where risks are low, simplified or reduced controls may be applied.
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> 25. There are no universally accepted methodologies that prescribe the nature and extent of a risk-based approach. However, an effective risk-based approach does involve identifying and categorising money laundering and terrorist financing risks and establishing reasonable controls based on risks identified.[9] [emphasis added]

5. A risk-based approach is intended to be flexible and as such, requires an organization to continually assess vulnerabilities and address them accordingly.[10] There is no "one way" to implement a risk-based approach; there may be various tools or components used, including tools that may be considered on their own to be prescriptive like monetary thresholds.[11] That is, a risk-based approach to AML may include, as part of its components, a specific, prescriptive tool.[12] The two concepts are not necessarily incompatible. For example, the implementation of a threshold over which source of funds inquiries are required does not transform a "risk-based approach" to AML generally into a prescriptive approach. It simply reflects the organization's assessment of risk and its response to that risk in its unique circumstances. This is apparent in FATF's publications.

6. As stated by FATF, "[h]igher risk areas should be subject to enhanced procedures; this would include measures such as enhanced [CDD] checks and enhanced transaction monitoring". The 2008 RAB Guideline elaborates on enhanced "Customer Due Diligence [CDD]" as follows:

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[9] Ex. 490, Ex. 2, ¶ 23-25.
[10] TR B. Desmarais 2/FEB/2021, p. 4, l. 2-6.
[11] TR B. Desmarais 2/FEB/2021, p. 4, l. 7-p. 6, l. 1; Ex. 148, ¶ 161-162.
[12] TR B. Desmarais 2/FEB/2021, p. 4, l. 7-p. 6, l. 1; Ex. 523; Mr. Desmarais did not agree the risk-matrix in Ex. 523 was indicative of injecting prescriptive components into a risk-based approach: TR B. Desmarais 2/FEB/2021, p. 7, l. 5-p. 8, l. 18; TR P. German 12/APR/2021, p. 113, l. 14-p. 114, l. 2

> 117. Casinos should apply CDD to all customers when they engage in financial transactions in a casino at a particular financial threshold. This threshold applies to either a single transaction, or to several transactions that appear to be linked. Operators with multiple web sites should apply the threshold per customer not per website. A threshold approach requires particularly careful policies and procedures which ensure that the casino knows when customers reach the threshold. In these circumstances, the casino's procedures should include procedures to:
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> - Identify and verify the identity of each customer.
> - Identify any beneficial owner (i.e. the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted16), and take reasonable risk-based measures to verify the identity of any beneficial owner. The measures that have to be taken to verify the identity of the beneficial owner will vary depending on the risk.
> - Obtain appropriate additional information to understand the customer's circumstances and business.[13] [emphasis added]

7. Source of funds inquiries are enhanced CDD checks.[14] The fact that the Province[15] and BCLC preferred a risk-based approach did not mean that prescriptive tools, like a generally applicable source of funds policy, could not form a part of and complement that general approach; FATF's guidance documents suggest that to be the case.

8. This is also reflected in the AML practices of financial institutions. In the Malysh Report, for example, under the heading "3.3 Cash Acceptance", the authors discuss the AML practices of deposit taking organizations:

> a) Using a risk based approach, questions are directed to a potential new client to determine what financial services they will need and the approximate transaction volumes to be anticipated. Based on responses, or lack thereof, decisions are made as to whether to open the account, ask further questions to make a more accurate assessment, or decline the business. A risk based approach enables efforts to be focused on clients, transactions, and payment methods that pose the greatest risk for ML/TF.
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> b) When cash over CAD $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. Some [deposit taking organizations] require the client complete and sign a Source of Funds Declaration, which is kept in the client

[13] Ex. 490, Ex. 2, ¶ 117.
[14] See, for example, Ex. 954, p. 5; BCLC's closing submissions, ¶ 91.
[15] TR M. de Jong 23/APR/2021, p. 11, l. 15-p. 13, l. 19, p. 34, l. 19-p. 37, l. 10.

> account file. If suspicions arise, details are reported to the compliance department via a STR. The client's account is flagged for monitoring. …[16] [emphasis added]

9. The Malysh Report followed the 2012 FATF Recommendations which emphasized the application of a risk-based approach, stating that it ought to be an "essential foundation" of a country's AML framework.[17]

10. A risk-based approach to AML is considered best practice, but it is not mandatory.[18] An impacted organization, like BCLC, is encouraged to consider risk factors specific to its operations and apply those CDD practices and other deterrence or reporting tools that are commensurate with that risk. The overarching application and guidance of a risk-based approach does nothing to tie the hands of those implementing it to use various types of policies and programs to deter money laundering.

Shifting views on level of "proof" necessary to refuse suspicious cash

(a) Lack of proof suspicious cash constituted proceeds of crime

11. A recurrent theme in BCLC's submissions is the lack of "proof" that suspicious cash was illicit or the proceeds of crime.[19] More specifically, BCLC asserts that "[n]o specific cash accepted at a BCLC casino has ever been established in a court of criminal or civil jurisdiction, or on the evidence in this Inquiry, to be proceeds of crime" and that "[s]uspicion does not equal proof, and an STR does not equal proceeds of crime"[20]. It then relies on this lack of proof at the criminal standard as supporting a finding that "BCLC's views with respect to possible legitimate sources of large cash buy-ins have at least been reasonable".[21]

12. BCLC also asserts the lack of proof in a court of law as justification for not refusing buy-ins with suspicious cash[22] and relies on jurisprudence to the effect that "… mere suspicion without judicial proof is not sufficient for a court of justice to act upon".[23] While

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[16] Ex. 73, App. H, pp. 12-13.
[17] Ex. 4, App. E, p. 9; see also pp. 12 and 66, as relates to financial thresholds.
[18] Ex. 490, Ex. 2, ¶ 7.
[19] See, for example, BCLC's closing submissions, ¶ 21, 22 and 28.
[20] BCLC's closing submissions, ¶ 21.
[21] BCLC's closing submissions, ¶ 19.
[22] BCLC's closing submissions, ¶ 18, 19, 22, 24.
[23] BCLC's closing submissions, FN 38.

that is certainly true, analytically, it has no bearing in these circumstances: BCLC does not determine fault or guilt, it must conduct and manage gaming in BC, and in doing so, minimize money laundering risk. In this context, relying on the absence of proof of illegality is not consistent with a risk-based approach. If such reasoning were accepted, then no matter how suspicious the circumstances, inaction could be justified absent proof to a criminal standard.

13. BCLC's reliance on civil forfeiture jurisprudence is similarly misplaced.[24] Principles that apply in the civil forfeiture context may be relevant if the question was whether BCLC ought to have been seizing suspicious cash. But that is not the question; the question was whether to implement enhanced AML procedures in the gaming industry. The level of "proof" required to seize property has no application in such circumstances. These are matters of a fundamentally different character. Civil forfeiture involves seizure of an individual's property; enhanced CDD at a casino simply requires an individual to respond to requests for information or documentation as a condition of using cash to engage in a discretionary leisure entertainment activity.

14. Nor has BCLC identified legislation, direction, or policy that required confirmation from law enforcement that suspicious cash constituted proceeds of crime before source of funds inquiries could be conducted or suspicious cash refused. In the absence of any such requirement, the reasonableness of waiting for confirmation from law enforcement, particularly in the period leading up to July 2015 when BCLC understood the police were not investigating money laundering in casinos and was itself actively attempting to engage them in that regard[25], is questionable.

15. These assertions must be considered in light of BCLC's conduct from mid-2015 onwards. By September 2015, BCLC appears to have softened its approach and began placing patrons on cash conditions despite the absence of proof that the funds were illicit.[26] In November 2014, BCLC placed one patron on sourced cash conditions for the first time because the patron tried to buy in using cash delivered by Mr. Jin.[27] In August

[24] BCLC's closing submissions, ¶ 22.
[25] See, for example, Ex. 522, ¶ 75, 76; Ex. 148, ¶ 46, 67.
[26] BCLC's closing submissions, ¶ 29.
[27] BCLC's closing submissions, ¶ 72.

2015, BCLC placed ten additional patrons on sourced cash conditions because they were known to receive cash from Mr. Jin.[28] BCLC acknowledges it took these steps without "proof that funds were illicit"[29] and based not on proof of criminality, but rather "potential" linkages between large cash buy-ins and illicit funds or organized crime.[30]

16. While neither BCLC or GPEB had proof to the criminal standard that suspicious cash was illicit or the proceeds of crime, there were nonetheless sufficient and early indicators of a risk of money laundering or the facilitation of money laundering in BC casinos.[31] For example, in 2009, BCLC investigator Michael Hiller identified what later became known as the "Vancouver Model" of money laundering[32] and communicated it to his superiors at BCLC[33], including Terry Towns.[34] Mr. Towns questioned how it could be money laundering if the money was put at risk and lost; Mr. Hiller explained the Vancouver Model to Mr. Towns[35]:

> …And I would reply to him that it's not the VIP player that's so much the money launderer. The VIP player is a vehicle for money laundering.
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> I believed the VIP players that were bringing in this sort of money were legitimate VIP players with substantial occupations or business occupations that enabled them to spend this type of money, but I believed they did not have the access to this type of money in Canada. They were mainly Chinese nationals and that they were obtaining this money from organized crime. So they were, in essence, a vehicle of the money laundering process.

