COMMISSION OF INQUIRY INTO MONEY LAUNDERING

IN BRITISH COLUMBIA

UNDER THE *PUBLIC INQUIRY ACT*, S.B.C. 2007, c. 9

FINAL SUBMISSIONS OF THE ORGANIZATION OF CHARTERED PROFESSIONAL ACCOUNTANTS OF BRITISH COLUMBIA

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A. INTRODUCTION AND OVERVIEW

1. On September 29, 2020, the Commissioner granted the Organization of Chartered Professional Accountants of British Columbia (**"CPABC"**) limited standing to participate in this inquiry as part of the professional services sector (Ruling #10).

2. As the sole professional regulatory body for professional accountants in British Columbia under the *Chartered Professional Accountants Act*, S.B.C. 2015, c. 1 (the ***"CPA Act"***), CPABC has statutory responsibility to regulate the practice and conduct of all chartered professional accountants (**"CPAs"**) in the province, in the public interest.

3. The *CPA Act* came into force in June 2015, and unified the three previously recognized professional accounting designations (chartered accountants, certified general accountants, and certified management accountants) under a common regulatory framework. This was done as part of a national initiative adopted in every province and territory, to ensure effective and consistent regulatory oversight of all professional accountants in Canada.

4. CPABC has general authority under the *CPA Act* to regulate all matters relating to the practice of accounting by its members. Among other things, this includes authority to establish professional standards for CPAs, to implement requirements for continuing professional development and education, to conduct practice reviews of CPA firms, to investigate complaints against CPAs, and to pursue disciplinary action when necessary. Although the *CPA Act* does not give CPABC a specific mandate over money laundering, CPABC may use these regulatory tools, as appropriate, to respond to money laundering-related concerns.

5. It is important to recognize, however, that CPABC does not have any regulatory authority over unregulated accountants, who comprise the majority of persons providing accounting services in the province. To the extent there may be any money laundering risk arising from the activities of unregulated accountants, CPABC has no regulatory authority or jurisdiction to take any action to address that risk.

6. At the outset, CPABC wishes to emphasize that there is no evidence before the Commission of any problem of CPAs being engaged in, or otherwise enabling, money laundering activity in British Columbia. Nevertheless, CPABC recognizes and strongly endorses the critical importance of CPAs in BC meeting their obligations under Canada's anti-money laundering (**"AML"**) regime under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (***"PCMLTFA"***). Unlike lawyers,[1] CPAs and their firms are subject to the requirements of Canada's AML regime, including regulatory oversight by the Financial Transactions and Reports Analysis Centre of Canada (**"FINTRAC"**) as the primary regulatory authority within the AML regime.

7. Aside from CPABC's role as a provincial regulator, the CPA profession is actively engaged in addressing AML issues on a national basis through its national membership organization, the Chartered Professional Accountants of Canada (**"CPA Canada"**). CPA Canada has outlined its extensive work in this area in the evidence it has adduced and the submissions it has made to the Commission.

8. Within the bounds of CPABC's role as a provincial regulator, CPABC further supports British Columbia CPAs in meeting their AML obligations through many educational opportunities and updates, and by providing access to advisory services and additional resources. Complaints about misconduct by BC CPAs and their firms, including any complaints that might potentially relate to money laundering activity, may also be dealt with through CPABC's rigorous investigative and disciplinary processes.

9. Having regard to the scope of its own regulatory mandate, CPABC's participation in this inquiry has been focussed on providing evidence and submissions to assist the Commission in its understanding of the accounting profession, the regulation of professional accountants in British Columbia, the absence of oversight for unregulated accountants, and potential money laundering issues relating to accountants.

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[1] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7.

10. To that end, CPABC provided a detailed background report to Commission counsel in November 2020, with supporting documentation, to assist in informing the Commission's Overview Report on the Accounting Sector in British Columbia (Exhibit 391) (**"Overview Report"**).

11. On January 12, 2021, CPABC's Vice President, Professional Conduct, Edward Tanaka, and its Vice President, Public Practice Regulation, Lisa Eng-Liu, CPA, CA, also testified before the Commission to provide additional evidence to further assist with this inquiry.

12. CPABC also provided the Commission in January 2021 with detailed written comments responding to the December 31, 2020 report[2] of Matthew McGuire, FCPA, FCA (*CPABC Review of the Report on Accountants, Money Laundering, and Anti-Money Laundering,* Exhibit 403) to assist the Commission with its assessment of Mr. McGuire's report and recommendations. These written submissions build on CPABC's previous comments in Exhibit 403 responding to the McGuire Report.

13. In particular, these written submissions focus specifically on the following two key issues:

    (a) that there is no evidence of a systemic, or any, problem of CPAs being engaged in or enabling money laundering in BC; and

    (b) that to better address any risks relating to the potential involvement of accountants in money laundering, AML regulatory measures should cover both CPAs and unregulated accountants based on the services they provide.

14. These submissions also provide CPABC's responses to the following questions:

    (a) the question posed by the Commissioner at the hearing on January 13, 2021 about "what conduct by a client might fracture both the expectation

[2] Matthew McGuire, "Report on Accountants, Money Laundering, and Anti-Money Laundering" (updated December 31, 2020), Exhibit 394 (the **"McGuire Report"**).

and the obligation of confidentiality that would bind an accountant and would enable a report to an appropriate authority";[3] and

(b) questions 25 to 32 posed by Commission counsel in their May 21, 2021 outline of issues provided in response to the directions in pars. 119-121 of the Commissioner's Ruling #32.

15. Finally, CPABC will comment further on possible recommendations and amendments to the AML regime relevant to accountants. These comments build on those made previously by CPABC in Exhibit 403 in response to the recommendations in the McGuire Report.[4]

B. BACKGROUND

16. The Commission's Overview Report (Exhibit 391) provides extensive commentary relating to the accounting sector and the regulation of accountants in BC. However, before addressing the issues outlined above, to provide greater context, CPABC wishes to summarize certain key aspects of the content that is covered in more detail in the Overview Report, and to comment further on the evidence that is before the Commission regarding the services provided by CPAs in BC as may relate to potential AML concerns.

i. CPAs vs. Unregulated Accountants

17. In the evidence before the Commission, Mr. McGuire and other witnesses spoke of "accountants" in general terms, and experts such as Peter German, QC often failed to make any distinction between professional accountants (CPAs), who are subject to CPABC's regulatory oversight, and unregulated accountants, who are able to provide many accounting services to the public in BC without any statutory oversight.[5] However, that distinction is critical to recognize.[6]

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[3] Proceedings at Hearing of January 13, 2021 (**"January 13 Transcript"**), p. 149.
[4] CPABC Review of McGuire Report on Accountants, Exhibit 403, pp. 18-23.
[5] See, for example, Peter M. German, QC, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia* (March 31, 2018) (**"German Report #1"**), p. 47.
[6] Overview Report (Exhibit 391), par. 4.

18. Accountants are unlike many of the other professionals who are often labeled as possible "enablers", "facilitators", or "gatekeepers".[7] Unlike lawyers, notaries, or real estate professionals, the majority of people working in the accounting sector in BC are not registered or licensed by any regulatory body, but rather are unregulated accountants who are not subject to any professional regulation, oversight or accountability at the provincial level.[8]

19. According to census statistics, approximately two-thirds of people who identified themselves as "accountants" in BC are unregulated (approximately 58,000 out of 89,000).[9] Functionally, however, as Mr. Tanaka noted in his evidence before the Commission, unregulated accountants would also include people who did not identify themselves as "accountants" in the census but who are still providing accounting services (with or without training and knowledge to do so). As such, the actual number of unregulated accountants may be significantly understated in the census.[10]

20. Unregulated accountants are also currently excluded from Canada's existing AML regime. Under the existing provisions of the *PCMLTFA* and its regulations, unregulated accountants are not currently subject to FINTRAC's regulatory oversight or any AML reporting requirements.[11]

21. Since unregulated accountants operate outside of CPABC's regulatory jurisdiction and oversight, CPABC generally has no contact with them and no direct knowledge of who they are.[12] However, to the extent there may be any money laundering risk

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[7] German Report #1, p. 47; Peter M. German, QC, *Dirty Money - Part 2: Turning the Tide - An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing* (March 31, 2019), (**"German Report #2"**), p. 37.
[8] Overview Report (Exhibit 391), par. 3.
[9] Overview Report (Exhibit 391), par. 3.
[10] Proceedings at Hearing of January 12, 2021 (**"January 12 Transcript"**), Evidence of Edward Tanaka (ET), pp. 11-12.
[11] Overview Report (Exhibit 391), par. 4.
[12] January 12 Transcript, Evidence of Lisa Eng-Liu (LL), p. 14. Ordinarily, CPABC's only interaction with unregulated accountants would be when they purport to use professional designations and initials that are reserved to CPAs, contrary to s. 45 of the *CPA Act* (as in *Organization of Chartered Professional Accountants of British Columbia v. Nordine*, 2017 BCCA 103 (**"*Nordine*"**), leave to appeal refused, 2017 CanLII 53391 (S.C.C.)), or when they provide services that may only be performed by CPAs under s. 47 of the *CPA Act*.

relating to the provision of accounting services, that risk clearly applies to unregulated accountants who provide many of the same services, but without being subject to CPABC's educational and training requirements, the ethical obligations of the CPA profession, or CPABC's regulatory oversight.

ii. Regulation of CPAs in BC

22. In contrast to unregulated accountants, CPAs in British Columbia are subject to CPABC's ethical and professional standards and its regulatory oversight under the *CPA Act*, as well as the requirements of the AML regime under the *PCMLTFA*.

