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 (NON-GAMING SECTORS)

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1. Unless otherwise noted, these reply submissions adopt the defined terms used in the Province's July 9, 2021 closing submissions for the non-gaming sectors.

Part I - Reply to the British Columbia Civil Liberties Association ("BCCLA")

(a) Civil Forfeiture

2. First, in response to the BCCLA's suggestion that administrative forfeiture should be abolished,[1] the Province notes that there is no evidentiary basis to support such a sweeping change. The administrative forfeiture process provides a streamlined procedure and a straightforward mechanism by which a respondent may dispute the claim.[2] The process itself was established in 2011 in response to the high level of civil forfeiture claims that were uncontested in civil proceedings[3]. Removing this option would unnecessarily add inefficiencies and cost to the civil forfeiture process and would not advance the Province's efforts to combat money laundering.

3. Second, and contrary to paragraphs 12, 14, 20, and 32 of the BCCLA's submissions, the BC *Civil Forfeiture Act*[4] ("*CFA*") does not grant authority to the state to "seize" property. Rather, the *CFA* is the legislative authority that allows the Director to seek forfeiture of certain property by either commencing civil proceedings or through the administrative forfeiture process described in Part 3.1 of the *CFA*.

4. While the BCCLA submits that the standard required to obtain relief from forfeiture pursuant to s. 6 of the *CFA* "…is a high bar and can lead to disproportionate outcomes",[5] it does not point to any evidence of incidents of such outcomes in BC. This assertion also disregards evidence showing that the interests of justice are considered at various stages in civil forfeiture, including at a file's early stages. By way of example, the Director of Civil Forfeiture explained that, pursuant to the Civil Forfeiture Office File Acceptance Policy, fairness and proportionality are factors that the CFO considers in determining whether a civil forfeiture matter will proceed beyond the referral stage.[6] Further, if civil forfeiture is

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[1] BCCLA Submission, ¶ 26.
[2] See e.g. *CFA*, s. 14.07 (2) which outlines the requirements for a notice of dispute.
[3] Ex. 373, ¶ 72-73.
[4] SBC 2005, c. 29.
[5] BCCLA Submission, ¶ 13.
[6] TR P. Tawtel, 18/Dec/2020, p.7, l. 3-18. Ex. 389, ¶ 24 and p. 54.

pursued, s. 6(1) of the *CFA* allows the court to provide relief from forfeiture if it is clearly not in the interests of justice; this exercise of judicial discretion is another effective safeguard in ensuring proportionality.[7]

5. The BCCLA's assertion that "[u]nlike judicial forfeiture, administrative forfeiture can occur where it is clearly not in the interests of justice"[8] is equally speculative and unfounded in the evidence. A file in the administrative forfeiture process in BC is subject to the same initial considerations and criteria for acceptance, including whether proceeding is in the interests of justice.[9] Further, provisions in the *CFA* allow for a defendant to contest the notice of administration through a notice of dispute,[10] at which point the matter would (unless abandoned) become part of the judicial forfeiture stream and subject to the judicial discretion provided for in s. 6(1) of the *CFA*.

6. Nor does BC's civil forfeiture regime undermine *Charter* rights, contrary to the assertion in paragraphs 12-23 of the BCCLA's submission. The critiques made by the BCCLA, including the assertion that the defendant does not benefit from the presumption of innocence or right to remain silent, imply that there is *in personam* liability in civil forfeiture proceedings from which the defendant must personally defend. This assertion ignores the express wording of the *CFA*, which provides that all claims of the Director are claims *in rem* and not *in personam*.[11] Further, the *CFA* does not supersede the *Charter* and cannot circumvent its appropriate application. In a civil forfeiture action, an individual's *Charter* rights may be considered contemporaneously with a Director's claim for forfeiture of property.[12]

7. In addition, the evidence of Dr. Sharman referred to in paragraph 19 of the BCCLA's submission must be considered in context. Specifically, that evidence is a broad and general comment on non-conviction-based measures, with a particular emphasis on