17. It is apparent from Mr. Hiller's explanation to Mr. Towns that BCLC's source of wealth inquiries to confirm the players had legitimate sources of wealth[36] would not address this typology of money laundering. The VIP players had legitimate wealth;

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[28] BCLC's closing submissions, ¶ 82.
[29] See, BCLC's closing submissions, ¶ 29.
[30] BCLC's closing submissions, ¶ 81: "In late July 2015, BCLC was advised by FSOC that E-Pirate had uncovered a potential connection between casino buy-ins and illicit funds" and "This marked the first time BCLC had received confirmation from law enforcement that large cash buy-ins had been potentially linked to organized crime" [emphasis added].
[31] See e.g. Province's closing submissions ¶ 54-55, 61, 88, and 91.
[32] TR M. Hiller 9/NOV/2020, p. 22, l. 2-p. 23, l. 12.
[33] TR M. Hiller 9/NOV/2020, p. 23, l. 13-p. 27, l. 12.
[34] TR M. Hiller 9/NOV/2020, p. 27, l. 13-15. Mr. Hiller's evidence on this point casts doubt on Mr. Lightbody's assertion at ¶ 28 of his closing submissions that it was not until October 2015 that BCLC first learned that "funds were being lent to patrons from unknown sources and repaid offshore".
[35] TR M. Hiller 9/NOV/2020, p. 27, l. 16-p. 28, l. 11.
[36] BCLC's closing submissions, ¶ 28.

inquiries into source of funds (not source of wealth) were needed to address the risk identified by Mr. Hiller and, at the same time, GPEB.[37] In response, Mr. Towns asserted there was no "proof" the cash was coming from organized crime; BCLC was to continue to accept the suspicious cash, "observe and report".[38]

18. It is also difficult to reconcile Mr. Desmarais' assertion that "BCLC had neither the mandate nor capacity to investigate potential money laundering offences or investigate which casino clients were associated with criminal activity (as opposed to those who were legitimately wealthy)"[39], with his subsequent reliance on BCLC having taken steps to address the influx of suspicious cash in the summer of 2015 by "develop[ing] an operational plan to interview 13 patrons who had been linked to Mr. Jin and those who were the subject of 20 or more STRs…".[40] On the whole of the evidence before the Commission, the primary purpose of that plan appears to have been to do exactly that which Mr. Desmarais asserted BCLC had neither the mandate or capacity to do: determine whether patrons buying in with suspicious cash were associated with criminal activity. Thus, on the whole of the evidence before the Commission, reliance on the absence of proof that suspicious cash was illicit as a reasonable response in the then-present circumstances and given the information known to BCLC at the time, does not withstand scrutiny.

(b) GPEB's understanding of BCLC's cash conditions program

19. The Province makes three points in response to the suggestion that government and GPEB did not have a good understanding of BCLC's cash conditions program.[41] First, criticism cannot fairly be leveled at GPEB for not understating BCLC's program in August 2015 (as Mr. Lightbody does) when that program was still relatively new and had only been applied to Mr. Jin and four other patrons.[42] Second, Mr. Mazure was not asked

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[37] See e.g. Province's closing submissions ¶ 88.
[38] TR M. Hiller 9/NOV/2020, p. 28, l. 12-p. 29, l. 1.
[39] Mr. Desmarais' closing submissions, ¶ 39.
[40] Mr. Desmarais' closing submissions, ¶ 53.
[41] Mr. Lightbody's closing submissions, ¶ 36. See also BCLC's closing submissions, ¶ 87. Mr. Lightbody's closing submission addresses the August 2015 time frame; BCLC asserts that GPEB's lack of understanding persisted into Fall 2015 and thereafter.
[42] Ex. 490, Ex. 39.

whether, had he known more about BCLC's cash conditions program as it existed at the time, he would have still sent his August 7th letter to Mr. Lightbody. Finally and most importantly, GPEB's understanding of BCLC's cash conditions program is immaterial; the point is that whatever measures BCLC was taking at the time did not appear to GPEB to be effective and Mr. Mazure was asking BCLC to do more.

Information flow between GPEB and BCLC

(a) GPEB's internal review and reporting

20. It is common ground that not all GPEB's investigative and internal review work related to AML was shared with BCLC. GPEB's Investigation Division was a Level 2 Police Agency. Due to this designation, GPEB investigators had access to certain information databases that BCLC investigators did not, such as CPIC.[43] GPEB's investigation reports, which would contain information gathered during any investigation undertaken, were not typically shared with BCLC.[44] Mr. Ackles, a former GPEB investigator, explained this was because there was no legal requirement for GPEB to provide information back to BCLC under the *GCA*.[45] When asked if GPEB could have shared that information, Mr. Ackles explained that, on occasion, GPEB did share tactical information with BCLC but the "integrity of certain aspects of CPIC … prohibited [them]" from sharing all aspects of the information gathered.[46]

21. GPEB had not "refused" to share police information with BCLC, as alleged by Mr. Desmarais.[47] Mr. Desmarais himself recognized that Mr. Vander Graaf advised him that he "could not share police information" with BCLC and he respected that. Mr. Desmarais was aware that the information that the police gave GPEB was third party protected.[48] GPEB and JIGIT were not at liberty to disclose confidential information of police

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[43] TR K. Ackles 2/NOV/2020, p. 14, l. 12-p. 15, l. 5.
[44] TR K. Ackles 2/NOV/2020, p. 16, l. 9-14.
[45] TR K. Ackles 2/NOV/2020, p. 16, l. 15-22.
[46] TR K. Ackles 2/NOV/2020, p. 96, l. 1-25.
[47] Mr. Desmarais' closing submissions, ¶ 40. Mr. Desmarais alleges that BCLC needed the ISA with RCMP in part because GPEB "refused" to provide information to BCLC.
[48] TR B. Desmarais 1/FEB/2021, p. 81, l. 1-p. 82, l. 15.

agencies,[49] nor was GPEB able to direct the police.[50]

22. Certain other internal reviews were not shared with BCLC because they were created by GPEB solely to inform the police and senior management about current and emerging risks.[51] On occasion, the Compliance Division would prepare reviews of information gathered from BCLC or service providers. Those internal reviews contained analyses to inform and educate management about issues that Compliance had observed and considered relevant to GPEB. Reviews of this nature were typically distributed through internal memorandum and were not provided to BCLC or service providers for their response because the intention was to provide information to GPEB management and the executive.[52] It is certainly reasonable for a regulator to compile and analyse data for its own internal purposes. For the most part, however, draft audit reports prepared by the Compliance Division were shared with the auditee for response prior to finalization.

23. Similarly, reports prepared by GPEB's intelligence unit were used to brief GPEB management, senior government officials and were provided to police in support of ongoing investigations.[53] Those reports were not routinely shared with BCLC because they were created to inform GPEB and senior management.[54] The reports were, however, shared with law enforcement and other intelligence agencies.[55] In some circumstances, the responsibility to decide whether to inform BCLC of a particular matter fell to law enforcement. For example, in June 2017, JIGIT announced the arrest of nine individuals arising from the E-Nationalize investigation. The ISA between JIGIT and BCLC provides that, where the information could cause harm to the integrity of an ongoing investigation, JIGIT would not provide that information.[56] When those nine arrests occurred, JIGIT conducted an analysis[57] and determined it would not provide the names of those

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[49] TR R. Fyfe 29/APR/2021, p. 98, l. 7-22.
[50] TR R. Fyfe 29/APR/2021, p. 24, l. 12-22.
[51] TR L. Meilleur 12/FEB/2021, p. 95, l. 16-p. 97, l. 25. See also ¶ 64 of Mr. Desmarais' closing submission which alleges GPEB refused to share its internal analyses with BCLC.
[52] Ex. 781, ¶ 27-34.
[53] TR L. Meilleur 12/FEB/2021, p. 92, l. 7-p. 95, l. 12.
[54] TR L. Meilleur 12/FEB/2021, p. 95, l. 16-p. 96, l. 7.
[55] TR L. Meilleur 12/FEB/2021, p. 97, l. 4-22.
[56] TR J. Hussey and S. Cocks 7/APR/2021, p. 44, l. 16-p. 45, l. 25.
[57] TR J. Hussey and S. Cocks 7/APR/2021, p. 46, l. 1-20.

individuals to BCLC at that time.[58] GPEB was not involved in that decision-making, perhaps other than the fact GPEB members are embedded within JIGIT.[59]

(b) BCLC's data analysis capacity

24. BCLC had the same ability to review and analyze data, including s. 86 reports as did GPEB, and had a greater ability to act quickly on the results of such analyses, including by imposing cash conditions, interviewing patrons, and banning patrons.[60] This is consistent with Mr. Kroeker's submissions[61] and evidenced by BCLC's conduct in taking such steps from summer 2015 onwards following receipt of information from E-Pirate and GPEB's Spreadsheet.

25. Indeed, BCLC recognized that analytical capacity was critical and, in anticipation of amendments to the *PCMLTFA* in February 2014, expended significant time and resources on purchasing, customizing and implementing SAS's AML software module.[62] BCLC expected that the SAS software would "increase [its] ability to monitor and analyze transactions for indicators of money laundering"[63] and its intent in acquiring the SAS AML model was, among other things, to increase its analytical capacity by leveraging the SAS AML into a case management, monitoring and incident reporting system.[64] Unfortunately, the SAS AML module did not perform as expected, Dr. German eventually recommended that BCLC not incur any further expense with respect to the SAS AML Software system.[65] BCLC accepted this recommendation[66] and by August 2019, BCLC was seeking a new software solution to support its AML compliance requirements.[67]

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[58] TR J. Hussey and S. Cocks 7/APR/2021, p. 44, l. 16-p. 45, l. 25, p. 47, l. 3-10, p. 81, l. 12-p. 82, l. 12, p. 83, l. 17-p. 84, l. 21, p. 108, l. 23-p. 110, l. 5; Ex. 505, ¶ 132-141; Ex. 490, paras. 169-175.
[59] TR J. Hussey and S. Cocks 7/APR/2021, p. 47, l. 11-p. 48, l. 7, p. 110, l. 14-p. 111, l. 8.
[60] Ex. 67, ¶ 115-116; TR P. Ennis 4/FEB/2021, p. 13, l. 22-p. 14, l. 28; See, also, Appendix B to the Province's closing submission re: the power to ban patrons.
[61] Mr. Kroeker's closing submissions, ¶ 27.
[62] Ex. 575, App. 57, p. 1.
[63] Ex. 916, p. 3.
[64] Ex. 575, App. 57, p. 2.
[65] Ex. 832, p. 15; Ex. 490, ¶ 133-135.
[66] Ex. 537, Ex. 2, Ex. K, p. 136.
[67] Ex. 575, App. 102.