23. Protection of the public is a cornerstone of the profession and CPABC. The courts have recognized that CPABC's "transcendent purpose" is the protection of the public.[13] CPABC gives effect to that public protection purpose through the exercise of its powers and authority under the *CPA Act*, the CPABC Bylaws, the CPABC Bylaw Regulations, and the CPABC Code of Professional Conduct (**"CPABC Code"**).

24. As the professional regulatory body for CPAs in BC, CPABC has regulatory oversight over all aspects of their conduct and practice, as well as the training and certification of CPA candidates.[14] The business community and the public should have confidence that if they engage a CPA, that person can be expected to meet CPABC's exacting ethical and professional standards, as well as its requirements for education, training and continuing competency, and that their practice and conduct is subject to CPABC's regulatory oversight.

25. As a statutory regulator with a mandate to protect the public, CPABC is committed to an effective regulatory system with both proactive and reactive components. Proactive elements have a forward-looking focus on promoting the maintenance of high professional standards, and include the admission of only qualified

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[13] *McPherson v. Institute of Chartered Accountants of British Columbia* (1988), 33 B.C.L.R. (2d) 348 (S.C.), at p. 374 (par. 31), aff'd (1991), 55 B.C.L.R. (2d) 286 (C.A.); *Nordine, supra*, at par. 24.
[14] Overview Report (Exhibit 391), par. 16; CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 38.

applicants of good character to membership, ensuring that members complete required professional development, and requiring members and firms engaged in public practice to undergo regular practice reviews (or inspections). Reactive elements, which address identified concerns after they have surfaced, include CPABC's formal complaint, investigation and discipline processes.[15]

26. The usual mechanism under the *CPA Act* for CPABC to address concerns about a member's suspected or alleged involvement in illegal activity would be through CPABC's complaint, investigation and discipline processes.[16] Those processes are focussed on members' compliance with the professional standards, rules, and principles in the CPABC Code, as well as the requirements of the *CPA Act* and CPABC's Bylaws and Bylaw Regulations.

27. The CPABC Code sets out rules and supporting principles that guide CPAs and their firms in the sound, fair and ethical practice of accounting. Rather than being overly prescriptive, CPABC has developed a progressive code of professional conduct that is nimble and flexible enough to respond to a wide range of potential issues in an ever-changing business environment. The principles in the CPABC Code guide members in providing accurate and reliable financial and management reporting, and set out their obligations to clients, employers, fellow CPAs, and the public interest.[17]

28. As Mr. Tanaka noted in his evidence to the Commission, the CPABC Code includes self-reporting obligations for members that specifically cover money laundering and terrorist financing related criminal offences (Rule 102.1), as well as findings of non-compliance with the requirements of another regulatory body, which would include FINTRAC (Rule 102.4).[18] Mr. Tanaka also noted members' further self-reporting obligations under CPABC Bylaw 511.[19]

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[15] CPABC 2019-2020 Regulatory Report to the Public, Appendix G of Exhibit 391, p. 457.
[16] For more detail see, for example, the description of CPABC's Professional Conduct Complaint Process in Appendix J of Overview Report (Exhibit 391).
[17] Overview Report (Exhibit 391), pars. 38-39.
[18] January 12 Transcript (ET), pp. 17, 21.
[19] January 12 Transcript (ET), p. 18.

29. The CPABC Code also includes further professional obligations, such as the prohibition against members being associated with any false or misleading statements (Rule 205), the duty to report concerns about potential breaches by other members (Rule 211), and the prohibition against any association with unlawful activity (Rule 213).[20] While CPABC is not directly responsible for compliance with the criminal law, a member who engages in or otherwise associates themselves with unlawful activity is subject to investigation and discipline by CPABC for a breach of the CPABC Code.[21]

30. It should be emphasized that the principles and standards that are established in the CPABC Code are generally harmonized across Canada, with equivalent codes of professional conduct adopted by all provincial and territorial CPA regulators.[22]

31. The harmonization of professional standards nationally is critically important to ensuring the efficient functioning of financial systems that depend on the seamless delivery of services by CPAs across provincial and international boundaries. That efficiency would be hindered by inconsistency in regulatory practices. As such, any significant changes to the CPABC Code require national study and review.

32. In conjunction with CPA Canada, CPABC also provides support to British Columbia CPAs in meeting their obligations under Canada's AML regime through educational opportunities, regulatory updates, advisory services, and other resources, as outlined further below.

33. Although CPABC does not have any specific AML mandate under its governing legislation, it regularly provides members with access to education and information in relation to AML, and members also have access to CPA Canada resources. CPABC has also developed a dedicated AML webpage for members that provides a landing page for relevant anti-money laundering news, resources, and education opportunities.

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[20] January 12 Transcript (ET), p. 16-18.
[21] Rule 213 specifically prohibits CPAs and their firms from associating with any activity that they know, or should know, to be unlawful.
[22] January 12 Transcript (ET), p. 107.

iii. CPAs and Canada's AML Regime

34. FINTRAC is the regulatory and oversight authority for Canada's AML regime. CPAs have formally been a part of that regime since 2000, and they are the only accountants who are reporting entities to FINTRAC and subject to the *PCMLTFA* and its regulations.[23] They are required to comply with reporting and record-keeping obligations and are subject to inspection and compliance reviews, and, if appropriate, sanctions by FINTRAC.

35. It is important to note the context in which CPAs' AML obligations under the *PCMLTFA* exist. CPABC understands the AML regime in the *PCMLTFA* has been designed to protect Canada's financial system.[24] Therefore, CPAs' obligations under the *PCMLTFA* are triggered when they engage in activities that interact with the financial system.[25]

36. CPABC does not have any specific AML mandate under its governing legislation, nor does the *PCMLTFA* give CPABC any prescribed role, duties or functions. Nevertheless, CPABC remains committed to ensuring that its members are supported in meeting their obligations under the *PCMLTFA*, and it regularly provides education opportunities for its membership, and ensures that its members and firms have access to AML resources, including CPA Canada resources. For example, CPABC's Continuing Professional Development program has included courses, seminars and conference presentations on AML or involving AML since CPABC was established.[26] To enhance access to AML education, many of those courses and seminars have been provided to members free of charge.[27] CPABC has also published a number of articles in various publications and member communications, to update members about AML legislation and regulation, and to provide information more generally about the harmful effects of money laundering on society. In addition, in its 2020 Member Engagement Tour, the senior

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[23] Overview Report (Exhibit 391), pars. 79.
[24] January 13 Transcript, Evidence of Michele Wood-Tweel (MWT), p. 49.
[25] *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, s. 34.
[26] Overview Report (Exhibit 391), par. 16 and Appendix F.
[27] See: CPABC AML-related course listings in Exhibit 399.

leadership of CPABC made a presentation on the avoidance of money laundering and CPAs' obligations under the *PCMLTFA*.[28]

37. CPABC has never received any communication directly from FINTRAC regarding compliance concerns related to any individual CPABC member or firm. CPABC is aware of the 2015 meeting between CPA Canada and FINTRAC that resulted in CPA Canada issuing an Alert to members nationally in July 2015.[29] However, CPABC has received no further information from CPA Canada or FINTRAC regarding concerns related to CPABC members' or firms' compliance or awareness, and it is CPABC's understanding that CPA Canada has never received any province-specific information from FINTRAC.

38. If CPABC were to receive information from FINTRAC, law enforcement, another regulatory body, or any other source regarding a member engaged (or suspected of being engaged) in money laundering, or any other illegal activity, that information would be referred to CPABC's investigation and discipline process where it would be treated very seriously.[30] The same would be true for any complaints about a member's alleged involvement in money laundering, including any complaints that might be received anonymously or initiated by CPABC itself.[31]

39. CPABC has also recently joined the RCMP's Counter Illicit Finance Alliance of British Columbia (**"CIFA-BC"**) as an Associate Partner.[32] CPABC welcomes this opportunity to work closely with a diverse group of stakeholders across the province to support and promote CIFA-BC's continued efforts to prevent and combat money laundering.