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[7] *British Columbia (Director of Civil Forfeiture) v. Wolff*, 2012 BCCA 473, at ¶ 39-40, where the Court held that the phrase "interests of justice" confers a "very broad discretion on the court…" and that, in determining whether forfeiture would be in the interests of justice, proportionality and fairness will be the dominant consideration in most cases. See also Ex. 373, ¶ 69.
[8] BCCLA Submission, ¶ 24.
[9] TR P. Tawtel, 18/Dec/2020, p. 7, l. 3-12.
[10] *CFA*, s.14.07.
[11] Section 15.01 (2). See also: *British Columbia (Director of Civil Forfeiture) v. Vo,* 2015 BCSC 600 at ¶ 37, 40; Ex. 373, ¶ 64.
[12] See, e.g. *Director of Civil Forfeiture v. Lloydsmith*, 2014 BCCA 72.

processes in the United States.[13] Dr. Sharman acknowledged under cross-examination that he was not aware of incidents of accidental or deliberate misuse of confiscation powers in Canada, and stated that such incidents are comparatively rare.[14]

8. In addition, the BCCLA's submission frames the evidence regarding the interplay between law enforcement, the BC Prosecution Service ("BCPS"), and the CFO in an incomplete manner.[15] For example, the Vancouver Police Department and the Director of Civil Forfeiture both indicated in their evidence that they prioritize criminal prosecution over civil forfeiture.[16] Further, BCPS prosecutors identified several factors that impact their ability to pursue money laundering prosecutions, including the lack of financial crime investigative expertise (including money laundering and accounting expertise), as well as the complex nature of money laundering investigations and prosecutions, including the multi-jurisdictional nature of money laundering prosecutions and the complicated evidence-gathering mechanisms involved.[17]

9. On a related note, the BCCLA asserts that there is evidence that civil forfeiture is not required to protect public safety, citing a study titled "Policing for Profit".[18] This assertion is not consistent with the evidence. Rather, while under cross-examination by counsel for the BCCLA, the former Assistant U.S. Attorney, Office of the U.S. Attorney, Stefan Cassella, was asked to comment on the ability to preserve public safety in the absence of civil forfeiture and he unequivocally disagreed with the conclusions reached by "Policing for Profit" regarding the efficacy of abolishing civil forfeiture and the lack of impact on public safety and justice.[19]

10. Finally, the BCCLA advocates in favour of the *CFA* being amended to allow defendants to use restrained assets for legal expenses, and for legal aid to be made available in civil forfeiture cases.[20] The evidence relating to the efficacy of either of these

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[13] In his testimony, J. Simser cautioned against extrapolating, without careful consideration, from research based on the civil forfeiture regime in the United States, given the difference in the systems in the US and Canada: TR J. Simser, 14/Dec/2020, p.151, l.16-21.
[14] TR J. Sharman, 6/May/2021, p. 129, l. 9-13.
[15] BCCLA Submission, ¶ 21-22.
[16] TR M. Heard, 30/MAR/2021, p.53, l.6-13; TR P. Tawtel, 18/DEC/2020, p. 42, l. 9–p. 43, l, 9.
[17] Ex. 1015, ¶ 5 & 6.
[18] BCCLA Submission, ¶ 33; Ex. 971.
[19] TR S. Cassella, 10/May/2021, p.125-126.
[20] BCCLA Submissions, ¶ 27.

proposed measures is inconclusive, at best. While litigants in Ontario and Ireland may technically have the ability to access restrained assets for legal expenses, this option is rarely used.[21] Jeffery Simser, co-author of *Civil Asset Forfeiture in Canada*, also testified that he was "…not aware of situations where the civil forfeiture proceeding is so successful that the other side is completely indigent".[22] This is consistent with the evidence of Melinda Murray, Executive Director of the Manitoba Criminal Property Forfeiture Unit, who testified that despite the unavailability of legal aid in civil forfeiture proceedings in Manitoba, there were very few cases where a respondent is unrepresented.[23]

(b) Unidentified Wealth Orders ("UWOs")

11. The Province makes three points in reply to the BCCLA's submissions on UWOs. First, the BCCLA submits "there is no evidence that [UWOs] are an effective tool for fighting money laundering".[24] This is not an accurate characterization of the evidence before the Commission. Rather, the effectiveness of UWOs remains an open question.[25]