GPEB did not interfere in BCLC or RCMP matters

(a) River Rock Chip Swap

26. In the fall of 2014, BCLC began making inquiries into the issue of casino chip liability. Brad Desmarais, then BCLC's Vice President, Corporate Security and Compliance, and Robert Kroeker, then with GCGC, discussed concerns about casino patrons buying in at the River Rock and leaving the casino with a significant amount of chips following minimal or no play.[68] By July 2015, Mr. Desmarais had identified the risk that the outstanding chips may be used as a "stored value instrument" and such an instrument could be used to enable money laundering.[69] Around the same time, BCLC began to plan for a "chip swap" at the River Rock to reduce the outstanding chip liability.[70]

27. The "chip swap" was originally scheduled to proceed on September 8, 2015.[71] Mr. Desmarais did not directly tell the FSOC unit of the RCMP about the planned "chip swap" and could not confirm if anyone at BCLC had told FSOC about the "chip swap" when it was planned.[72] He also did not tell Inspector Calvin Chrustie about the "chip swap" in February 2015, when they met to discuss other issues even though planning was underway.[73] This was despite the fact that FSOC had told Ross Alderson, then Director, AML & Operational Analysis, that BCLC should keep FSOC in the loop regarding any action BCLC planned in case it would interfere with their ongoing investigation.[74]

28. The day before the scheduled swap[75], Len Meilleur, then Executive Director of Compliance, was speaking with Inspector Mike Serr of the Vancouver Police Department about unrelated matters. During the call, Mr. Meilleur inquired whether Inspector Serr, who he understood to be working on the E-Pirate investigation, was aware of BCLC's impending "chip swap".[76] Inspector Serr was not, and Mr. Meilleur explained the plan as

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[68] Ex. 74, ¶ 3, App. B and C; TR B. Desmarais 2/FEB/2021, p. 57, l. 10-14; see also: Ex. 490, ¶ 69-77.
[69] Ex. 74, ¶ 7, App. G and H.
[70] Ex. 74, ¶ 9, App. G. See ¶ 4-5 and App. A, D, and E regarding amounts of outstanding chips.
[71] Ex. 74, ¶ 10.
[72] TR B. Desmarais 2/FEB/2021, p. 59, l. 1-p. 60, l. 19.
[73] TR B. Desmarais 2/FEB/2021, p. 57, l. 6-p. 58, l. 3.
[74] TR B. Desmarais 2/FEB/2021, p. 59, l. 1-6.
[75] TR B. Desmarais 1/FEB/2021, p. 151, l. 21-p. 152, l. 3; Ex. 522, ¶ 104-107, Ex. 77.
[76] TR L. Meilleur 12/FEB/2021, p. 108, l. 8-p. 110, l. 25.

he understood it. At that time, Mr. Meilleur asked Inspector Serr if he would like the "chip swap" delayed so it would not impede the investigation. Inspector Serr said he would. Mr. Meilleur passed on that request to BCLC and understood that Mr. Alderson and Inspector Serr spoke about the plan the next day.[77] If additional information was needed from BCLC, there was an opportunity to provide it prior to the "chip swap" being scheduled[78] and again prior to it being rescheduled.[79] As a result of Mr. Meilleur's call with Inspector Serr, the "chip swap" was delayed and ultimately occurred on January 18, 2016.[80]

29. GPEB simply facilitated a request from police of jurisdiction to BCLC; it did not "cancel" the "chip swap", as is suggested by Mr. Desmarais.[81] As BCLC acknowledged in its closing submissions, it was law enforcement that asked BCLC not to carry out the chip swap.[82] Given Mr. Meilleur had recently learned of E-Pirate, it was reasonable for him to inquire with the police of jurisdiction as to the potential impact of the "chip swap" on its ongoing investigation. GPEB was not "actively interfering" with BCLC's ability to address money laundering risks, as asserted by Mr. Kroeker.[83] Rather, GPEB was concerned that BCLC's actions may impede or interfere with an ongoing police investigation, the initiation of which was welcome news to both GPEB and BCLC after many years of inaction on the part of law enforcement.

(b) RCMP ISA Cancellation

30. In mid-2015, in his role as Executive Director, Mr. Meilleur became aware that BCLC and the RCMP E-Division had an information sharing agreement dated January 2014 (the "ISA").[84] Upon reviewing the ISA, Mr. Meilleur had some concerns with its terms. He observed that GPEB was not consulted at the time the terms were agreed upon and he believed the ISA did not represent the roles of both organizations.[85] At that time, Mr. Meilleur was in discussions with the RCMP around the roles and responsibilities of GPEB

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[77] TR L. Meilleur 12/FEB/2021, p. 108, l. 8-p. 110, l. 25; See also: Ex. 505, ¶163-165.
[78] TR B. Desmarais 2/FEB/2021, p. 59, l. 1-p. 60, l. 19
[79] TR L. Meilleur 12/FEB/2021, p. 108, l. 8-p. 110, l. 25.
[80] Ex. 74, ¶ 2.
[81] Mr. Desmarais' closing submissions, ¶ 58.
[82] BCLC's closing submissions, ¶ 31.
[83] Mr. Kroeker's closing submissions, ¶ 58.
[84] TR L. Meilleur 10/MAR/2021, p. 55, l. 19-24; Ex. 587, ¶ 105.
[85] TR L. Meilleur 10/MAR/2021, p. 55, l. 25-p. 56, l. 16; Ex. 587, ¶ 110-111.

and BCLC and how GPEB could assist in ongoing investigations including by facilitating cooperation and sharing information.[86] He suggested to the RCMP that the parties should commence work on reviewing all information sharing agreements involving GPEB and BCLC and determine if any of those agreements needed to be modified or reconsidered.[87]

31. On October 5, 2015, after considering the matter further, Mr. Meilleur spoke with Superintendent Sandro Colassaco of the RCMP about his concerns with the ISA.[88] Superintendent Colassaco had his own concerns, which he expressed to Mr. Meilleur. After that meeting, Mr. Meilleur expected that Superintendent Colassaco would review the ISA and RCMP operational policy as it related to GPEB and determine next steps. Instead, Superintendent Colassaco suspended the ISA on October 27, 2015.[89]

32. Following this suspension, discussions occurred between Mr. Kroeker, Mr. Meilleur and Superintendent Colassaco around the issues that had been identified and proposals for moving forwards with a new ISA.[90] The discussions were short-lived. On October 29, 2015, Superintendent Colassaco's decision was overturned, and the ISA was re-instated.[91] That is, the ISA was suspended for two days.[92] Again, it is not accurate to state as Mr. Kroeker does that this is another example of GPEB "actively interfering" with BCLC's ability to respond to money laundering risks. Mr. Meilleur did not ask the RCMP to suspend the ISA; he did raise concerns with the terms of the ISA in good faith and, although his concerns did not appear to result in any amendment to the ISA, the resulting suspension of the ISA for two days cannot be said to have resulted in BCLC losing "its ability to obtain important information to proactively ban and condition patrons and provide

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[86] Ex. 587, ¶ 109.
[87] Ex. 587, ¶ 109.
[88] Ex. 587, ¶ 113.
[89] Ex. 587, ¶ 113-114, Ex. RR and SS.
[90] Ex. 587, ¶ 114-117, Ex. RR and SS.
[91] Ex. 587, ¶ 118, Ex. TT; TR L. Meilleur 10/MAR/2021, p. 56, l.17-p. 58, l. 4.
[92] Mr. Kroeker's closing submissions state the ISA was "reinstated in November 2015": ¶ 59.This reference in Mr. Kroeker's closing submissions is taken from Mr. Kroeker's Affidavit #1, Ex. 490, ¶ 117: "The ISA was re-instated in November 2015". There is no exhibit provided to support that statement in Mr. Kroeker's affidavit and the email from Superintendent Colassaco to Mr. Kroeker stating that the terms of the ISA will be complied with is dated October 29, 2015. This is consistent with the evidence of Mr. Desmarais: Ex. 522, ¶ 80, Ex. 58. As such, Mr. Meilleur's evidence should be preferred: Ex. 587, ¶ 118, Ex. TT.

information to police".[93]

(c) *Project Athena and money laundering risk associated with bank drafts*

33. Mr. Kroeker asserts that GPEB failed to provide names or information that would assist BCLC in identifying patrons who had used anonymous bank drafts.[94] This assertion is not borne out in the evidence. Mr. Skrine testified at length about GPEB's concerns regarding the potential risks associated with bank drafts, Project Athena's work in that regard, and his impression of Mr. Kroeker's view on money laundering risk associated with bank drafts.[95] The fact that Mr. Skrine and Mr. Kroeker did not agree on the level of risk posed, does not mean GPEB's concerns were invalid or misdirected.

Evolution of BCLC's cash conditions program

34. Several of the participants emphasize the importance of BCLC's cash conditions program as a significant AML initiative. It is described as "extraordinarily novel"[96] and "unprecedented in the global gaming industry".[97] Other participants point to BCLC's reasonable measures requirements as evidence of BCLC's commitment to addressing source of funds concerns.[98] To place these submissions in context, it is necessary to consider the evolution of BCLC's cash conditions program, its reasonable measures program, and the ultimate implementation of its general source of fund policy in 2018.