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[28] January 12 Transcript (ET), p. 49.
[29] CPA Canada Alert, Proceeds of Crime (Money Laundering) and Terrorist Financing – Know Your Obligations (July 2015), Exhibit 397.
[30] January 12 Transcript (ET), pp. 22-23.
[31] January 12 Transcript (ET), pp. 51-52.
[32] CIFA-BC Framework (revised April 9, 2021), Exhibit 847.

iv. Services Provided by CPAs in BC

40. In BC, with limited exceptions, most accounting services may be provided to the public by any "accountant", regardless of whether they are a CPA or an unregulated accountant. The exceptions are specified in section 47 of the *CPA Act*, which reserves the performance of certain services (including audit and assurance) exclusively for CPAs. Generally speaking, however, the services triggering CPAs' existing obligations under the AML regime in the *PCMLTFA* are not exclusive to CPAs, and may also be provided by unregulated accountants.

41. CPABC exercises regulatory oversight over the performance of all accounting services when they are provided by CPAs.[33] It has no regulatory authority over the provision by unregulated accountants of accounting services that are outside the scope of section 47 of the *CPA Act*.[34]

42. Given Mr. McGuire's evidence, there may be a misunderstanding regarding what services provided by CPAs in BC are regulated by CPABC.[35] As Mr. Tanaka clarified in his evidence before the Commission, all CPABC members are subject to the *CPA Act*, CPABC Bylaws, CPABC Bylaw Regulations, and CPABC Code in respect of all of the professional services they provide.[36] Specifically, Mr. Tanaka noted:[37]

> [T]he code applies to all members equally regardless of the professional activities they're engaged in. There are some specific rules in the code that are related to certain activities, but the code, the principles, the rules…, they apply equally to all members.

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[33] *CPA Act*, s. 3(c); CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 38.
[34] *CPA Act*, s. 46.
[35] Proceedings at Hearing of January 11, 2021 (**"January 11 Transcript"**), Evidence of Matthew McGuire, pp. 58-59; CPABC Review of McGuire Report on Accountants, Exhibit 403, response to pars. 38, 42, 49.
[36] January 12 Transcript (ET), p. 17 (lines 22-25). Indeed, CPABC's investigative and disciplinary jurisdiction over its members extends beyond oversight of their provision of accounting services, and includes "conduct unbecoming": *CPA Act*, s. 53(2)(d). This may encompass private or "off-duty" conduct by a member that is not directly related to the provision of accounting services, but which is nevertheless of such a nature that it impairs the member's ability to perform their responsibilities as a CPA or causes other harm to the profession: *Fountain v. British Columbia College of Teachers*, 2007 BCSC 830; *Fountain v. British Columbia College of Teachers*, 2013 BCSC 773.
[37] January 12 Transcript (ET), pp. 18-19.

43. Apart from the breadth of CPABC's regulatory authority over its own members, it is important to recognize there are limitations on the services that CPAs may provide. For example, the *Legal Profession Act* prohibits CPAs (and other non-lawyers) from providing legal advice or services constituting the practice of law.[38] This includes such services as incorporating companies, establishing trusts, and preparing and maintaining corporate records[39] (including beneficial ownership registry records[40]). CPAs are also restricted by the *Real Estate Services Act* in their ability to provide real estate services (subject to limited exceptions).[41]

44. It is also important to recognize that the services delivered by accountants may vary between countries, and that the services listed in the July 2019 Report of the Financial Action Task Force (**"FATF"**)[42] may not be applicable in every jurisdiction. In particular, many of the FATF-specified services cannot be performed by CPAs in British Columbia.[43] In addition, to the extent that the FATF-specified services are within the scope of practice of BC CPAs, many of those services are not unique to CPAs and may also be provided by unregulated accountants in BC.[44]

45. In her evidence before the Commission, CPA Canada's Vice President of Regulatory Affairs, Michele Wood-Tweel, FCPA, FCA, provided a clear example of how restrictions on CPA practice in Canada impact the risks of Canadian CPAs becoming involved with money laundering, in contrast to accountants in other international jurisdictions such as the United Kingdom:[45]

> …the most significant risk within the accounting sector in the UK is pointing in the direction of company formation and company

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[38] *Legal Profession Act*, S.B.C. 1998, c. 9, s. 15.
[39] CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 18. See also, for example, Law Society of BC website, "What is Unauthorized Practice of Law?"; *Law Society of BC v. Siegel*, 2000 BCSC 875, pars. 24-29.
[40] January 12 Transcript (LL), pp. 80-81; CPABC website, "Preparing and Maintaining the Transparency Register Considered Legal Services".
[41] *Real Estate Services Act*, S.B.C. 2004, c. 42, s. 3; CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 19.
[42] FATF, *Guidance for a Risk-Based Approach: Accounting Profession*, Appendix B of Exhibit 391 (the **"FATF Report"**), par. 20.
[43] CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 19.
[44] CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 19.
[45] January 13 Transcript (MWT), pp. 142-143.

> termination. And these are services in the UK that can be provided within the accounting sector and particularly with respect to trust and company service providers, some 17,000 entities in the UK or in the accounting sector providing trust and company service provider work. And that includes actual formation, it includes termination, it includes trusts, it includes partnerships, it includes cash flow, banks, overseas transfers.
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> These are in-depth money-running businesses that are inside the accounting profession in the UK. The equivalent to that is not in Canada, and of course with the scope of practice restricted for CPAs that we don't practice law. The formation of companies, trusts, partnerships, et cetera, is a legal position in this country.

46. These restrictions are especially important to recognize when comparing Canada's AML regime as it relates to professional accountants to the AML regimes of other international jurisdictions. Many of the transactions or services that may trigger suspicious transaction or activity reports by accountants in other jurisdictions are related to real estate or trust/company formation activities[46] which are outside the scope of CPA practice in Canada. It is also very uncommon for CPAs in public practice in BC to operate trust accounts.[47]

47. CPABC estimates that approximately 20% of its members work in public practice,[48] where reporting and record-keeping obligations under the *PCMLTFA* may be engaged. While the survey conducted by CPABC in December 2020 provides only anecdotal evidence, it suggests that over 85% of CPAs engaged in public practice do not engage in triggering activities, and that the large majority of CPAs and firms that provide services to the public do not handle their clients' money.[49]

48. Given the differences in scope of practice between international jurisdictions, combined with the involvement of unregulated accountants in the provision of many FATF-specified services in BC (or elsewhere in Canada), as well as

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[46] See, for example, the regime in the UK where accountants are able to engage in real estate transactions and company formation: January 13 Transcript (MWT), pp. 144-145.
[47] CPA Memo from Lisa Eng-Liu, Re Possible opportunities for education (December 21, 2020), Exhibit 400, p. 1.
[48] CPABC 2019-2020 Regulatory Report to the Public, Appendix G of Exhibit 391, p. 450.
[49] CPA Memo from Lisa Eng-Liu, Re Possible opportunities for education (December 21, 2020), Exhibit 400, p. 2.

differences between AML regimes, any direct comparison of statistics between Canada and other jurisdictions with respect to suspicious transaction/activity reports relating to accountants may be inaccurate or misleading, and should be viewed with caution. Accountants in many other jurisdictions provide services beyond what is permitted in Canada, including real estate, corporate, and trust services. Further, in many jurisdictions, including the UK, the definition of a suspicious transaction or activity is far wider than what would trigger a suspicious transaction report in Canada.[50] Canada's AML regime is more targeted, and focusses on triggering activities that interact with the financial system.[51]

v. Trust Accounts

49. Trust accounts are often one of the ways professionals, including lawyers, real estate agents, notaries, and accountants, directly interact with their clients' money. CPABC is aware that trust accounts are used by some CPAs in BC. In contrast to lawyers, however, CPABC understands that the number of CPAs who use trust accounts is very small. As noted previously, to CPABC's knowledge, it is very uncommon for CPAs in public practice in BC to operate trust accounts.[52]

50. Those few CPABC members who do operate trust accounts must comply with regulatory requirements. This includes the rules and guidance set out in the CPABC Code for members and firms who handle the property of others.[53] CPABC members are further regulated by FINTRAC and under bankruptcy and insolvency legislation. The CPABC Code also explicitly prohibits CPAs from associating with any activity they know or should know to be unlawful.[54]

51. CPABC does not believe that trust accounts held by CPAs in BC pose a significant risk for money laundering. CPABC has never received information from law enforcement, any other regulatory agency, or any member of the public raising a

[50] January 13 Transcript (MWT), pp. 141-143.
[51] January 13 Transcript (MWT), pp. 26-27, 49, 53.
[52] CPA Memo from Lisa Eng-Liu, Re Possible opportunities for education (December 21, 2020), Exhibit 400, p. 1.
[53] CPABC Code (Appendix E of Exhibit 391), Rule 212.
[54] CPABC Code (Appendix E of Exhibit 391), Rule 213.

concern about a member's or firm's handling of trust funds. In contrast, CPABC is aware of examples of such disclosure with other professions, such as lawyers.[55]

52. CPABC is in the process of seeking additional information from members regarding their use of trust accounts. This information will assist CPABC in ensuring that members have the necessary training and education to understand their obligations relating to trust accounts as well as risks that may be associated with trust account transactions.

vi. Handling of Cash

53. CPABC is aware that a small number of members may receive and handle cash from clients. Based on anecdotal evidence obtained through the brief survey conducted by CPABC in December 2020,[56] it appears that most of the cash received is small amounts as payment for services such as tax return filings. The receipt of cash for this purpose would not be considered a triggering activity for the purposes of FINTRAC, as the payments are for services.