12. For example, the October 2020 report titled "Unexplained Wealth Orders: UK Experiences and Lessons for British Columbia" highlights some limitations in the United Kingdom's UWO regime and examines the experiences of other jurisdictions, noting that "the Republic of Ireland is frequently held out as a jurisdiction that has used a reversed burden of proof in civil forfeiture to great effect"[26] and that a key facet of Ireland's asset recovery system is the Criminal Assets Bureau (CAB), a well-resourced, fusion centre-style enforcement agency.[27] The report notes that the agency has a "stellar reputation" and that the country's approach to civil forfeiture has been identified as best practice.[28] This is largely consistent with the evidence of Dr. Colin King, the director of postgraduate research studies at the Institute of Advanced Legal Studies at the University of London, who also cautioned that the effectiveness of the regime should not be assessed on the

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[21] TR McMeel, 16/Dec/2020, p. 170, l. 10-15; TR J. Simser, 14/Dec/2020, p. 43, l. 4-6, 24-25.
[22] TR J. Simser, 14/Dec/2020, p. 44, l. 17-21.
[23] TR M. Murray 5/May/2021, p. 66, l.19-p. 67, l. 8.
[24] BCCLA Submission, ¶ 35. BCCLA appears to soften its position later in its submission, stating that it is "unclear that UWOs are an effective tool for fighting money laundering" and that "UWOs have so far had a decidedly mixed record": BCCLA Submission, ¶ 44.
[25] See also the Province's closing submissions, ¶ 156-157.
[26] Ex. 382, p. 22.
[27] Ex. 382, p. 23.
[28] Ex. 382, p. 23.

number of court orders alone. Dr. King explained that, although there is anecdotal evidence that the non-conviction-based approach has had an impact on organized crime in Ireland, the overall impact on the criminal market is unclear.[29]

13. Second, the BCCLA argues that "UWO regimes, in substance, create *in personam* proceedings rather than *in rem* proceedings, given that they are concerned with an individual's wealth writ large and not just a specific piece of property", citing Manitoba's proposed UWO law as an example.[30] This position is inconsistent with both the explicit wording of Manitoba's proposed legislation, and the evidence of Ms. Murray, Executive Director of the Manitoba Criminal Property Forfeiture Unit.

14. Section 2.3 of Manitoba's Bill 58, the *Criminal Property Forfeiture Amendment Act*, permits the director to apply to the court for a preliminary disclosure order, Manitoba's equivalent of an UWO.[31] Section 2.3(4) specifically provides that "[t]he proceedings under this section are *in rem* and not *in personam*, even though there are parties to the proceedings".[32] In cross-examination, the BCCLA asked Ms. Murray if she would agree that despite the express wording of s. 2.3(4), "an order requiring a person to disclose the sources and amounts of their lawfully obtained income and assets is really directed at a person and not a piece of property". Ms. Murray did not agree with this proposition; she confirmed her understanding that Bill 58 proceeds on an *in rem* basis, not *in personam*.[33]

15. Third, the BCCLA questions the constitutionality of the *CFA*, UWOs, and various policy proposals and recommendations made by witnesses and experts before the Commission, and states that it is "seriously concerned that the constitutional issues raised by many proposals presented to the Commission have not been adequately canvassed, as there were essentially no witnesses with expertise in Canadian constitutional law called to speak to the implications of these proposals".[34]

16. The Province agrees that conducting a constitutional analysis of any policy under consideration is an essential and important step prior to implementation. However, for the

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[29] TR C. King, 16/DEC/2020, p. 134, l. 16–p. 139, l. 14.
[30] BCCLA Submission, ¶ 39.
[31] TR M. Murray, 5/MAY/2021, p. 43, l. 9–p. 45, l. 8.
[32] Ex. 956, s. 2.3(4).
[33] TR M. Murray, 5/MAY/2021, p. 87, l. 19–p. 88, l. 22.
[34] BCCLA Submission, ¶ 4.

most part, the initiatives proposed during the inquiry were discussed only at a conceptual level and did not contain the necessary detail to permit meaningful constitutional analysis. The high-level policy discussions that occurred during the Commission may assist the Commissioner in making recommendations for action by the Province or other actors but those discussions or the subsequent recommendations made by the Commissioner should not and will not preclude a constitutional evaluation of any such initiative in the event that it is considered for implementation. This is because the constitutionality of any specific piece of legislation or regulation will depend on its purpose, structure, and impact.[35] These are fact and context driven issues.