35. In April 2015[99], BCLC initiated a "cash conditions program", wherein BCLC imposed cash conditions on players assessed to be at a higher risk of money laundering. As Kevin Sweeney, Director of Security, Privacy and Compliance for BCLC, explained, BCLC investigators began interviewing a limited number of select players who were

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[93] Mr. Kroeker's closing submissions, ¶ 59. For completeness, however, Mr. Desmarais' affidavit speaks to a request made on October 27, 2015 to the RCMP's Real Time Intelligence Centre which was denied: Ex. 522, ¶ 80, Ex. 56.
[94] Mr. Kroeker's closing submissions, ¶ 53.
[95] TR C. Skrine 27/JAN/2021, p. 40, l. 20-p. 42, l. 14; p. 107, l. 22-p. 109, l. 2; p. 111, l. 3-p. 112, l. 23.
[96] Mr. Kroeker's closing submissions, ¶ 34; Mr. Lightbody's closing submissions, ¶ 24 and 29.
[97] BCLC's closing submissions, ¶ 72.
[98] Mr. Lightbody's closing submissions, ¶ 29.
[99] BCLC, at ¶ 26 of its closing submissions, states that "beginning in 2013" it undertook unprecedented source of funds initiatives and formal patron interviews. However, the first patron was not put on cash conditions until November 2014: Ex. 148, ¶ 79. Further, Mr. Tottenham deposed that BCLC commenced targeted interviews of patrons in September 2015: Ex. 148, ¶ 89.

buying in with large amounts of unsourced cash about the source of funds, their employment or occupations, and any other relevant information.[100] Following the interviews BCLC would either: (i) allow the individual to play, based on the information provided; (ii) ban the player; or (iii) place them on cash conditions.[101] Players subject to cash conditions were required to provide evidence that the cash was acquired from a legitimate source before being permitted to buy-in.[102]

36. The Province does not dispute this was a worthwhile and helpful initiative[103]; however, the cash conditions program was not an AML panacea. BCLC's reluctance to bar VIP or VVIP patrons persisted.[104] The source of funds questionnaires often resulted in unhelpful responses from an AML-perspective. For example, when asked the source of funds for this cash, patrons would state "from home savings" or "my own cash" and service providers would accept the cash.[105] Notably, Mr. Lightbody asserts that patron interviews were "a core component" of the cash conditions program, and that "[p]atrons who could not establish a legitimate source of funds were put on cash conditions…",[106] but provides no evidentiary support for this assertion and does not engage with the poor quality of responses elicited from the source of funds questionnaires.

37. Further, the cash conditions program was not a policy of general application; it did not require all patrons to provide source the funds for large cash transactions. As Mr. Sweeney explained, "there was a very limited number" of patrons subject to cash conditions "in the initial onset".[107] However, the evidence is inconsistent as to how many

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[100] The Province observes that BCLC's cash conditions program, which involved BCLC investigators interviewing patrons, is inconsistent with the assertion by Mr. Desmarais at ¶ 39 of his closing submissions where he submits that "BCLC had neither the mandate nor capacity to investigate potential money laundering offences or investigate which casino clients were associated with criminal activity (as opposed to those who were legitimately wealthy)".
[101] TR. K. Sweeney 29/JAN/2021, p. 190, l. 21-p.191, l.22.
[102] Ex. 505, Ex. 68, p. 336; Ex. 490, ¶ 9 6.
[103] See BCLC's closing submissions, ¶ 95-96, for a discussion of the impact.
[104] TR D. Tottenham 4/NOV/2020, p. 146, l. 13-22, p. 149, l. 24-p. 160, l. 24; Ex. 148, ¶ 82-83; see also, Ex. 130; Ex. 170; Ex. 177; Ex. 178.
[105] Ex. 85; TR D. Tottenham 10/NOV/2020, p. 6, l. 20-p. 14, l. 22; TR S. Beeksma 26/OCT/2020, p. 44, l. 19-25, p. 45, l. 1-14; Ex. 148, ¶ 143-144.
[106] Mr. Lightbody's closing submissions, ¶ 24.
[107] TR. K. Sweeney 29/JAN/2021, p. 191, l. 23-p.192, l. 14.

patrons were placed on cash conditions prior to September 2015.[108] While the number of players on conditions expanded in September 2015, following E-Pirate and GPEB's Spreadsheet, the cash conditions program was essentially a directed source of funds policy that only targeted high-risk players.

38. Contrary to assertions made by BCLC and its senior executives,[109] BCLC's cash conditions program was not "extraordinarily novel" or "unprecedented". As Robert Boyle of Ernst & Young LLP explained, as early as June 2014, the Financial Crimes Enforcement Network ("FinCEN") was recommending that casinos, like other financial institutions, inquire about source of funds. Specifically, FinCEN recommended that casino operators should pay close attention to where precisely are the funds coming from.[110]

39. In addition, and as noted above, the Malysh Report expressly recognized the existence of source of funds policies in financial and gaming institutions. The Malysh Report observed that when cash over CAD $10,000 is tendered at a financial institution they will "interview the client to determine the source of funds and other related questions to ensure the deposit is of non-criminal origin".[111] The Malysh Report also noted that gaming facilities in Ontario and the United States were implementing source of funds policies; specifically, cash buy-ins of CAD $10,000-15,000 at Ontario casinos triggered a customer due diligence interview, often with a member of the Ontario Provincial Police, to learn the source of funds.[112] This evidence calls in to question the suggestion that BCLC's cash conditions program was "unprecedented".

40. Mr. Lightbody suggests that BCLC complemented its cash conditions program with

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[108] See for example, Ex. 490, Ex. 39; Ex. 923; Ex. 482, Ex. A; Ex. 148, ¶ 87-99, Ex. 8. The Province notes that at ¶ 58 of its closing submissions it referred only to Ex. 490, Ex. 39 for the assertion that four patrons were placed on cash conditions prior to September 2015; however, the evidentiary record is inconsistent on this point. In particular, Ex. 923 suggests that 10 patrons were placed on cash conditions in August 2015.

[109] See, Mr. Lightbody's closing submissions, ¶ 24, citing TR B. Desmarais 2/FEB/2021, p. 134, l. 14-15; Mr. Kroeker's closing submissions, ¶ 16 ("the program was incredibly novel in the gaming industry"), citing TR D. Tottenham 5/NOV/2020, p. 5, TR D. Tottenham 10/NOV/2020, pp. 193-194, TR P. Ennis 4/FEB/2021, p. 3, and TR M. de Jong 23/APR/2021, p. 144; BCLC's closing submissions, ¶ 26, also citing TR D. Tottenham 10/NOV/2020, pp. 193-194.

[110] TR R. Boyle 13/SEP/2021, p. 54, l. 13-p. 55, l. 17; p. 67, l. 3- p. 69, l. 19.

[111] Ex. 73, App. H, p. 23.

[112] Ex. 73, App. H, p. 23; see also: TR L. Meilleur 12/FEB/2021, p. 15, l. 17-p. 16, l. 12.

other measures to address source of funds concerns; specifically, he observes that, in June 2017, BCLC implemented a "reasonable measures" process that required service providers to complete enhanced due diligence for buy-ins of $10,000 or more within a static 24-hour period.[113] For clarity, this was not a BCLC-led initiative. Rather, BCLC was required to implement a reasonable measures process as a result of amendments to the *PCMLTFA* regulations.[114]

41. It was not until January 10, 2018—following Dr. German's December 2017 interim recommendations, and despite Minister de Jong's October 1, 2015 direction[115]—that a general source of funds policy that required all patrons to provide a source of funds receipt for all cash and bearer monetary instruments of $10,000 or more prior to acceptance at all BCLC gaming locations was implemented.[116]

42. While some participants suggest the Province's direction to BCLC to implement a source of funds policy lacked specificity[117], the correspondence suggests otherwise. First, on August 7, 2015, Mr. Mazure asked BCLC to:

> Develop and implement additional Customer Due Diligence (CDD) policies and practices constructed around financial industry standards 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. [118] [emphasis added]

43. Mr. Lightbody responded to Mr. Mazure's letter on August 24, 2015 by writing directly to Minister de Jong, taking the position that "BCLC believes that no one agency in British Columbia is equipped to identify the actual source of funds…" and characterizing identification of source of funds (as opposed to source of wealth) as "problematic". [119]

44. Mr. Lightbody asserts it was "an unusual step" for him as President and CEO of

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[113] Mr. Lightbody's closing submissions, ¶ 29.
[114] TR P. Ennis 3/FEB/2021, p. 177, l. 2-14; Ex. 535; Ex. 536; Ex. 148, ¶ 196.
[115] Ex. 521.
[116] Ex. 521; TR K Sweeney 29/JAN/2021, p. 193, l.9-p.194, l. 4.
[117] See, BCLC's closing submissions, ¶ 30; Mr. Lightbody's closing submissions, ¶ 35; Mr. Kroeker's closing submissions, ¶ 41.
[118] Ex. 505, Ex. 48. At ¶ 54 of his closing submissions, Mr. Desmarais recorded the date of Mr. Mazure's letter as August 14, 2015 – the correct date is August 7, 2015.
[119] Ex. 505, Ex. 34 and Ex. 49.

BCLC to write directly to the Minister.[120] This characterization is at odds with Mr. Lightbody's evidence that throughout his time as CEO, he "exchanged or was copied on numerous letters" with Minister de Jong and interacted with him "personally".[121]

45. Regardless, Mr. Mazure was not copied on Mr. Lightbody's August 24th letter to the Minister and as such, wrote again to Mr. Lightbody on September 1, 2015 to reiterate his August 7th requests, specifically asking BCLC to:

> … develop an implement additional CDD policies and practices which are constructed around financial industry standards. This would include robust Know Your Customer (KYC) requirements with a focus on source of wealth and funds as being integral to the overall risk assessment process.[122]

46. On September 16, 2015, Mr. Lightbody responded to Mr. Mazure's September 1st correspondence. On the source of funds issue, he did not ask for clarification on what was being asked of BCLC, but instead wrote the following:

> With respect to your specific suggestions in regard to source of wealth, source of funds and suspicious transaction reports made to FINTRAC, I can confirm that all three of these elements, amongst many other factors, are integrated into BCLC's risk assessment and ongoing monitoring of individual customers. Despite this, BCLC's AML regime is not static, and we remain keenly committed to a process of continuous improvement.[123]

47. Following Mr. Lightbody's response, on October 1, 2015, Minister de Jong requested BCLC enhance its CDD "through the implementation of AML compliance best practices, including processes for evaluating the source of wealth and source of funds prior to cash acceptance".[124]

48. Mr. Mazure continued to address the issue of source of funds with BCLC in correspondence dated January 15 and July 14, 2016.[125] On this evidence, Mr. Kroeker's suggestion that BCLC was not asked to do more in the context of the 2015

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[120] Mr. Lightbody's closing submissions, ¶ 30.
[121] Ex. 505, ¶ 179, 195.
[122] Ex. 505, Ex. 50.
[123] Ex. 505, Ex. 52. At paragraph 27 of his closing submissions, Mr. Desmarais notes that "GPEB did not direct BCLC to take those steps [make SOF inquiries] until October 2015". However, the October 1, 2015 direction was contained in a letter from Minister de Jong – not GPEB.
[124] Ex. 505, Ex. 53.
[125] Ex. 505, Ex. 54 and Ex. 55.

correspondence cannot be sustained.[126] While Mr. Kroeker relies on the statement of former GM Douglas Scott that BCLC had undertaken everything GPEB had asked as part of its AML strategy, Mr. Scott's statement must be grounded in January 2013 when he was GM – it is unrelated to the Province's 2015/2016 directions to BCLC regarding source of funds.[127] Mr. Mazure's evidence is clear that the Province was asking and expecting BCLC to do more in terms of source of funds.