54. CPABC is in the process of seeking additional information from members regarding their handling of cash. This information will assist CPABC in ensuring that members have the necessary training and education to understand any potentially applicable obligations relating to cash transactions under the AML regime, as well as the general risk that may be associated with cash.

C. ISSUES

i. No evidence of CPA involvement in money laundering in BC

55. The evidence before the Commission does not support the existence of a systemic, or any problem of CPAs in BC or their firms being engaged in or otherwise enabling money laundering activity.

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[55] See, for example, *Uzelac (Re)*, 2020 LSBC 58, pars.16-17.
[56] CPA Memo from Lisa Eng-Liu, Re Possible opportunities for education (December 21, 2020), Exhibit 400, p. 2.

56. Throughout the course of the hearings, the concept of "professional enablers" or facilitators has been referenced numerous times. However, experts have also noted that while professional enablers (generally) have been used to launder money, this is not necessarily indicative of a sector-wide criminality:[57]

> A professional advisor is often needed as well. Expenditures can quickly rise to thousands of euros or dollars that eat into the criminal profit. If the criminal profit was small to begin with, efforts at concealment become pointless and cost-inefficient. However, it would be wrong to imagine that, at a certain financial profit point, every criminal of note reaches out to international law firms for offshore financial services, such as the morally and now economically bankrupt Panamanian based law firm Mossack Fonseca & Co. That simply has not been proven in any literature on money laundering.

57. In fact, evidence before the Commission indicates that the number of instances of CPAs being involved in money laundering is extremely low in Canada, and around the world. For example, in Dr. Katie Benson's examination of professional money launderers, she found:[58]

> This process resulted in the identification of 20 cases that fit the inclusion criteria. As it turned out, all of the cases involved solicitors, as no cases of chartered accountants convicted for money laundering offences in the relevant time period were found.

58. Similarly, Dr. Stephen Schneider acknowledged in his evidence to the Commission that there were "not a lot of cases on accountants" that were identified in his study (without distinguishing further between CPAs and unregulated accountants).[59]

59. Moreover, as Mr. Tanaka noted in his evidence before the Commission, CPABC has not had any cases involving any CPA or firm in British Columbia being involved in or connected to money laundering activities.[60]

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[57] Mike Levi and Melvin Soudij, "Understanding the Laundering of Organized Crime" (March 6, 2020), Exhibit 25, p. 2.
[58] Katie Benson, "The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response" (2016), Exhibit 218, p. 97.
[59] Proceedings at the Hearing of May 26, 2020, Evidence of Stephen Schneider, p. 22.
[60] January 12 Transcript (ET), p. 15.

60. Despite the fact that accountants are often casually included in lists of professionals potentially involved in money laundering, the evidence before the Commission does not support the assertion that CPAs are systemically, or in any way, engaged in money laundering in BC. In fact, the evidence suggests that the instances of CPAs in Canada being engaged in money laundering is very rare, and there is no actual evidence of any such involvement by BC CPAs.

61. In particular, Mr. McGuire's comments about "Domestic Reports of Accountant Involvement in Money Laundering" in section 6.3 of his report[61] make no distinction between CPAs and unregulated accountants, and none of the ten cases cited at the end of that section (in par. 30) provide any actual evidence of CPA involvement in money laundering in BC. Of those ten cases, there is only one isolated example of a CPA in Alberta being convicted of money laundering since the unification of the profession,[62] and there appears to be only one other (pre-unification) reference to a conviction of a professional accountant (a CA) more than two decades ago in Manitoba.[63] Of the four BC cases cited, two pre-date the *PCMLTFA*,[64] another involved an unregulated bookkeeper who very clearly was not a professional accountant,[65] and there is no indication that the accounting firm referenced in the only other cited BC case did anything illegal.[66]

62. Indeed, Mr. McGuire specifically admitted during cross-examination that the cases cited and other evidence referenced in his report provide no basis to conclude there is a systemic problem of CPAs being involved in money laundering.[67]

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[61] McGuire Report, Exhibit 394, pars. 23-30.
[62] *R. v. Neilson*, 2020 ABQB 556.
[63] *R. v. Loewen*, 1999 CanLII 18745 (Man. C.A.).
[64] *Elias v. Law Society of British Columbia*, 1996 CanLII 1359 (B.C.C.A.) (apparently involving a former CA who had moved to the UK and was no longer practising as a professional accountant in BC) and *R. v. Joubert*, 1992 CanLII 1073 (B.C.C.A.).
[65] *SPYru Inc. (Re)*, 2014 BCSECCOM 53. Indeed, the Securities Commission found (at par. 9) that the referenced individual was not even competent to be employed as a bookkeeper.
[66] *British Columbia (Director of Civil Forfeiture) v. PacNet Services Ltd.*, 2019 BCSC 1658.
[67] January 11 Transcript (McGuire), p. 129.

ii. AML regulatory measures should cover both CPAs and unregulated accountants based on the services they provide

63. If there is any potential concern relating to accountants in British Columbia being engaged in money laundering or becoming "professional enablers" for such activity by virtue of the services they provide, there is no reason to assume that CPAs would be involved (and, as noted above, there is no evidence to support such a concern). CPABC submits that, under the current regulatory regime, unregulated accountants would be better placed to engage in such activity, as they are able to provide most of the same accounting services as CPAs – including those that would involve triggering activities for CPAs under the *PCMLTFA* – without being subject to CPABC's professional standards and ethical requirements and without any regulatory oversight or scrutiny.

64. Accordingly, if the Commissioner concludes that any additional regulatory measures should be recommended to address the risk of accountants becoming involved in money laundering activity in BC, those measures should be focussed on addressing the omission of unregulated accountants from Canada's existing AML regime.

65. As CPABC does not have regulatory jurisdiction over the practice or conduct of unregulated accountants, CPABC would not be the appropriate agency to implement such measures.[68] Indeed, CPABC submits that FINTRAC's expertise in the area of money laundering would place FINTRAC in the best position to oversee and regulate all accountants in relation to Canada's AML regime, including unregulated accountants, if the *PCMLTFA* regime were to be amended to give FINTRAC that authority.

66. Accordingly, the Commissioner should consider recommending such measures as modifying the existing AML regime under the *PCMLTFA* to be based on an

[68] From a broader regulatory perspective, it would be a contradiction in terms to extend CPABC's own regulatory jurisdiction to unregulated accountants. Apart from the limited subset of accounting services described in s. 47 of the *CPA Act*, the Legislature has specifically decided that unregulated accountants should be permitted to provide other accounting services in BC: *CPA Act*, s. 46.

individual's performance of triggering activities regardless of their professional designation or lack thereof, so that unregulated accountants will no longer be exempt from the *PCMLTFA*'s reporting and record-keeping requirements.

iii. Limitations on confidentiality obligations of CPAs in BC

67. At the hearing on January 13, 2021, the Commissioner posed the following question to CPA Canada's witness panel about the limits of the confidentiality obligations of CPAs:[69]

> What conduct by a client might fracture both the expectation and the obligation of confidentiality that would bind an accountant and would enable a report to an appropriate authority?

68. CPABC notes that Rule 208 of the CPABC Code codifies the professional obligation of a CPA not to disclose "any confidential information concerning the affairs of any client, former client, employer or former employer".[70]

69. "Confidential information" is defined broadly in the CPABC Code to mean:[71]

> … information acquired in the course of a professional services relationship with a party. Such information is confidential to the party regardless of the nature or source of the information or the fact that others may share the knowledge. Such information remains confidential until the party expressly or impliedly authorizes it to be divulged. In the case of an employee-employer relationship, a member or student has legal obligations to the employer that include a duty of confidentiality. The CPA Code imposes a duty of confidentiality as a professional obligation, which is in addition to the member's or student's legal obligation to the employer.

70. Rule 208 includes specific exceptions, as set out in Rule 208.1(a) to (e). Among other things, it is not a breach of a CPA's professional duty of confidentiality if they disclose their client's or employer's confidential information:

    (a) to CPABC, in order to comply with their duty to report any information concerning an apparent breach of the CPABC Code or any information

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[69] January 13 Transcript, p. 149.
[70] CPABC Code (Appendix E of Exhibit 391), Rule 208.
[71] CPABC Code (Appendix E of Exhibit 391), Definitions, p. 272.

raising doubt as to the competence, integrity or capacity to practise of another CPABC member, firm or applicant when required to do so under Rule 211.1 (Rule 208.1(b));

(b) to comply with an order of a court, tribunal or other body with lawful authority to compel disclosure of that information (Rule 208.1(c));[72] or

(c) to comply with another legal duty, if that other duty has the effect of overriding the CPA's professional confidentiality obligation as contemplated by Rule 101.1(c) (Rule 208.1(b)).