17. Thus, just as the courts will decline to determine constitutionality in the absence of a proper factual foundation,[36] so too should this Commission decline to opine on constitutional issues in the abstract. In the Province's submission, the Commission is not the appropriate venue for a determination of the constitutionality of any existing or proposed legislation or any existing or proposed policy response.[37]

(c) Beneficial Ownership

18. The Province also responds to three issues raised by the BCCLA with respect to beneficial ownership. First, to the extent that the BCCLA questions the effectiveness of beneficial ownership transparency in combatting ML,[38] the Province notes that the preponderance of evidence before the Commission supports the conclusion that disclosure of beneficial ownership, including beneficial ownership of legal persons, is an important means of disrupting money laundering because money laundering often relies on the ability to disguise the ownership of property.[39]

19. Second, the BCCLA says that the Acting Executive Director of FREDA's policy

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[35] See, for instance, the discussion in *Mackay v. Manitoba*, [1989] 2 SCR 357 at 361-362.
[36] *Danson v. Ontario (Attorney General)*, [1990] 2 SCR 1086 at 1099; *British Columbia (Attorney General) v. Christie*, 2007 SCC 21, at ¶ 28; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2018 BCCA 385, at ¶ 49-55.
[37] This is particularly the case given that this Inquiry is not bound by the usual rules of evidence, including for opinion evidence and hearsay, but rather by its own Rules of Practice and Procedure.
[38] BCCLA Submission, ¶ 77-79.
[39] See, for example: Ex. 330, p. 29; TR P. Dent, 30/NOV/2020, p. 21, l. 5-17; TR J. Cohen, 30/NOV/2020, p. 10, l. 1-18, p. 11, l. 1-24; TR G. Barrow, 2/DEC/2020, p. 77, l. 19-21; Ex. 272; Ex. 706, p. 4-5.

branch, Joseph Primeau, "acknowledged that publicly accessible data could be used for 'nefarious purposes such as identity theft or scams or even solicitations'",[40] but fails to place that evidence in its proper context. When testifying about BC's corporate beneficial ownership registry, Mr. Primeau was asked to explain the connection, if any, between protection of privacy and whether to put in place a pay wall to access that registry.[41] Mr. Primeau's evidence was that a pay wall and nominal fee can reduce the number of queries of the registry, while without a pay wall it is possible for the public to essentially obtain the entire registry for their own use. Mr. Primeau observed that, on the one hand, access to the entire registry may provide some opportunities for civil society to identify possible wrongdoers, but, on the other hand, this level of access may allow for the data to be used for nefarious purposes.[42] When taken as a whole in its proper context, Mr. Primeau's evidence was that, in developing policy, governments try to strike a balance between the benefits of a policy and its potential negative effects.

20. Finally, the BCCLA advocates for beneficial ownership registries to permit vulnerable individuals to apply to have their personal information omitted from a public registry for reasons of privacy and security.[43] The Province agrees that this is an important feature of such registries. This is reflected in its consultation paper on a public beneficial ownership registry, which states that if the registry is accessible to the public, there will be a mechanism to obscure the information of vulnerable individuals, as was done with the *Land Ownership Transparency Act* ("*LOTA*").[44] Under *LOTA*, individuals under the age of 19 or those who have been determined to be incapable of managing their own financial affairs are automatically obscured.[45] There is also an application process for individuals to request that their information be obscured if its publication could reasonably be expected to threaten the safety or mental or physical health of the individual or a member of the individual's household.[46]

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[40] BCCLA Submissions, ¶ 83.
[41] TR J. Primeau, 1/DEC/2020, p. 104, l. 20-25.
[42] TR J. Primeau, 1/DEC/2020, p. 105, l. 1-11.
[43] BCCLA Submissions, ¶ 86-87.
[44] Ex. 55, p. 15.
[45] *LOTA*, s. 39.
[46] *LOTA*, s. 40.