49. On any reasonable interpretation, the 2015/2016 correspondence between GPEB, BCLC and the Minister leaves no doubt as to the clarity and specificity of the Province's directions regarding a source of funds policy and, more importantly, that BCLC understood that direction.

Participants' perceptions of industry responsiveness

50. Mr. Lightbody's assertion that BCLC was subjected to "inaccurate, misleading and often sensationalized media reports" which were "exacerbated" by "inaccurate statements of BCLC's new Minister, Minister Eby"[128] is not borne out by the evidence. While Mr. Lightbody's submissions do not particularize which statements he alleges were inaccurate, his testimony on this point focussed on media reports alleging wilful blindness[129] and claiming that "you could walk into a casino with hundreds of thousands of dollars, play notionally and then walk out with a casino cheque".[130] In response, BCLC commissioned three cheque analysis reports by Ernst & Young LLP, including a cheque audit report for the River Rock Casino dated February 15, 2019 (the "River Rock Cheque Audit")[131], at a cost of approximately $811,000[132] which demonstrated that a traditional cash for cheques typology of money laundering was not occurring. Mr. Lightbody did not

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[126] Mr. Kroeker's closing submissions, ¶ 42, FN 148.
[127] TR D. Scott, 8/FEB/2021, p. 97, l. 8-21; see also: p. 2, l. 7-24; Ex. 557, ¶ 69; Ex. 557, Ex. 32.
[128] Mr. Lightbody's closing submissions, ¶54-55.The Province also notes that the evidence cited in FN 225 does not support the proposition for which it is tendered. Mr. Lightbody was testifying generally about his perception of the impact of media reporting on BCLC as an organization and his personal perception that statements regarding BCLC being wilfully blind were "simply wrong". There is no evidence proffered to support the suggestion that the Minister "persisted" in making statements that had been proven incorrect, particularly given the divergent views of BCLC and GPEB at the time, and the ongoing nature of Dr. German's engagement.
[129] TR J. Lightbody 29/JAN/2021, p. 125, l. 20-25.
[130] TR J. Lightbody 29/JAN/2021, p. 124, l. 13-19.
[131] Ex. 484, Ex. 13, 14, and 17.
[132] TR R. Boyle 13/SEPT/2021, p. 75, l. 24-p. 82, l. 14.

put these allegations to the Minister; however, in response to questions from BCLC, the Minister explained his concerns that the River Rock Cheque Audit not be publicly misconstrued.[133] Moreover, the Minister supported BCLC releasing the River Rock Cheque Audit and posting it on their website.[134]

51. Further and on a related note, Mr. Lightbody's assertion that the River Rock Cheque Audit "revealed that BCLC's AML strategies effectively mitigated the 'traditional' and 'Vancouver Model' typologies of money laundering and BCLC was working to address the 'retail' typology"[135] is incorrect. Mr. Boyle confirmed in his testimony that Ernst & Young did not, as part of any of the three cheque analysis reports (including the River Rock Cheque Audit), investigate whether the casinos were being used to facilitate money laundering by way of something akin to the Vancouver Model.[136] Mr. Boyle explained that the cheque analysis reports investigated the prospect of money laundering within the casinos by, for example, cash for cheque.[137]

52. Regardless and in any event, the submission that allegedly inaccurate media reports were exacerbated by allegedly inaccurate statements from the Minister is a manifestation of the divergence of opinion that existed at the material time between various stakeholders as to the nature and extent of money laundering occurring in BC casinos and the effectiveness of the steps being taken to address it. As the Minister testified, what was clear to him at the relevant time was that BCLC and GPEB each had their own perspectives, that those perspectives were "radically different", and that it was "really hard to know what exactly was happening".[138] This was why the Minister retained Dr. German to assist him in understanding what happened and the best way forward.[139]

53. The fact that BCLC executives may have been frustrated the Minister did not

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[133] TR D. Eby 26/APR/2021, p. 80, l. 7- 16. To the extent allegations of wilful blindness were attributed to the Minister, his intention was to communicate his view that the prior administration had been insufficiently engaged in the issue: TR D. Eby 26/APR/2021, p. 135, l. 1-p. 136 l. 22.
[134] TR D. Eby 26/APR/2021, p. 81, l. 18-20.
[135] Mr. Lightbody's closing submissions, ¶ 58.
[136] TR R. Boyle 13/SEPT/2021, p. 81, l. 6-19.
[137] TR R. Boyle 13/SEPT/2021, p. 75, l. 24-p. 81, l. 5.
[138] TR D. Eby 26/APR/2021, p. 152, l. 19-p. 153, l. 3, 19-25; p. 155, l.19-p. 156, l.3.
[139] TR D. Eby 26/APR/2021, p. 152, l. 19-p. 153, l. 3.

appear to understand BCLC's perspective[140] and did not issue the statements BCLC would have preferred is immaterial to the issues before this Commission. Nonetheless, the Minister's conduct was reasonable in the circumstances, particularly given the divergent views that prevailed at the time.

54. At the time, the Minister was concerned about protecting both government and BCLC from further criticism that they did not understand the Vancouver Model or were trying to confuse the issue in the public realm.[141] This was especially the case with the River Rock Cheque Audit, which the Minister was concerned not be presented as a conclusive determination about whether or not money laundering was occurring in BC casinos given that it did not address the Vancouver Model of money laundering and merely confirmed that a different potential means of money laundering was not occurring.[142] Regardless and as noted above, the Minister supported BCLC releasing the River Rock Cheque Audit and posting it on their website.[143]

55. To the extent that participants suggest BCLC was unable to publicly defend itself,[144] the Province notes that when faced with negative or potentially inaccurate media reports, BCLC had a practice of providing the media outlet with facts and information to correct those errors,[145] and as of fall 2017, a more coordinated approach to responding to media reports was put in place between BCLC and the Province.[146] BCLC also had a direct line to the Minister,[147] frequent communication with the Deputy Minister,[148] and a practice of providing briefing notes and information notes to government to address negative media reports.[149]

56. The evidence does not support the suggestion that government directed BCLC not

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[140] TR D. Eby 26/APR/2021, p. 66, l. 25-p. 67, l. 9; Ex. 505, ¶ 255; TR R. Kroeker 26/JAN/2021, p. 145, l. 23-p.146, l. 2.
[141] TR D. Eby 26/APR/2021, p. 80, l. 7-16.
[142] TR D. Eby 26/APR/2021, p. 80, l. 21-p. 81, l. 4.; TR R. Boyle 13/SEPT/2021, p. 81, l. 6-19.
[143] TR D. Eby 26/APR/2021, p. 81, l. 18-20.
[144] Mr. Lightbody's closing submissions, ¶ 54.
[145] TR R. Kroeker 26/JAN/2021, p. 105, l. 8-19.
[146] TR R. Fyfe 29/APR/2021, p. 20, l. 3-p. 21, l. 15.
[147] TR D. Eby 26/APR/2021, p. 57, l. 22-p. 58, l. 10.
[148] TR R. Fyfe 29/APR/2021, p. 6, l. 5-11.
[149] TR R. Kroeker 26/JAN/2021, p. 105, l. 20-p. 107, l. 4.

to publicly defend itself.[150] Neither of the Minister or Deputy Minister were asked if such a direction was ever given. Rather, the evidence suggests that from June 2018 onwards, following release of Dirty Money, BCLC's decision not to speak directly to the media resulted from discussions between Mr. Lightbody and BCLC's Board Chair, Mr. Smith.[151] Mr. Smith testified that, in his view, it would not be helpful for BCLC to try to correct the specifics.[152] As a result of those discussions, Mr. Lightbody directed BCLC's communications team to create the aforementioned information notes for the Minister in response to media articles.[153]

57. Finally, and on a related note, Mr. Lightbody asserts that GPEB "departed significantly from the established practice of providing an incoming Minister with an overall briefing about the organization"[154] in its initial briefing of Minister Eby. He does not point to any evidence establishing what the "established practice" for such briefings was. Minister Eby testified that a new minister typically is briefed on important decisions coming up in the next 30/60/90 days, major business initiatives, challenges and opportunities.[155] This is consistent with the focus of GPEB's initial briefing with Minister Eby: the issue of suspicious cash in casinos and the disconnect between GPEB and BCLC as to what steps should be taken in response cannot reasonably be construed as anything other than important decisions involving major business initiatives and challenges. Minister Eby also testified that his practice was to meet with GPEB and BCLC separately;[156] the lack of BCLC presence at the GPEB briefing is consistent with this practice and not reflective of any inappropriate conduct on GPEB's part.