71. A CPA's duty of confidentiality is also overridden when information is provided to CPABC for the purpose of a CPABC practice review or investigation, as contemplated by section 51(9) and (10) of the *CPA Act*.

72. In addition to these codified exceptions, even though a CPA's duty of confidentiality is different from the legal concept of privilege, CPABC would not consider it to be professional misconduct or a breach of Rule 208 for a CPA to disclose the confidential information of a client, former client, employer, or former employer in exceptional circumstances that are equivalent to those for which the law recognizes an exception to solicitor-client privilege. This would include, for example, the following implied exceptions to a CPA's confidentiality obligations under Rule 208:

(a) disclosure to appropriate authorities of communications from a client or employer that are in themselves criminal, or that were made with a view to obtaining the CPA's advice to facilitate the commission of a crime or fraud, by analogy with the exception to solicitor-client privilege recognized in such cases as *Solosky v. The Queen* and *Descôteaux v. Mierzwinski*;[73] or

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[72] See e.g. *Minister of National Revenue v. KPMG LLP*, 2016 FC 1322, at pars. 7-9.

[73] *Solosky v. The Queen*, [1980] 1 S.C.R. 821, at pp. 835-836, and *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860, at p. 881. Consistent with the principles in those cases, the Supreme Court of British Columbia has held that "communications between a lawyer and a client who deliberately uses the lawyer to facilitate any unlawful conduct is … not within the proper functional scope of the privilege": *McDermott v. McDermott*, 2013 BCSC 534, at par. 74. CPABC considers the same limitation to apply to the functional scope of a CPA's professional duty of confidentiality under Rule 208 of the CPABC Code.

(b) other disclosure that the CPA has reasonable grounds to believe is necessary to prevent a crime involving death or serious bodily harm to any person, in accordance with the principles adopted by the court in *Smith v. Jones*.[74]

73. CPABC expects that these implied exceptions will be further addressed in due course as part of its collaborative efforts, working with CPA Canada and other provincial CPA regulators on the Public Trust Committee, towards the adoption in Canada of the international "NOCLAR" standard (for *Responding to Non-Compliance with Laws and Regulations*) on a nationally harmonized basis.[75]

74. The above exceptions speak to a CPA's professional confidentiality obligations, but they do not necessarily shield a CPA from civil liability for breach of an express or implied legal duty of confidence, or other possible legal consequences over which CPABC has no authority.

75. A CPA may have common law defences to shield them from civil liability or other legal consequences for making a report to another regulatory body.[76] However, a legislated whistleblower protection regime would be preferable, if it could provide greater certainty to CPAs that they will be shielded from civil liability or other legal consequences[77] for disclosing client or employer confidential information to another regulatory body or law enforcement agency in the kinds of exceptional circumstances outlined above.

76. In this regard, CPABC endorses and adopts CPA Canada's submissions and recommendations for a comprehensive whistleblowing framework that would be effective in all Canadian jurisdictions to protect whistleblowers who identify and escalate public interest concerns, including with respect to AML violations.

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[74] *Smith v. Jones*, [1999] 1 S.C.R. 455, at pars. 74-86.
[75] January 13 Transcript (MWT), pp. 137-138.
[76] See e.g. *Hung v. Gardiner*, 2003 BCCA 257, at pars. 4, 30-34; *Re a Company's Application*, [1989] Ch. 477.
[77] To be fully effective for these purposes, this may require coordinated federal and provincial legislation.

iv. Responses to questions in Commission counsel outline of issues

25. Are accountants (including Chartered Professional Accountants (CPAs) and unregulated accountants) exposed to money laundering risks and, if so, what is the nature and extent of those risks?

77. Some of the functions performed by accountants (both CPAs and unregulated accountants) are potentially susceptible to money laundering risks, to the extent they involve interactions with the financial system. However, at least with respect to CPAs in British Columbia, that risk is low.

78. These risks were addressed from an international perspective in the FATF Report.[78] However, as noted previously,[79] the services identified by FATF that might involve the most significant risk (i.e., company and trust formation; real estate services) are outside a CPA's scope of practice in British Columbia. As a result, the level of money laundering risk for CPAs in British Columbia is significantly lower than in other jurisdictions internationally.

79. The FATF Report notes further that the preparation, review and auditing of financial statements may be susceptible to risk of misuse by criminals "where there is a lack of professional body oversight or required use of accounting and auditing standards."[80] However, CPABC provides significant oversight for CPAs and their firms in this area, in particular, through CPABC's robust practice review program, and through the enforcement mechanisms of CPABC's complaint, investigation and discipline processes. CPAs and their firms are also subject to further oversight by the Canadian Public Accountability Board (**"CPAB"**) and/or the Public Company Accounting Oversight Board (**"PCAOB"**) when they are engaged in audits of public companies or reporting issuers.[81]

80. The level of money laundering risk for CPAs is also lower than it is for lawyers for a variety of reasons. In addition to the fact that CPAs are prohibited from engaging

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[78] FATF Report, Appendix B of Exhibit 391, par. 22.
[79] See pars. 43-46 above.
[80] FATF Report, Appendix B of Exhibit 391, par. 23.
[81] Overview Report (Exhibit 391), par. 50.a; January 13 Transcript (MWT), pp. 131-132.

in the practice of law, it is CPABC's understanding that, compared to lawyers, it is relatively unusual for CPAs in public practice to make use of trust accounts, or to be involved in the receiving or handling of cash on their clients' behalf. Unlike lawyers, CPAs are also fully subject to Canada's AML regime and FINTRAC's regulatory oversight – although the same cannot be said for unregulated accountants who are currently exempt from the FINTRAC regime.

81. Without distinguishing between CPAs and unregulated accountants, the Canadian Department of Finance recognized in its 2015 report, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, that services provided by "accountants" have a "medium vulnerability" rating, in contrast to the "high vulnerability" rating for many other service providers such as legal professionals, real estate agents and developers, and securities dealers.[82]

82. In all of the circumstances, it is CPABC's view that the risk of CPAs being involved in money laundering is low.

83. However, the risk for unregulated accountants is greater, given that unregulated accountants are not required to comply with the exacting standards in the CPABC Code; they are not subject to CPABC's regulatory jurisdiction; and, their activities and the services that they provide to the public are currently exempt from Canada's AML regime or any oversight by FINTRAC.

26. What evidence is there that accountants have been involved in or facilitated money laundering in British Columbia?

84. The evidence before the Commission does not support the existence of a systemic, or any, problem of CPAs in British Columbia or their firms being engaged in or otherwise enabling money laundering activity. This is addressed in more detail above.[83]

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[82] Canada, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada* (2005), Appendix B of Exhibit 3, p. 112.
[83] See pars. 55-62 above (issue i.).

27. What are the levels of suspicious transaction reporting from professional accountants to FINTRAC under the *PCMLTFA*, and what are the reasons for and significance of those levels of reporting?

85. CPABC has not previously received any information from FINTRAC about suspicious transaction reports made by CPAs or their firms.

86. It is CPABC's understanding from the evidence before the Commission that levels of reporting by CPAs appear to be relatively low.[84] However, this is not surprising, as Canada's AML regime is designed to focus on interaction with the financial system, and CPAs' reporting obligations are triggered only in narrow circumstances.

87. As noted previously,[85] CPABC has never received any communication directly from FINTRAC identifying a concern about the level of reporting or compliance on the part of CPAs or their firms.

28. What has been the response of the Chartered Professional Accountants of British Columbia (CPABC) to address the risks of money laundering through professional accountants?

a. Has that response been adequate?

b. Should CPABC be given an express anti-money laundering mandate?

88. CPABC's response to the risks of money laundering has been outlined previously.[86] In the absence of any specific AML mandate under its governing legislation, CPABC's focus, in collaboration with CPA Canada, has been on providing AML educational opportunities and resources for its members and firms, and on promoting continuous improvement through its Continuing Professional Development program.

[84] McGuire Report, Exhibit 394, pars. 74-76.
[85] See par. 37 above.
[86] See pars. 36-39 above.

89. As noted above,[87] CPABC has also recently joined CIFA-BC, and intends to continue to work collaboratively with CIFA-BC's stakeholders and the RCMP in their joint efforts to prevent and combat money laundering in BC.

90. In CPABC's view, this response has been entirely appropriate in the context of CPABC's regulatory role and mandate under the *CPA Act*, and having regard to the extensive work done in this area by CPA Canada on behalf of the CPA profession nationally.

91. It would not be necessary or appropriate for CPABC to be given an express AML mandate. This would distract from CPABC's core regulatory functions under the *CPA Act*, and would be duplicative of FINTRAC's mandate as the AML regulator under the *PCMLTFA*. Unlike lawyers, CPAs are fully subject to FINTRAC's regulatory oversight and reporting requirements, and there is no need for CPABC to step in to fill any gap.