(d) Privacy Issues

21. The BCCLA submits that it is "profoundly concerned about the privacy implications of many of the proposals for combatting money laundering presented to this Commission".[47] As emphasized in the Province's closing submission, the issue of information sharing was a common theme among the various sectors. Numerous regulators testified that their inability to access or share information, including but not limited to personal information, hindered their ability to regulate effectively and proactively address money laundering risks and vulnerabilities.[48] This is not to say, however, that any proposal undertaken to address money laundering should not consider and appropriately balance individual privacy interests.

22. On this point, the Commission heard evidence from Barbara McIsaac, Q.C. regarding information and privacy legislation in Canada and British Columbia. That legislative framework, along with sector specific information and privacy provisions, sets the current boundaries for the actions that could be taken by the Province and various other public bodies and organizations involved in AML initiatives. Without legislative change, any policy proposal or recommendation from the Commission will need to comply with those legislative requirements.[49]

23. If amendments to information and privacy legislation are necessary to undertake a recommendation of the Commission, the Province appreciates the need to consider the impact of those amendments on the privacy interests of British Columbians.

Part II - Reply to Transparency International Canada, Canadians for Tax Fairness and Publish What You Pay Canada (the "Coalition")

(a) Quantification of Money Laundering

24. The Province makes two points in reply to the closing submission of the Coalition

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[47] BCCLA Submission, ¶ 48

[48] See, for example, from the real estate sector: TR B. Morrison and C. Carter, 16/FEB/2021, p. 113, l. 15–p. 117, l. 3; TR C. Carter, 16/FEB/2021, p. 38, l. 3–p. 40, l. 1; TR M. McTavish, 22/FEB/2021, p. 91, l. 20–p. 96, l. 8; TR E. Seeley, 17/FEB/2021, p. 59, l. 2–p. 62, l. 19; TR M. Noseworthy, 16/FEB/2021, p. 91, l. 6–p. 106, l. 5.

[49] The BCCLA acknowledges this at ¶ 71, where it refers to the fair information principles. Ms. McIsaac suggested that the legislative framework was sufficient to enable information sharing to combat money laundering but acknowledged that there may be a reticence among public bodies and organizations to do so where it is uncertain to be permitted by the applicable legislation: Ex. 319.

on quantification of ML.

25. First, in response to the Coalition's suggestion that the Province conduct research to determine the return on investment for AML strategies,[50] the Province observes that this may be difficult to determine with the level of accuracy necessary to inform decision-making going forward.

26. Second, the Coalition states that the Province is contemplating undertaking further quantification efforts, citing the testimony of Megan Harris, then Executive Director, Corporate Priorities and Strategic Engagement, Associate Deputy Minister's Office, Ministry of Attorney General.[51] For clarity, Ms. Harris stated that government had not yet undertaken any further quantification steps and such steps "would be something that would need to be undertaken as an action within the strategy".[52]

(b) *LOTA*

27. The Province has four points in reply to the submissions of the Coalition on *LOTA*. First, the Coalition advocates for increased verification of information in the LOTR and increased penalties under *LOTA*.[53] The Province submits that, in considering these issues, it is important to be mindful of the potentially significant disconnect between the reporting entity under *LOTA* and the ultimate beneficial owners. Beneficial owners *per se* have no duty to report any information under *LOTA*. The reporting entity is the entity on title.[54] In addition, the reporting entity must use a designate (typically a lawyer or notary) to submit information under *LOTA*.[55] Although designates are not required to verify the accuracy of information included in a transparency report under *LOTA*, they are regulated professionals.

28. Second, the Coalition submits that penalties under *LOTA* should include prison sentences.[56] Penalties under *LOTA* include fines up to 15% of the assessed value of the

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[50] Coalition Submission, ¶ 6.
[51] Coalition Submission, ¶ 9.
[52] TR M. Harris, 11/JUN/2021, p. 37, l. 3-30.
[53] Coalition Submission, ¶ 100-108.
[54] *LOTA*, ss. 10, 12, 15, 16.
[55] *LOTA*, s. 26; see also, TR L. Blaschuk, 12/MAR/2021, p. 149–p. 150, l. 1-3; see also, TR R. Danakody, 12/MAR/2021, p. 223, l. 1–p. 226, l. 5.
[56] Coalition Submission, ¶ 107 and 108.

property to which the transparency declaration or transparency report relates[57], which may result in significant monetary penalties. Further, although the penalties do not include imprisonment, information in the LOTR is available to law enforcement[58] and may be used by law enforcement to help identify money laundering.