58. It is not surprising in light of the whole of the evidence before the Commission that BCLC and GPEB would have different views as to accuracy of GPEB's August 2017 and BCLC's July 2017 briefings of Minister Eby. While Mr. Lightbody suggests that GPEB's

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[150] Mr. Lightbody's closing submissions, ¶ 55; also repeated in Mr. Kroeker's evidence: TR R. Kroeker 26/JAN/2021, p. 106, l. 1-p. 107, l. 4.
[151] Ex. 505, ¶ 253-254; TR B. Smith 4/FEB/2021, p. 168, l. 17-18.
[152] TR B. Smith 4/FEB/2021, p. 168, l. 8-13.
[153] Ex. 505, ¶ 254; TR R. Kroeker, 26/JAN/2021, p. 105, l. 20-25.
[154] Mr. Lightbody's closing submissions, ¶ 45.
[155] TR D. Eby 26/APR/2021, p. 30, l. 8-25.
[156] TR R. Fyfe 29/APR/2021, p. 56, l. 7-p. 57, l. 4.

briefing was incomplete or inaccurate,[157] the same could be said of BCLC's briefing, which left the Minister with the impression that there was no concern about the issue of suspicious cash entering casinos or the potential that British Columbia casinos were being used to launder proceeds of crime.[158]

59. Regardless, the fact remains that Minister Eby did not accede to either BCLC or GPEB's respective narratives, but instead understood there to be a significant gap between BCLC and GPEB's perspectives[159] that warranted seeking external advice. As the Minister explained:

> The gap between the BC Lottery Corporation perspective and the Gaming Policy Enforcement Branch perspective was so significant that I had difficulty understanding which of the organizations I could turn to and rely on in terms of the best recommendations going forward. Either we had a FINTRAC-recognized leading anti-money laundering program or we had a profound and ongoing money laundering problem in our casinos, and I suspected the truth was probably somewhere in the middle, but I didn't know that. And I was very concerned there was a serious and ongoing issue, and so I wanted someone to be able to navigate both the BC Lottery Corporation and the Gaming Policy Enforcement Branch and who had the expertise to understand policy proposals that may not come forward from either of them and provide additional recommendations to government.[160]

60. In the result, Dr. German was retained and both GPEB and BCLC worked cooperatively with him to facilitate his work and implement his interim and final recommendations.

Response to alleged delay in approvals of new policies

61. Several participants allege that GPEB was responsible for the delay in implementing various AML proposals. In fulfilling its policy role under the *GCA,* GPEB reviewed various AML policy proposals and ensured that any new proposals enhanced the integrity of gaming. In doing so, GPEB often provided comprehensive feedback on BCLC's proposals. Any allegations of delay ought to be assessed in the context of the

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[157] Mr. Lightbody's closing submissions, ¶ 46.
[158] TR D. Eby 26/APR/2021, p. 31, l. 12-19; p. 32, l. 20-24; p. 33, l. 16-p. 34, l. 1; See also Ex. 905, Ex. 916.
[159] TR D. Eby 26/APR/2021, p. 35, l. 15-p. 36, l. 5; p. 44, l. 2-6.
[160] TR D. Eby 26/APR/2021, p. 65, l. 10-p. 66, l. 4.

exigencies of the circumstances and GPEB's ongoing policy role under the *GCA*.[161]

(a) Implementation of recommendations mid-German review

62. In January 2018, while Dr. German was conducting his review into money laundering in BC, BCLC proposed several initiatives aimed at reducing cash in casinos. According to Minister Eby, he was frustrated with the timing of the proposals as it appeared that BCLC did not understand the process he had established, wherein Dr. German would evaluate policy recommendations and advise government as to the best path forward.[162] Minister Eby set out his concerns in a January 26, 2018 email to Mr. Lightbody requesting that BCLC not proceed with immediate implementation of the initiatives. Rather, Minister Eby encouraged BCLC to "present [the] policy reform proposals to Dr. German directly with any suggestions about implementation".[163]

63. Minister Eby explained his concerns regarding the implementation of any proposal while Dr. German's review was ongoing:

> 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 law enforcement investigations or could prevent necessary resources from being dedicated to higher priority initiatives identified by Mr. German.[164]

64. As Mr. Lightbody agreed during cross-examination, Minister Eby's request to delay the implementation of new proposals while Dr. German's review was ongoing was reasonable for the reasons set out in the January 26, 2018 email.[165]

(b) Implementation of Dr. German's interim recommendation

65. Mr. Lightbody alleges that because of "delays in GPEB's responses" BCLC was unable to issue the directive to service providers implementing Dr. German's December 5, 2017 interim recommendation regarding source of funds "until January 10, 2018".[166] This is, in part, inaccurate and is also an incomplete characterization of events.

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[161] Ex. 490, Ex. 25 and Ex. 68.
[162] TR. D. Eby 26/APR/2021, p. 73, l. 13-p. 74, l. 25; TR. R. Fyfe 29/APR/2021, p. 32, l. 8-p.38, l. 25.
[163] Ex. 911, pp. 2-3.
[164] Ex. 911, pp. 2-3; see also TR. R. Fyfe 29/APR/2021, p. 32, l. 8-p.38, l. 25.
[165] TR J. Lightbody 29/JAN/2021, p. 45, l.18-25- p. 46, l. 1.
[166] Mr. Lightbody's closing submissions, ¶ 50.

66. After Dr. German released his interim recommendations, Mr. Lightbody and GPEB exchanged email correspondence regarding implementing the first of those recommendations – source of funds. On December 13, 2017, Mr. Mazure wrote to Mr. Lightbody expressing his expectation that any source of funds declaration and directive would be provided to GPEB for its approval.[167] That same day Mr. Lightbody responded to Mr. Mazure advising that, among other things, BCLC did not agree with the assertion that GPEB approval was required and demanded GPEB provide its response to BCLC's proposed directive and source of funds declaration by December 15, 2017.[168] GPEB responded as requested by Mr. Lightbody.[169]

67. The Acting GM, Kim Bruce, enclosed with her December 15, 2017 letter a three-page document setting out GPEB's comments and questions on BCLC's draft source of funds declaration and directive. The questions included, among other substantive concerns: "Why are you not asking the patron to verify this information (i.e. signing to confirm the above)?" and "How will [a] Service Provider ensure [the] same receipt isn't used for multiple transactions – either at their casino or at another service provider's facility?"[170]

68. BCLC responded substantively to GPEB's concerns on December 19, 2017.[171] GPEB next responded on December 27, 2017. Ms. Bruce expressed appreciation for BCLC's efforts to implement Dr. German's interim recommendation; however, she explained that GPEB had a significant concern regarding BCLC's proposed directive:

> In addition to [GPEB's recommendations], GPEB has one area of significant concern with the Source of Funds declaration that, without resolution, will result in GPEB being unable to support the proposal.
>
> The Source of Funds Declaration, as currently proposed, does not require a patron to confirm the accuracy of the information provided through a signature. GPEB understands that BCLC intends to rely on the signature of the registered gaming worker. However, the gaming worker can only confirm the Source of Funds Declaration reflects the information provided to them by the patron. This is not a

[167] Ex. 505, Ex. 137-141.
[168] Ex. 512; Ex. 505, Ex. 142.
[169] Ex. 505, Ex. 143.
[170] Ex. 505, Ex. 143.
[171] Ex. 505, Ex. 144 and 145.

> substitute for the signature of the patron. …[172]

69. Mr. Lightbody responded on January 2, 2018 advising that BCLC would add a patron signature requirement and he clarified certain other matters.[173] By letter dated January 4, 2018, Ms. Bruce advised that GPEB supported BCLC's source of funds declaration. She encouraged BCLC to consider GPEB's other recommendations.[174] That same day, BCLC sent a directive to all service providers advising them to implement Dr. German's interim recommendation as of January 10, 2018.[175]

70. As demonstrated by this summary of communications, there were no "delays" in GPEB's responses as alleged by Mr. Lightbody. Rather, GPEB was properly fulfilling its function under the *GCA* by probing the processes to be implemented by BCLC in furtherance of its mandate to ensure they enhanced the integrity of gaming in BC.

(c) AML-Deputy Minister Committee review

71. In summer 2018, BCLC advanced several proposals to enhance its AML measures, including policies regarding PGF accounts and convenience cheques. However, at the request of Sam MacLeod, GM and ADM of GPEB, BCLC suspended the implementation of the proposals. Mr. MacLeod explained the reasoning for his request in an August 9, 2019 letter to Mr. Lightbody:

> 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

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[172] Ex. 505, Ex. 147.
[173] Ex. 505, Ex. 148; Ex. 175.
[174] Ex. 505, Ex. 149. This was done, see Ex. 505, Ex. 150.
[175] Ex. 505, Ex. 151.

> effectiveness of the Source of Funds process and whether the additional training undertaken by BCLC has increased compliance.
>
> I request you continue to hold implementation of the directive to Casino Service Providers until this work is complete and future direction has been established by the deputy minister committee.[176]

72. Mr. MacLeod testified that GPEB was also concerned that implementing several new policies may prove difficult for service providers who had "gone through significant change with the source of funds and obviously struggled with that".[177] As Mr. MacLeod explained, it is an issue of education and awareness; adding three or four new initiatives at the same time would have had a significant impact on service providers.[178]

73. While Mr. MacLeod asked BCLC to suspend the implementation of the proposals, it was his expectation that BCLC would move the proposals forward through the AML-DMC. Despite bringing other AML-initiatives to the AML-DMC, BCLC did not bring the August 2018 policy proposals to AML-DMC for consideration.[179]

AML Practices Report – Limitations on scope and use

74. Without notice to, or consultation with, the Commission, in February 2021, BCLC retained Robert Boyle of Ernst & Young LLP to prepare the AML Practices Report, which addresses AML practices in various jurisdictions and a report addressing the topic of known play dated April 30, 2021 (the "Known Play Report").[180] This retainer occurred after Commission counsel independently reached out to Mr. Boyle in August and November 2020 to request a meeting with him to discuss other reports Ernst & Young had prepared for BCLC. Mr. Boyle did not respond to either communication from Commission counsel.[181] In fact, Commission counsel did not know that Mr. Boyle had been retained by BCLC to prepare the AML Practices Report and the Known Play Report until very shortly before the reports were finalized.[182]

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[176] Ex. 881.
[177] TR. S. MacLeod, 19/APR/2021, p. 137, l. 14-24.
[178] TR. S. MacLeod, 19/APR/2021, p. 137, l. 14-24.
[179] TR. S. MacLeod, 19/APR/2021, p. 128, l. 2-16; p. 142, l. 3-14.
[180] TR R. Boyle 13/SEPT/2021, p. 4, l. 13-22, p. 6, l. 12-p. 7, l. 12, p. 9, l. 4-12; Ex. 1037; Ex. 1038.
[181] TR R. Boyle 13/SEPT/2021, p. 84, l. 17-p. 86, l. 18.
[182] TR R. Boyle 13/SEPT/2021, p. 7, l. 9-12.