92. The one very significant gap in Canada's existing AML regime as it relates to accounting is the fact that unregulated accountants are currently exempt from that regime. However, CPABC cannot be the vehicle to address that gap when, by legislative design, it has no regulatory jurisdiction over unregulated accountants.[88] As addressed further below,[89] that gap would most effectively be addressed by expanding the FINTRAC regime to be based on an individual's performance of triggering activities regardless of whether or not they hold the CPA designation.

29. What measures, if any, should be taken to implement greater provincial oversight of regulated accountants' activities as they relate to anti-money laundering in British Columbia?

93. British Columbia CPAs and their firms are already highly regulated by CPABC, and their activities relating to AML are already subject to FINTRAC oversight as the primary regulatory authority with respect to AML.

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[87] See par. 39 above.
[88] See footnote 68 above.
[89] See pars. 105-108 below.

94. There is no evidence of a systemic, or any, problem relating to CPAs and money laundering in BC, and no need for greater oversight of CPAs' activities as they relate to AML

30. What measures, if any, should be taken to monitor and address the risks of money laundering by unregulated accountants in British Columbia?

95. As noted in response to question 28 above, the one very significant gap in Canada's existing AML regime as it relates to accounting is the fact that unregulated accountants are currently exempt from that regime. That gap should be addressed by expanding the FINTRAC regime to be based on services provided rather than professional designation, so that the existing reporting and record-keeping obligations under the *PCMLTFA* will apply to unregulated accountants when they perform the same triggering activities that currently engage those obligations for CPAs and their firms.

31. What constitutional questions (for example, under the *Charter of Rights and Freedoms*) arise or may arise out of the evidence led or potential recommendations in this sector?

96. CPABC is not aware of any constitutional question arising out of the evidence led or potential recommendations relating to the accounting sector.

97. In particular, unlike the situation with lawyers, CPABC is not aware of any constitutional barrier to the full application of the FINTRAC regime to CPAs and their firms, as well as unregulated accountants. Therefore, there is no resulting gap in the AML regime as it relates to CPAs (or its potential extension to unregulated accountants) that might otherwise have needed to be filled by CPABC.

32. What privacy issues arise or may arise out of the evidence led or potential recommendations in this sector?

98. If any recommendation is being considered that might contemplate CPABC disclosing any confidential information about the clients of CPAs and their firms to FINTRAC, that would raise serious concerns about privacy and confidentiality. It would be incompatible with CPABC's regulatory role – which is confined to

regulating CPAs, not their clients – for CPABC to disclose to FINTRAC client information obtained by CPABC on a confidential basis in the course of an investigation or practice review.

99. The disclosure of identifiable client information to FINTRAC could be harmful to CPABC's ability to carry out its regulatory functions under the *CPA Act*, which depends on registrants providing CPABC with access to client information on a confidential basis when it is relevant in both practice reviews and investigations, on the understanding that CPABC will be required to maintain the confidentiality of that information.[90]

100. Apart from that potential issue, CPABC has not identified any privacy issue arising out of the evidence led or potential recommendations relating to the accounting sector.

D. CPABC POSITION / RECOMMENDATIONS

101. CPABC previously stated its position in response to the recommendations set out in the McGuire Report in its written response to that report.[91]

102. In addition to those previous submissions, CPABC provides the following further comments:

i. Scope of Canada's AML Regime and Unregulated Accountants

103. CPABC does not support the extension of the existing federal AML regime to all FATF-specified accounting services. The FATF-specified accounting services include activities that do not interact with the financial system and therefore do not fit well within the Canadian AML regime, such as audit and assurance services.

104. With respect to the McGuire Report's reference to audit engagements specifically, CPABC notes that those engagements are highly regulated in Canada, with additional oversight provided by CPAB and/or the PCAOB for CPA firms engaged

[90] CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 91.
[91] CPABC Review of McGuire Report on Accountants, Exhibit 403, pp. 18-23.

in audits of public companies or reporting issuers.[92] As addressed in more detail in CPA Canada's submissions, there is no reason to extend the FINTRAC regime to audit and assurance engagements.

105. However, CPABC supports the recommendation to amend Canada's AML regime to have reporting be based on an individual's performance of triggering activities regardless of whether or not they hold the CPA designation.[93]

106. This change would be consistent, for example, with the approach taken in New Zealand's AML regime, which is based on activities performed, not professional designation. Gary Hughes highlighted this in his evidence, stating:[94]

> It's not like you're a reporting entity because you are an accountant or a lawyer. It depends on what services you provide. And it gives entities the option to reconsider whether it's worth them continuing to provide a particular service if it's high risk and carries a compliance burden.

107. The United Kingdom has similarly extended AML regulation to firms and individuals providing accounting services whose practice is not supervised by a professional regulatory body.[95]

108. Although CPAs only make up approximately one-third of individuals who identify themselves as "accountants" in BC, they are the only ones who may currently be subject to AML reporting requirements. The expansion of FINTRAC's regulatory oversight to cover unregulated accountants would significantly increase the reach of the AML regime in Canada and would manifestly be in the public interest.

109. To help facilitate the expansion of FINTRAC's regulatory oversight to unregulated accountants, CPABC is also supportive in principle of Mr. McGuire's

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[92] See par. 79 above.
[93] CPABC Review of McGuire Report on Accountants, Exhibit 403, response to pars. 86-88 and 90.
[94] Proceedings at Hearing of May 3, 2021, Evidence of Gary Hughes, p. 51.
[95] *UK national risk assessment of money laundering and terrorist financing* (Exhibit 33), pars. 6.39-6.40, 6.43.

recommendation to establish a registry of unregulated accountants who perform triggering activities under the *PCMLTFA*.[96]

ii. CPABC and FINTRAC

110. Oversight and compliance with Canada's AML regime as established by the *PCMLTFA* is principally the responsibility of FINTRAC.[97] Moreover, unlike the situation with lawyers, there is no constitutional gap in FINTRAC's regulatory authority that would require provincial CPA regulators to step in to duplicate FINTRAC's regulatory role *vis-à-vis* CPAs.

111. While the *CPA Act* does not give CPABC any specific AML mandate, CPABC has been and remains even more committed to ensuring that its members have regular access to information, education and resources to support them in complying with their obligations under the *PCMLTFA* and the CPABC Code.

112. CPABC is also very open to, and would welcome, greater opportunities for dialogue and collaboration with FINTRAC, similar to FINTRAC's relationship with organizations such as the Real Estate Council of BC (**"RECBC"**)[98] and the BC Financial Services Authority (**"BCFSA"**).[99]

113. For example, CPABC notes that FINTRAC's Memorandum of Understanding with RECBC allows FINTRAC to share information with RECBC regarding FINTRAC's compliance program and results of FINTRAC compliance actions regarding RECBC licensees.[100] Information such as this would be extremely helpful for CPABC to allow for targeted information and education programs to ensure that all members are aware of their *PCMLTFA* obligations.

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[96] CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 90.
[97] Overview Report (Exhibit 391), pars. 80-82.
[98] Memorandum of Understanding between RECBC and FINTRAC (March 2019) (**"RECBC MOU"**), Exhibit 615.
[99] Memorandum of Understanding between BCFSA's predecessor (Financial Institutions Commission) and FINTRAC (2005), Exhibit 419.
[100] RECBC MOU, Exhibit 615, s. 13.1.

114. There are statutory limitations on CPABC's ability to share certain information with third parties.[101] In particular, as noted above,[102] it would be incompatible with CPABC's role to disclose to FINTRAC client information obtained by CPABC on a confidential basis in the course of an investigation or practice review. CPABC would, however, be open to sharing limited information with FINTRAC, such as a list of firms registered with CPABC.[103]

115. CPABC would also welcome the opportunity to put on educational programs for its members and firms jointly with FINTRAC.

E. CONCLUSION

116. CPAs in British Columbia are effectively and thoroughly regulated by CPABC and FINTRAC, within their respective mandates under the *CPA Act* and the *PCMLTFA*.

117. CPABC is committed to continuing to support Canada's AML regime, and continuing to provide its members with timely AML information, resources, and educational opportunities. However, any further regulatory measures that might be considered necessary to address the risk of money laundering in BC or nationally in connection with the provision of accounting services should address unregulated accountants based on their performance of triggering activities, and should be situated in the FINTRAC regime.

118. CPABC will continue to be part of society's approach to combatting money laundering in BC through its membership in CPA Canada, participation in organizations such as CIFA-BC, and the provision of AML-related educational programs, resources, and support to its members and firms.