29. Third, the Coalition identifies the absence of a tip line to connect whistleblowers to law enforcement as a fault within the LOTR.[59] *LOTA* does not preclude a law enforcement agency from setting up a *LOTA*/money laundering tip line. If there is suspicion of criminal activity (and not just inaccurate information filed under *LOTA*), this information should be provided to law enforcement.

30. Finally, the Coalition is critical of the search restrictions for the LOTR.[60] Although members of the public are restricted in their searches[61], the enforcement officer, tax agencies, law enforcement and authorized regulators have access to the full data set in the LOTR and do not have the same search restrictions[62]. This ensures those entities can use information in the LOTR for the purpose of the administration and enforcement of their legislation or for policy analysis and the compilation of statistical information.

Part III - Reply to the Government of Canada ("Canada")

(a) Reply on evidentiary issues

31. The Province provides the following points of clarification and reply to certain evidentiary submissions made by Canada. First, at paragraph 117, Canada states that an MOU was entered into between FINTRAC and the BCFSA. For clarity, FINTRAC entered into an MOU with FICOM, the predecessor to the BCFSA, in January 2005.[63] On October 30, 2019, that MOU was transferred from FICOM to the BCFSA, due to FICOM being dissolved effective November 1, 2019.[64]

32. Second, at paragraph 157 of Canada's closing submission, it states that an

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[57] *LOTA*, s. 92.
[58] *LOTA*, s. 33.
[59] Coalition Submission, ¶ 110.
[60] Coalition Submission, ¶ 112.
[61] *LOTA*, s. 35.
[62] *LOTA*, ss. 31-34.
[63] Ex. 419; TR C. Elgar, 15/JAN/2021, p. 50, l. 17-p. 51, l. 6.
[64] Ex. 419 at p. 5; TR C. Elgar, 15/JAN/2021, p. 51, l. 18-22.

operational plan to investigate the large amount of suspicious cash flowing into BC casinos was not approved by senior RCMP management "as the federal re-engineering process had begun and other priorities and projects that were already ongoing took precedence", citing to the testimony of former RCMP officer Melanie Paddon (at p. 13, l. 3-13).

33. The evidence establishes that, as part of the re-engineering of federal policing in late 2012 and early 2013, the unit responsible for the casino investigation, IPOC, was disbanded.[65] Ms. Paddon testified the operational plan was not approved because the Officer in Charge "had other priorities".[66] When asked about the disbandment of IPOC, Ms. Paddon testified that the casino investigation file was closed in 2012 with a note added to the file "basically saying that the project would not be pursued due to other high priority projects, which is what Inspector Chrustie had … directed us to do". She noted that, in May 2015, another note "had been added to the file saying the file would be concluded due to lack of resources".[67] Mr. Baxter understood that the investigation had been "terminated" and asserted that, had Canada "not re-engineered federal policing and IPOC remained the same, that [casino investigation] would have been a priority investigation".[68]

34. Third, at paragraph 196, Canada describes the structure of JIGIT and states that JIGIT consists of 22 law enforcement personnel including four GPEB investigators. According to RCMP Staff Sgt. Joel Hussey's testimony, there are eight GPEB investigators currently embedded within JIGIT who assist in gathering valuable intelligence.[69]