75. Ernst & Young has a long history of being retained by BCLC, including to prepare three cheque audit reports, conduct two assessments under FINTRAC regulation, and serve as a subject matter advisor for the potential implementation of credit, with total invoices exceeding $1,200,000.[183] Ernst & Young invoiced BCLC approximately $285,000 for the AML Practices Report, the Known Play Report, and other work associated with BCLC's participation in this Commission.[184] Drafts of the AML Practices Report and the Known Play Report were shared with Messrs. Kroeker, Lightbody, and Desmarais under common interest privilege; BCLC did not request permission to share draft versions of the AML Practices Report or the Known Play Report with other gaming sector participants.[185]

76. BCLC and Messrs. Kroeker, Lightbody, and Desmarais rely in part on the AML Practices Report to characterize BCLC's AML practices as "extraordinarily novel", "unprecedented", and "unique to BC".[186] BCLC and Mr. Desmarais also rely on Mr. Boyle's opinion that certain AML controls suggested by GPEB, and rejected by BCLC, are not used in other jurisdictions[187], presumably to support a finding that BCLC acted reasonably in failing to implement GPEB's proposed measures.

77. Mr. Boyle's *viva voce* evidence revealed fundamental flaws in his methodology, such that the AML Practices Report offers little, if any, insight into the reasonableness of BCLC's AML response. As explained below, the jurisdictions examined in the AML Practices Report are too narrow to conclude whether certain AML practices in BC are unique in the global gaming industry.

78. Further, for the most part, the AML Practices Report compares BCLC's detailed and confidential AML operator policies with high-level and publicly available regulations and industry body guidance in other jurisdictions. This type of "apples to oranges" comparison is not a reliable method to conclude whether certain AML practices existed at various points in time in other jurisdictions, particularly within the context of a risk-based

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[183] TR R. Boyle 13/SEPT/2021, p. 75, l. 24- p. 84, l. 9.
[184] TR R. Boyle 13/SEPT/2021, p. 10, l. 22-p. 11, l. 2.
[185] TR R. Boyle 14/SEPT/2021, p. 15, l. 25-p. 18, l. 3; Ex. 1055.
[186] Mr. Kroeker's closing submissions, ¶ 16, 33, 34 and 36; Mr. Lightbody's closing submissions, ¶ 24, 50 and 51; Mr. Desmarais' closing submissions, ¶ 70; BCLC's closing submissions, ¶ 10, 26, 29, 72, 102, 105 and 119.
[187] See e.g. BCLC's closing submissions, ¶ 119; Mr. Desmarais' closing submissions, ¶ 70.

approach to AML. Nor does the AML Practices Report provide any information about the relative degree of AML risk as between BC and the other jurisdictions or address the effectiveness of any AML practice or system.

(a) Scope of AML Practices Report is too narrow to conclude whether certain AML practices in BC are unique or effective

79. The AML Practices Report compares a number of BCLC's specific AML practices or potential practices and attempts to determine whether, for each of the "Gaming Jurisdictions" (defined below), those practices are mandated by regulation, recommended by an industry body, or utilized by a casino operator.[188] Although BCLC originally proposed the AML Practices Report would cover "any gaming jurisdictions" globally, with no date restrictions, Mr. Boyle narrowed the scope of the AML Practices Report such that his opinions are limited geographically and temporally. The AML Practices Report only addresses Canada, the United States, the European Union, the United Kingdom, Macau, Australia and New Zealand (defined as the "Gaming Jurisdictions") and is restricted to practices in place between January 1, 2014 and December 31, 2020 (defined as the "Time Period").[189]

80. Further, Mr. Boyle's review of the relevant regulatory framework[190] and industry guidance[191] in the jurisdictions he considered is incomplete. For example, in Canada, Mr. Boyle did not consider requirements mandated by provincial legislation or regulation or directed by provincial regulators[192], nor did he rely on any guidance issued by the Canadian Gaming Association[193].

81. BCLC attempts to shore up this deficiency in the AML Practices Report by relying on Mr. Ennis' evidence as to the lack of cash conditions policy in Ontario.[194] However, Mr.

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[188] TR R. Boyle 13/SEPT/2021, p. 27, l. 6-19.
[189] TR R. Boyle 14/SEPT/2021, p. 10, l. 4-p. 14, l. 15; Ex. 1053; Ex. 1054; Ex. 1038, App. C.
[190] TR R. Boyle 13/SEPT/2021, p. 27, l. 25-p. 28, l. 5.
[191] TR R. Boyle 13/SEPT/2021, p. 30, l. 10-19.
[192] TR R. Boyle 13/SEPT/2021, p. 28, l. 6-p. 29, l. 17.
[193] TR R. Boyle 13/SEPT/2021, p. 30, l. 24-p. 31, l. 5.
[194] BCLC's closing submissions, ¶ 120. Notably Mr. Ennis' evidence in this regard is limited to what he personally "observed as of 2015" and was that, while OLG officials were not interviewing patrons about large cash buy-ins, those interviews were being conducted by the police's Gaming Enforcement Unit: TR P. Ennis 04/FEB/2021, p. 3, l. 20-25. This is consistent with the Malysh Report, which noted in

Ennis' evidence is of limited utility as it is similarly anecdotal and ungrounded by reference to specific policies or procedures in place in Ontario at the relevant time. BCLC could have—and indeed initially did[195]—ask Mr. Boyle to include AML practices in Ontario in the AML Practices Report, but he did not do so[196]. This is problematic as Mr. Ennis' evidence also appears to be inconsistent with the Malysh Report which, based on interviews and surveys of AML Compliance Officers operating casinos in Canada and the US, concluded as of September 2014 that:

> Source of funds and source of wealth interviews are becoming normal procedures as FinCEN is developing policy initiatives to increase the KYC/CDD activities. But this policy is in its infancy and will take a few more years to be fully implemented industry wide.
>
> Casinos in Ontario generally will not allow more than CAD $10,000-15,000 cash/in. These large deposits trigger a CDD interview to learn the source of funds. This interview is usually conducted by the OPP police officer
>
> However, there are thresholds that trigger managers and concierge to identify and interview those clients. The threshold amount is based upon the risk tolerance for backing bets. Some casinos have thresholds starting at $10,000 buy-ins while other set thresholds at $100,000. CDD procedures are focused on betting patterns and betting amounts.[197]

82. Further – and, as explained below, this limitation is key – Mr. Boyle admitted that the operator practices sections of the AML Practices Report were "essentially populated by [Mr. Boyle] anecdotally".[198] Mr. Boyle agreed that his methodology would not identify individual operator initiatives except in respect of those properties of which he had personal knowledge[199] and Mr. Boyle acknowledged that his personal knowledge of casino operator practices suffered from significant limitations.

September 2014 that the Ontario Casino Enforcement Unit "…are responsible for interviewing clients referred by the cash cage operators when large or suspicious cash is presented for deposit": Ex. 73, App. H, p. 23. Mr. Kroeker similarly relies on testimony of non-independent lay witnesses (Messrs. Ennis and Tottenham) as support the proposition that BCLC's AML initiatives were novel in the gaming industry in the absence of them having been examined on their experience or qualification to provide such opinion evidence: Mr. Kroeker's closing submissions, ¶ 16.

[195] Ex. 1053, p. 3; Ex. 1054, p. 4.

[196] Mr. Boyle's *viva voce* evidence was that casinos in Ontario utilize a risk-based approach to cash that may include source of funds inquiries: TR R. Boyle 13/SEPT/2021, p. 131, l. 10-16.

[197] Ex. 73, App. H, p. 23. See also Mr. Kroeker's submissions, ¶ 27 where he asserts that in 2015 "no one in the gaming industry was interviewing patrons".

[198] TR R. Boyle 13/SEPT/2021, p. 31, l. 6-p. 32, l. 9, p. 32, l. 25-p. 33, l. 11.

[199] TR R. Boyle 13/SEPT/2021, p. 36, l. 20-p. 37, l. 6.

83. More specifically, although the definition of Gaming Jurisdictions includes the United Kingdom, Australia and New Zealand[200], Mr. Boyle admitted that he does not have any direct experience working with casino operators in these countries.[201] Therefore, the opinions he provides about operator practices in the Gaming Jurisdictions do not apply to the United Kingdom, Australia, or New Zealand.[202] Additionally, Mr. Boyle's experience in Canada is limited to three provinces (BC, Alberta and Ontario)[203] and his direct experience of casino operator practices in the European Union is limited to Cypress and Sweden.[204] Mr. Boyle admitted that, to the extent there are operators who he has not worked with personally, those operators' practices did not inform the opinions in the AML Practices Report.[205]

84. As such, while at first instance the AML Practices report may initially appear to provide a comprehensive review of AML practices across various jurisdictions and therefore permit conclusions to be drawn as to the uniqueness of BCLC's own initiatives, the more limited nature of Mr. Boyle's actual experience (and by consequence the scope of his expertise) significantly and materially affects the weight that can be given to the AML Practices Report and the opinions expressed therein.

(b) Comparison of AML operator policies with publicly available documents is not a reliable method

85. The AML Practices Report is based upon Mr. Boyle's limited personal experience working with casino operators in other jurisdictions. This has significant consequences for the reliability of the opinions expressed therein. Without information about operator practices in the Gaming Jurisdictions, Mr. Boyle was left comparing BCLC's detailed and confidential AML operator policies with high-level and publicly available regulatory requirements or industry guidance in other jurisdictions. This is not a reliable method to conclude whether certain AML practices existed in the Gaming Jurisdictions at any point in time, particularly when those jurisdictions employ a risk-based approach to AML such

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200 Ex. 1038, App. C.
201 TR R. Boyle 14/SEPT/2021, p. 14, l. 23-p. 15, l. 1.
202 TR R. Boyle 14/SEPT/2021, p. 15, l. 6-11.
203 TR R. Boyle 13/SEPT/2021, p. 26, l. 9-12.
204 TR R. Boyle 14/SEPT/2021, p. 15, l. 12-24.
205 TR R. Boyle 13/SEPT/2021, p. 32, l. 18-24.

that measures employed would presumably have been tailored to the prevailing risk in those jurisdictions.