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[101] *CPA Act*, s. 69.
[102] See pars. 98-99 above.
[103] CPABC Review of McGuire Report on Accountants, Exhibit 403, response to par. 91.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Allen Soltan

Jason Herbert

Counsel for the Organization of Chartered Professional Accountants of British Columbia

July 9, 2021

In re A COMPANY'S APPLICATION

1989 Feb. 7 — Scott J.

Confidential Information—Breach of confidence—Public interest—Former employee of company providing financial services—Threat to disclose confidential information to regulatory body and revenue—No threat of disclosure to public—Whether company entitled to injunction

The plaintiff company carried on the business of providing financial advice and management to its clients in respect of their investment portfolios, its business therefore being subject to the regulatory scheme imposed by the Financial Investment Management and Broker's Regulatory Authority pursuant to the provisions of the Financial Services Act 1986. The defendant, until recently, had been employed by the company in a senior position, his duties including supervision of procedures and practices of the plaintiff in order to secure compliance with the regulatory scheme. In October 1988, the company gave the defendant a month's notice, effective from 1 November, but agreed that he would continue to act as a self-employed consultant, and would receive payment for his services. On 12 December 1988, a telephone conversation took place between the defendant and one of the company's chief executives which the plaintiff company interpreted as an attempt at blackmail, whereas the defendant contended that he had merely indicated his intention to seek compensation for unfair dismissal. The defendant also raised certain matters which in his view represented breaches of the regulatory scheme by the plaintiff or improprieties in regard to tax.

On the plaintiff's application for, inter alia, an interlocutory injunction restraining the defendant from disclosing to the regulatory body or to the revenue its confidential information or documents:—

Held, that an employee should not be inhibited from disclosing his employer's confidential information to a regulatory body that had the power to investigate whether the employers were complying with the regulatory scheme; that if the employee's allegations were baseless, no harm would be caused to the employer provided the employee neither disclosed the information to others nor informed others that he had made the allegations to the regulatory body; that similarly it was not contrary to public policy that an employee should disclose to the revenue his employer's confidential information concerning fiscal matters; that, accordingly, even if the defendant was motivated by malice, no injunction would be granted to prohibit disclosure of the plaintiff's confidential information to the regulatory body or information concerning fiscal matters to the revenue (post, pp. 481G—482E, 483F—484C).

The following case is referred to in the judgment:

Attorney-General v. Guardian Newspapers Ltd. (No. 2) [1988] 3 W.L.R. 776; [1988] 3 All E.R. 545, H.L.(E.)

No additional cases were cited in argument.

MOTION

By a notice of motion dated 20 January 1989, a company sought an order against a former employee, that he be restrained until after

judgment or further order in the meantime from doing (whether acting by himself his servants or agents or any of them or otherwise howsoever) the following acts or any of them without the consent in writing of the plaintiff company or its solicitors, namely, (1)(a) parting with the possession of (other than by delivering the same to the plaintiff or its solicitors), removing from the jurisdiction of the court, hiding, destroying, defacing, amending or altering any of the following "relevant things," that was to say, (i) all documents and articles the property of the plaintiff or to the possession of which the plaintiff was entitled, (ii) all documents and articles created by employees of the plaintiff or its predecessor in title (whether employed under a contract of service or under a contract for services) in the course of their employment, (iii) all documents and articles comprising information relating to the identity or affairs of the plaintiff's clients or of any client bank account of the plaintiff, and (iv) all documents and articles comprising a copy or abstract of any part of any document or article aforesaid; (b) disclosing to any person other than the plaintiff or its solicitors or to his professional legal advisors or using any information contained or comprised in any relevant thing, provided that it should not be a breach of the injunction to make and use an affidavit solely for the purposes of the present action; (c) directly or indirectly informing or notifying any person, company or firm of the existence of the present proceedings or of the provisions of the order, of the plaintiff's interest in the proceedings, or otherwise warning any person, company or firm that proceedings might be brought against him or her or it by the plaintiff otherwise than for the purpose of seeking legal advice from his lawyers. (2) That the defendant do forthwith make and swear and serve upon the plaintiff's solicitors an affidavit setting out so far as was known to him (a) the whereabouts of all relevant things which were in the defendant's possession, custody, power or control, (b) the names and addresses of all persons to whom the defendant had supplied any relevant thing, and identifying the thing and the date of supply. (3) That the defendant do deliver forthwith to the plaintiff's solicitors all relevant things which were in his possession, custody or power and if any such item existed in computer readable form only the defendant should cause it forthwith to be printed out and deliver the print out to the plaintiff's solicitors.

Scott J. made an order under section 4 of the Contempt of Court Act 1981, that the identity of the plaintiff company and of the defendant should not be revealed.

The facts are stated in the judgment.

Graham Shipley for the plaintiff company.
Mark Warby for the defendant.

The main submissions of counsel are set out in the judgment, post, pp. 479F—480A, H—481B, C–E, G–H, 482E–G, 483C–F).

SCOTT J. The plaintiff is a company that carries on business in the supply of financial advice and financial management of clients' investment portfolios. As it carries on business of that character, it is

A subject to the regulatory scheme imposed by the Financial Investment Management and Brokers' Regulatory Authority (F.I.M.B.R.A.), pursuant to the provisions of the Financial Services Act 1986.

The defendant was, until fairly recently, an employee of the plaintiff in a fairly senior position. He was, among other things, the compliance officer within the plaintiff, whose duty it was to supervise the procedures and practices of the plaintiff so as to secure compliance B with the regulatory requirements imposed from time to time by F.I.M.B.R.A.

I have been told, and it seems sensible, that F.I.M.B.R.A. is entitled at its discretion from time to time to make spot checks on companies subject to its regulatory umbrella for the purpose of ensuring compliance with its regulations. It follows therefore that the C details of the businesses carried on by these companies may at any time become known to F.I.M.B.R.A., and those acting on behalf of F.I.M.B.R.A. Of course it would be expected, and it may for all I know be expressly so provided, that any details which come to the attention of F.I.M.B.R.A. in the discharge of its regulatory role would be kept confidential by F.I.M.B.R.A.

In October 1988, the plaintiff gave the defendant a month's notice, D effective from 1 November 1988. However, it was agreed, in circumstances which are not entirely without dispute, that the defendant would not sever entirely his connection with the plaintiff but would act as a self-employed consultant in connection with the business of the plaintiff. He would, I suppose it was envisaged, continue to introduce clients to the plaintiff and would receive some E form of remuneration for his services.

For a time, following the cessor of his employment with the plaintiff, the defendant acted in that self-employed capacity. In the course of so acting, it was natural that he would have in his possession documents containing confidential information about the plaintiff, its clients and its business and which were the property of the plaintiff.

On Monday, 12 December 1988 a telephone conversation took F place between the defendant and a senior executive, who is either the chief executive or one of the chief executives of the plaintiff. The content of that telephone conversation and the detail of what passed between the two men is in dispute. It is alleged on behalf of the plaintiff that the defendant sought to extract from the plaintiff the sum of £10,000 under threat that if he were not paid that sum he G would report the plaintiff to F.I.M.B.R.A. for breaches of the F.I.M.B.R.A. regulations and to the Inland Revenue for misfeasances on the part of some of the directors of the plaintiff and some of its clients in respect of their obligations under the Taxes Acts. In short, blackmail is alleged.

The defendant denies that there was any blackmailing attempt at all. He contends that he indicated his intention to seek compensation H for unfair dismissal, and indicated that he thought £10,000 was the right amount for him to receive. He then, he says, went on to raise with the senior executive of the plaintiff, various misfeasances in connection with the plaintiff's carrying on of business which

represented, in his view, breaches of the F.I.M.B.R.A. regulations and improprieties in regard to tax.

So while there is some agreement as to the matters referred to in the course of this telephone conversation, the parties are miles apart as to the tenor and the implications of what was said.

The plaintiff concluded that in order to make the disclosures to F.I.M.B.R.A. and to the tax authorities that had been threatened, the defendant would be making use of confidential information and confidential documents. An ex parte application was therefore made for injunctions to restrain any disclosure based upon confidential information or confidential documents and for an *Anton Piller* order entitling the plaintiff by its solicitors and representatives to attend the defendant's home and remove all the plaintiff's documents there found as well as documents which those searching might reasonably believe to be the plaintiff's documents.

An order to that effect was made by Knox J. on 14 December. The hearing before me is the inter partes hearing of the plaintiff's application for a continuance of the ex parte interlocutory relief granted by Knox J. There is also before me an application by the defendant to have the ex parte order set aside on the ground that it was obtained by inadequate disclosure and misrepresentation, and for an inquiry as to the damage caused to the defendant by that order. It is agreed that the defendant's application shall stand over until trial. It is not possible, as is realistically accepted by Mr. Warby on behalf of the defendant, for the defendant to establish at this interlocutory stage that the order made by Knox J. was improperly obtained.

I omitted to say, but it is perhaps implicit in what I have said, that the *Anton Piller* order was executed shortly after it was granted. A volume of documents was removed from the defendant's house by those executing the search. They included some documents which it is now accepted were not the plaintiff's documents but were the defendant's documents. Those have been returned. A number of the documents removed from the defendant's premises are documents as to which there is no question but that they are the plaintiff's documents. Any question as to the impropriety of the defendant having them in his possession must await trial, and one of the matters before me today is an application by the plaintiff under R.S.C., Ord. 14 for final judgment in respect of those documents. As I understand it, agreement has been reached between Mr. Shipley, for the plaintiff, and Mr. Warby, for the defendant, as to what order I should make on that application.