(b) Reply on jurisdictional issues

35. In Annex A to its closing submission, Canada outlines its position regarding the

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[65] Ex. 864, p. 12; TR B. Baxter, 8/APR/2021, p. 78, l. 24-p. 81, l. 13 and p. 83, l. 12-p. 84, l. 9; TR C. Chrustie, 29/MAR/2021, p. 57, l. 4-10, and p. 4, l. 9-12; TR W. Rideout, 6/APR/2021, p. 95, l. 5-p. 96, l. 10.
[66] TR M. Paddon, 14/APR/2021, p. 12, l. 10-p. 13, l.13.
[67] TR M. Paddon, 14/APR/2021, p. 23, l. 17-p. 24, l. 5; see also, p. 132, l. 17-p. 133, l. 3, confirming on cross-examination that it was resourcing and other priorities, and p. 14, l. 11-p. 15, l. 2 for a reference to other ongoing projects.
[68] TR C. Chrustie, 29/MAR/2021, p. 47, l. 6-20 and p. 54, l. 9-p. 57, l. 3; TR B. Baxter, 8/APR/2021, p. 85, l. 11-p. 87, l. 25. And p. 89, l. 1-17.
[69] TR J. Hussey, 7/APR/2021, p. 23, l. 8-20.

scope of the Commission's jurisdiction. The Province agrees with Canada that a provincial commission of inquiry cannot entrench into areas of management or administration of federal agencies, including in material respect, the RCMP. The Province also acknowledges that a provincial inquiry cannot be used as an alternative to criminal proceedings, namely, to investigate the alleged commission of specific offences by named persons.[70] However, in the Province's submission, the jurisprudence does not go so far as to limit any findings the Commission may make in respect of Canada's AML regime to "objective findings of fact"[71] or require it to express findings in a "strictly factual and objective"[72] manner.

36. So long as the Commission's findings do not offend the parameters outlined above, "the administration of justice permits a provincially appointed commission to reflect on matters that bear on public confidence in the administration of justice", and consider the response of federal entities such as the RCMP.[73] As Justice Saunders concluded in *Canada (Royal Canadian Mounted Police) v. British Columbia (Commissioner)*, 2009 BCCA 604, finding that certain notices of alleged misconduct issued in the context of a provincial inquiry did not impermissibly tread on the management or administration of the RCMP:

> … Thus, as demonstrated by the cases I have referred to, a provincial inquiry may not be engaged as an alternate to criminal procedures provided by the federal government. Nor may a provincial inquiry trench upon areas of management or administration of a federal agency. However, where such a direct focus or effect is not present, I see no basis on which to curtail what is otherwise a proper inquiry directed by the Province, under the terms of valid provincial legislation enacted under the province's constitutional authority over the administration of justice in the province.[74] [emphasis added]

37. This inquiry is not directly focussed—in purpose or effect—on Canada's AML regime. To the contrary, the pith and substance of this Commission is firmly anchored within a matter of provincial competence, namely to "conduct hearings and make findings

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[70] *Canada (Royal Canadian Mounted Police) v. British Columbia (Commissioner)*, 2009 BCCA 604 ("*Canada (RCMP)*") ¶ 51; *Starr v. Houlden*, [1990] 1 SCR 1366, ¶ 26.
[71] Canada Submission, ¶ 251.
[72] Canada Submission, ¶ 257.
[73] *Canada (RCMP)*, ¶ 51.
[74] *Canada (RCMP)*, ¶ 54.

of fact respecting money laundering in British Columbia".[75] Within its terms of reference, the Commission is entitled consider and reflect on issues related to public confidence in the administration of justice in British Columbia and this may include the actions and responses of federal entities.

Part IV - Conclusion

38. The Province appreciates having had the opportunity to provide these reply submissions and hopes that they will be of assistance to the Commissioner. The Province remains committed to working with all stakeholders, including Canada and international partners, towards improving British Columbia's AML regime.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6th DAY OF AUGUST 2021.

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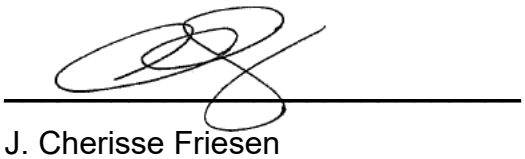

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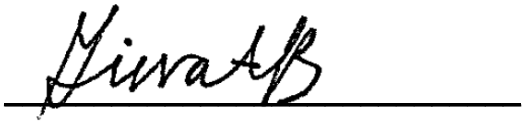

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[75] Order in Council No. 238/2019, s. 4(1).