86. Indeed, Mr. Boyle agreed that in jurisdictions that have embraced a risk-based approach, he would not expect to see detailed requirements in legislation or regulation to the level of specificity of the AML practices he was considering and rather, operators typically implement these kinds of measures in response to their own risk analysis, even if not specifically required by legislation.[206] For example, Mr. Boyle acknowledged that Dr. German's source of funds recommendation is not found in any regulation or industry guidance, and the receipting requirement was a decision made by BCLC.[207] Mr. Boyle also admitted there could be properties in Australia, Germany, or New Jersey, for example, that have determined from their own risk-based analyses they are going to require receipts to establish source of funds over a certain threshold, and Mr. Boyle just does not know about it.[208]

(c) The AML Practices Report does not provide any information about the relative degree of AML risk as between BC and the Gaming Jurisdictions

87. Finally, and importantly, the AML Practices Report does not provide any information about the relative degree of AML risk as between BC and the Gaming Jurisdictions.[209] In jurisdictions that employ a risk-based approach to AML, specific AML controls are responsive to identified risks.[210] Without consideration of the relative risk environments, the AML Practices Report offers little, if any, insight into the reasonableness of BCLC's AML response. Further, Mr. Boyle admitted the AML Practices Report does not speak to the effectiveness of any AML practice or system[211], does not provide any opinions about the effectiveness of the AML efforts or regimes in the Gaming Jurisdictions[212], and does not assess the effectiveness of BCLC's AML approach or any

[206] TR R. Boyle 13/SEPT/2021, p. 29, l. 18-p. 30, l. 9.
[207] TR R. Boyle 13/SEPT/2021, p. 33, l. 22-p. 34, l. 12.
[208] TR R. Boyle 13/SEPT/2021, p. 35, l. 24-p. 36, l. 7.
[209] TR R. Boyle 13/SEPT/2021, p. 37, l. 19-p. 38, l. 1.
[210] See paragraphs 5-12, *infra*, Risk-Based Approach v. Prescriptive Approach.
[211] TR R. Boyle 13/SEPT/2021, p. 37, l. 7-12, p. 38, l. 17-18.
[212] TR R. Boyle 13/SEPT/2021, p. 37, l. 13-18.

measure instituted by BCLC.[213]

88. The narrow scope of the AML Practices Report, incomplete review of relevant regulations and industry guidance, reliance on anecdotal experience about operator practices, and absence of any information about relative AML risk or effectiveness are significant limitations when considering what, if any, conclusions can be drawn from Mr. Boyle's opinions. The AML Practices Report does not establish that BCLC's AML practices were "extraordinarily novel", "unprecedented", or "unique to BC".[214] Nor does the AML Practices Report demonstrate that BCLC's failure to implement GPEB's proposed AML controls was reasonable.[215] At best, Mr. Boyle's partial review of relevant regulations and industry body guidance did not identify AML practices or potential practices akin to BCLC's in the Gaming Jurisdictions he considered.

Response to miscellaneous points

89. Gateway asserts that "[o]ne of the false assumptions underlying the theory that service providers prioritized revenue over appropriate risk mitigation is that large cash buy-ins at tables are the driver of revenue for casino service providers".[216] There was no evidence led by Gateway about the revenue earned from high-limit tables as compared to other forms of play. If Gateway asserts this is a false assumption, then it ought to have provided evidence to the Commission in support of this proposition.

90. Further, Gateway's submission is undermined by other evidence before the Commission. For example, BCLC sought to update the OSAs to increase the commissions to service providers for low-limit table games because, without a change to the commission structure, "there was a gravitation… towards higher limit gaming".[217] Additionally, at the suggestion of service providers[218], in December 2013, BCLC sought and secured ministerial approval for a table limit increase.[219] In an effort to fast-track this

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[213] TR R. Boyle 13/SEPT/2021, p. 38, l. 12-16.
[214] Mr. Kroeker's closing submissions, ¶34 and 36; Mr. Lightbody's closing submissions, ¶ 24 and 50; Mr. Desmarais' closing submissions, ¶ 70; BCLC's closing submissions, ¶ 29, 102, 105 and 119.
[215] See e.g. BCLC's closing submissions, ¶ 119; Mr. Desmarais' closing submissions, ¶ 70.
[216] Gateway's closing submissions, ¶ 27; see also, ¶ 28-30.
[217] TR R. Fyfe 29/APR/2021, p. 63, l. 24-p. 65, l. 16; Ex. 505, ¶ 103; Ex. 505, Ex. 8.
[218] Ex. 576, ¶ 49.
[219] See Province's closing submissions, ¶ 115-116.

approval so that the table limit increase could come into effect before Lunar New Year—traditionally one of the busiest times of the year for casinos—BCLC contacted the Minister's office directly.[220] These examples are consistent with high-limit tables being a significant revenue driver for service providers.

91. In response to Mr. Lightbody's assertion that some GPEB investigators did not receive any AML training, the Province directs the Commissioner to paragraphs 196 to 204 of the Province's Closing Submissions, which provide a detailed overview of the training available to GPEB investigators during the material time frame.

92. GPEB also reiterates that at all material times prior to November 2018, it did not have the authority to ban patrons if it believed the presence of the person was "undesirable". Until November 2018, BCLC or a person acting on its behalf had this authority under s. 92 of the *GCA*.[221] This is why GPEB investigators would advise BCLC of suspected loan sharks lending money to patrons for the purpose of gaming; so that BCLC, who had the authority to bar patrons from casinos, would do so.[222]

[220] Ex. 576, ¶ 50; see also BCLC's closing submissions, ¶ 60.
[221] See Province's closing submissions, ¶ 9, FN 15.
[222] See Province's closing submissions, ¶ 24.

PART III – CONCLUSION

93. Finally and by way of overarching observation, the Province urges the Commissioner to exercise caution when considering participants' submissions that are advanced without citation to the evidence[223], where assertions are made relying on facts not in evidence in this Inquiry[224], where the evidence cited stands alone or is inconsistent with the preponderance of the evidence[225], or where assertions are made without addressing the full factual matrix.[226] Attention should also be paid to internal inconsistencies both within and among the various other gaming participants' submissions.

94. In summary, though the participants' views of historical events diverge in certain respects, GPEB, BCLC and other industry stakeholders are currently aligned and working together to address remaining money laundering vulnerabilities and emerging risks.

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[223] By way of example, Mr. Lightbody makes a serious allegation at ¶ 45 of his closing submissions that "GPEB departed significantly from the established practice of providing an incoming Minister with an overall briefing about the organization" but cites no evidence in support. BCGEU's submissions at p. 14 are to the same effect, asserting, by way of example that "…revenue dependency [of the provincial government] motivated willful blindness among decision makers that resulted in inaction…" without any supporting evidence. Mr. Desmarais asserts in his closing submissions, ¶64, that "GPEB was receiving every STR, containing all of the information it needed to investigate" and that GPEB "tied one hand behind [BCLC's] back by withholding information from them" but does not cite to any evidence in support of this broad assertion.

[224] BCGEU's closing submissions, see by way of example, pp. 8, 16, 22, 23.

[225] See, e.g., BCLC states in its closing submissions, at ¶ 22, FN 43, that it refused buy-ins in circumstances which had clear criminal characteristics and referred to the testimony of Mr. Terry Towns. However, the complete exchange with Mr. Towns indicates there were a "couple of occasions" where BCLC refused cash which had blood or white powder on it, or had been burned in a fire, Mr. Towns was not aware of any circumstance where "the context of the funds being presented, perhaps late at night in an unusual receptacle packaged in a way that's inconsistent with the bank… led [his] investigators to intervene and prevent the cash from being accepted at first instance": TR T. Towns, 29/JAN2021, p. 151, l. 4-25. This is but one example.

[226] See, e.g., in Mr. Desmarais' closing submissions, ¶ 58, he cites to his own testimony for the proposition that GPEB "cancelled the chip swap" at the request of the police. This does not address the rationale for doing so, or the surrounding context. For discussion of the chip swap, see *infra* ¶ 28-31. Also, in Mr. Kroeker's closing submissions at ¶ 57, FN 213, he states GPEB "took issue with BCLC engaging with police and undertaking due diligence". Mr. Kroeker cites to the testimony of Brad Desmarais. However, in his testimony, Mr. Desmarais made clear his evidence was limited to his "opinion" (see: TR B. Desmarais, 2/FEB/2021, p. 133, l.4-p. 134, l. 1). Mr. Kroeker also states at ¶ 57 that "GPEB expressed concern when BCLC had discussions with the RCMP instead of going through GPEB" and in support, at FN 215, Mr. Kroeker cites to Mr. Cal Chrustie's testimony. In his testimony, however, Mr. Chrustie stated that he was encouraged by "multiple stakeholders from RCMP management to GPEB themselves to engage with GPEB as a point of contact": TR C. Chrustie 29/MAR/2021, p. 169, l. 4-16. These are but a few examples.

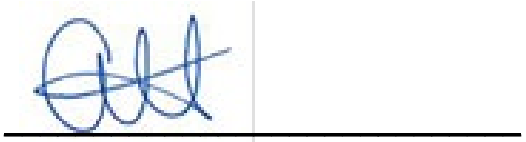
Recent initiatives such as JIGIT, CIFA-BC, GIG, and the GIIU are demonstrative of this shared commitment towards addressing the risk of money laundering.[227] This collaboration between stakeholders, the upcoming amendments to the *GCA*[228], and the ongoing work of this Commission all signal a brighter AML future for the Province.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF OCTOBER 2021

Counsel for Her Majesty the Queen in right of the Province of British Columbia:

Jacqueline D. Hughes, Q.C.

Chantelle M. Rajotte



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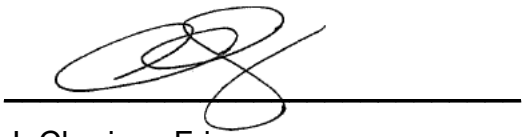

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Joanna Stratton

[227] See Province's closing submissions, ¶ 167-170, 214.
[228] See Province's closing submissions, ¶ 219.