The final matter outstanding before me with which I must deal in this judgment concerns the question as to what if any negative injunction should, pending trial or further order, be made against the defendant for the purpose of restraining him from making any use of confidential documents or of confidential information. The motion is argued before me at a stage when, commendably, a statement of claim and a defence thereto have already been served. The defendant has therefore specified in his defence what use he proposes to make

of such confidential information or copies of confidential documents as he may have in his possession.

He denies, of course, that he made any attempt at blackmail in the course of the telephone conversation to which I have referred, but he accepts that he did indicate on that occasion his intention to communicate information to F.I.M.B.R.A. and to the Inland Revenue, and in his defence he repeats and to some extent amplifies, that intention.

I am therefore, on this interlocutory application, faced with the need to consider the extent to which it would be right to grant an interlocutory injunction to restrain the defendant from making communications to F.I.M.B.R.A., the regulatory authority, of alleged breaches by the plaintiff of F.I.M.B.R.A. regulations, or communications to the Inland Revenue of alleged improprieties in respect of tax concerning some of the plaintiff's directors and clients.

Mr. Shipley, for the plaintiff, has suggested that I ought to grant a full injunction against the defendant restraining any use of confidential documents or confidential information pending trial, subject only to an undertaking by the plaintiff itself to place before F.I.M.B.R.A. and the Inland Revenue respectively such documents as it may have relating to the specific matters identified by the defendant in his affidavits or defence as being, in his view, matters which merit investigation.

I do not think, however, that that is the right approach. I must ask myself what cause of action the plaintiff is pursuing in seeking this interlocutory relief. The case has been based by Mr. Shipley on the duty of confidentiality that undoubtedly was owed by the defendant to the plaintiff in the course of and arising out of his employment. It is easy to agree that details about the plaintiff's clients' personal affairs should be regarded as confidential information and should be so treated by all the plaintiff's employees.

If this were a case in which there were any question or threat of general disclosure by the defendant of confidential information concerning the way in which the plaintiff carries on its business or concerning any details of the affairs of any of its clients, there could be no answer to the claim for an injunction; but it is not general disclosure that the defendant has in mind. He has in mind only disclosure to F.I.M.B.R.A., the regulatory authority, and, in relation to a particular case that he has identified in his affidavit, the Inland Revenue. I ask myself whether an employee of a company carrying on the business of giving financial advice and of financial management to members of the public under the regulatory umbrella provided by F.I.M.B.R.A. owes a duty of confidentiality that extends to barring disclosure of information to F.I.M.B.R.A.

It is part of the plaintiff's case, although not essential to its confidential information cause of action, that the defendant in communicating with F.I.M.B.R.A. will be motivated by malice. The defendant's professed intention is, in the plaintiff's view, associated with the blackmail attempt made by the defendant. At the present stage, and until cross-examination, I must accept that that may be

true. It is not necessarily true. The defendant's explanation may be a genuine one. But the plaintiff's case may be true. It may be the case that the information proposed to be given, the allegations proposed to be made by the defendant to F.I.M.B.R.A., and for that matter by the defendant to the Inland Revenue, are allegations made out of malice and based upon fiction or invention.

But if that is so, then I ask myself what harm will be done. F.I.M.B.R.A. may decide that the allegations are not worth investigating. In that case, no harm will have been done. Or F.I.M.B.R.A. may decide that an investigation is necessary. In that case, if the allegations turn out to be baseless, nothing will follow the investigation. And if harm is caused by the investigation itself, it is harm which is implicit in the regulatory role of F.I.M.B.R.A. It may be that what is put before F.I.M.B.R.A. includes some confidential information. But that information would, as it seems to me, be information which F.I.M.B.R.A. could at any time obtain by the spot checks that it is entitled to carry out. I doubt whether an employee of a financial services company such as the plaintiff owes a duty of confidence which extends to an obligation not to disclose information to the regulatory authority F.I.M.B.R.A.

So far as the Inland Revenue is concerned, the point is a narrower one. The Inland Revenue is not concerned in any general way with the business of a financial services company. It is concerned with tax. It is concerned with assets, with capital and income. If confidential details which did not relate to fiscal matters were disclosed to the Inland Revenue, that would, in my opinion, be as much a breach of the duty of confidentiality as the disclosure of that information to any other third party. But if what is disclosed to the Inland Revenue relates to fiscal matters that are the concern of the Inland Revenue, I find it difficult to accept that the disclosure would be in breach of a duty of confidentiality.

Mr. Shipley submitted that it was for me now, in this interlocutory application, to conduct some sort of preliminary investigation into the substance of the allegations proposed to be made by the defendant to F.I.M.B.R.A. and to the Inland Revenue respectively, for the purpose of deciding whether there was any case warranting investigation either by F.I.M.B.R.A. or by the Inland Revenue. I am unable to accept that that is a proper function for me to discharge.

Mr. Shipley supported his submission by referring me to a part of the speech made by Lord Keith of Kinkel in *Attorney-General v. Guardian Newspapers Ltd. (No. 2)* (the *Spycatcher* case) [1988] 3 W.L.R. 776. Lord Keith of Kinkel said, at p. 787:

> "As to just cause or excuse it is not sufficient to set up the defence merely to show that allegations of wrongdoing have been made. There must be at least a prima facie case that the allegations have substance."

But that remark was in the context of a disclosure threatened to be made to the world at large, a disclosure which would have taken place in the national press. Where the disclosure which is threatened is no

more than a disclosure to a recipient which has a duty to investigate matters within its remit, it is not, in my view, for the court to investigate the substance of the proposed disclosure unless there is ground for supposing that the disclosure goes outside the remit of the intended recipient of the information.

In the present case, in my opinion, it is for F.I.M.B.R.A. on receiving whatever information the defendant puts before it, to decide whether there is a matter for investigation. If there is not then I cannot see that any harm has been done to the plaintiff. If there is, then it is right for F.I.M.B.R.A. rather than the court to investigate. Similarly, it is not for the court but for the Inland Revenue, if information is placed before them by the defendant, to decide whether there is material that warrants investigation or explanation.

Mr. Shipley suggested that if the allegations were insubstantial and based on moonshine harm would flow in that management of the plaintiff would have to spend time in dealing with the investigations. That, of course, presupposes that at least the allegations would have sufficient substance to prompt some investigation. He suggested also—and this I thought had more substance—that public knowledge that investigations into the plaintiff were being conducted by F.I.M.B.R.A. or the Inland Revenue would damage its credibility and injure it in its business prospects.

It was not suggested that public knowledge of an investigation would come about through any lack of discretion on the part of F.I.M.B.R.A. or the Inland Revenue. It is, however, feared that the defendant—be it remembered that the plaintiff regards him as maliciously motivated—might spread around the story of the investigations that he had prompted. I thought, when this point was raised by Mr. Shipley, that it might well be right to impose an injunction on the defendant restraining him, in the event that he does provide information to F.I.M.B.R.A. or to the Inland Revenue, from communicating to anyone other than to his legal advisers the fact that he has done so. I was anticipated, however, by Mr. Warby who offered an undertaking on the part of the defendant that he would not disclose publicly the fact that he had placed information before F.I.M.B.R.A. or the Inland Revenue or that in consequence thereof any investigation was continuing.

I think it would be contrary to the public interest for employees of financial services companies who thought that they ought to place before F.I.M.B.R.A. information of possible breaches of the regulatory system, or information about possible fiscal irregularities before the Inland Revenue, to be inhibited from so doing by the consequence that they might become involved in legal proceedings in which the court would conduct an investigation with them as defendants into the substance of the information they were minded to communicate.

If it turns out that the defendant's allegations are groundless and that he is motivated by malice then, as it seems to me, he will be at serious risk of being found liable in damages for defamation or malicious falsehood. But that is for the future. The plaintiff's application before me for an injunction is based on the proposition

that the disclosure by the defendant of the information will be in breach of his duty of confidence. In my judgment, however, the defendant's undoubted duty of confidence does not extend so as to bar the disclosures to F.I.M.B.R.A. and the Inland Revenue of matters that it is the province of those authorities to investigate.

Accordingly I propose to grant an injunction in the form sought in paragraph 1 of the plaintiff's notice of motion but to qualify the injunction so as not to apply to communications made by the defendant either to F.I.M.B.R.A. or to the Inland Revenue in respect of the matters identified in his defence. I propose also to accept the undertaking offered by the defendant not to reveal to anyone other than to his legal advisers the fact that he has made these communications to F.I.M.B.R.A. or to the Inland Revenue. These orders will be until trial or further order in the meantime. I would expect that it would be possible for counsel, Mr. Shipley and Mr. Warby, to draw up a suitable injunction to give effect to what I have decided.

Order accordingly.
Costs in cause.

Solicitors: Gouldens; Hammond Suddards, Leeds.

T. C. C. B.