

**COMMISSION OF INQUIRY
INTO MONEY LAUNDERING IN BRITISH COLUMBIA**

**REPLY SUBMISSIONS
OF THE GOVERNMENT OF CANADA**

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TABLE OF DEFINITIONS

As used herein, the following terms shall be defined as follows:

TERM	DEFINITION
2015 NIRA	2015 National Inherent Risk Assessment
ACE	Anti-Money Laundering Action, Coordination and Enforcement
AML	Anti-Money Laundering
AMP	Administrative Monetary Penalties
ATF	Anti-Terrorist Financing
ATM	Automated Teller Machine
BCFSA	BC Financial Services Authority
BCLC	British Columbia Lottery Corporation
BCREA	British Columbia Real Estate Association
BCSC	British Columbia Securities Commission
BC	British Columbia
Canada	Government of Canada
CARM	CBSA Assessment and Revenue Management
CBCA	Canada Business Corporations Act
CBSA	Canada Border Services Agency
CFO	Civil Forfeitures Office
CFSEU	Combined Forces Special Enforcement Unit
CIF	Counter Illicit Finance Initiative
CIFA-BC	Counter Illicit Finance Alliance
CISBC/YT	Criminal Intelligence Service British Columbia and Yukon Territory
CISC	Criminal Intelligence Service Canada
CMAA	Customs Mutual Assistance Agreements
CMHC	Canada Mortgage and Housing Corporation
CPA	Chartered Professional Accountant
CRA	Canada Revenue Agency
CREA	Canadian Real Estate Association
CROPS	Criminal Operations

TERM	DEFINITION
CSIS	Canadian Security Intelligence Service
DOJ	Department of Justice
DRAP	Deficit Reduction Action Plan
FAMG	Forensic Accounting Management Group
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
FC3	Financial Crime Coordination Centre
Federal Regime	Canada's AML/ATF regime
FINA	House of Commons Standing Committee on Finance
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FIU	Financial Intelligence Units
FLSC	Federation of Law Societies Canada
FRFI	Federally Regulated Financial Institutions
FSOC	Federal Serious and Organized Crime
GAC	Global Affairs Canada
GDP	Gross Domestic Product
GIG	Gaming Integrity Group
GIIU	Gaming Intelligence and Investigation Unit
GIU	Gaming Intelligence Unit
GPEB	Gaming Policy and Enforcement Branch
GCGC	Great Canadian Gaming Corporation
IIGET	Integrated Illegal Gaming Enforcement Team
IMET	Integrated Market Enforcement Team
IMLIT	Integrated Money Laundering Investigative Team
IPOC	Integrated Proceeds of Crime
ISED	Innovation, Science and Economic Development Canada
JIGIT	Joint Illegal Gaming Investigation Team
LCTR	Large Cash Transaction Report
ML	Money Laundering
MOU	Memorandum of Understanding

TERM	DEFINITION
MSB	Money Services Businesses
NCIE	National Criminal Intelligence Estimate
NHQ	National Headquarters
OCG	Organized Crime Group
OSFI	Office of the Superintendent of Financial Institutions
PCMLTFA	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17</i>
PCMLTF Regulations	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184</i>
PCMLTF STR Regulations	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations, SOR/2001-317</i>
PEP	Politically Exposed Person
POC	Proceeds of Crime
PPSC	Public Prosecution Service of Canada
PS	Public Safety
PSB	Policing and Security Branch
PSPC	Public Services and Procurement of Canada
PSSG	Public Safety and Solicitor General
RCMP	Royal Canadian Mounted Police
RECBC	Real Estate Council of British Columbia
SBML	Service Based Money Laundering
SCC	Supreme Court of Canada
SIU	Sensitive Investigations Unit
SPMD	Seized Property Management Directorate
SROI	Social Return On Investment
STR	Suspicious Transaction Report
TBML	Trade-Based Money Laundering
TF	Terrorist Financing
TNOC	Transnational Organized Crime
TOR	Terms of Reference
VPD	Vancouver Police Department

TERM	DEFINITION
VIR	Voluntary Information Records
WLATM	White Label Automated Teller Machine

OVERVIEW

1. Canada is grateful for the opportunity to reply to the closing submissions filed by non-gaming participants in the Cullen Commission of Inquiry (the “Commission”) on July 9, 2021. Canada also looks forward to providing a reply to the submissions of the gaming participants when they are filed in the coming months.
2. Canada’s reply to the Closing Submissions of the Attorney General of British Columbia (“Province”), the British Columbia Real Estate Association (“BCREA”), the British Columbia Civil Liberties Association (“BCCLA”), the Chartered Professional Accountants of British Columbia (“CPABC”) and the Chartered Professional Accountants of Canada (“CPAC”), as well as the Coalition of Transparency International Canada, Canadians for Tax Fairness, and Publish What You Pay Canada (“Coalition”) are set out below. The lack of an express response in this reply to other assertions made by these participants, or assertions made by other participants who filed closing submissions, should not be interpreted as Canada’s agreement with the facts set out in those submissions. Rather, it indicates Canada’s assessment that they do not require a formal response other than what is set out in Canada’s Closing Submissions.

A. ATTORNEY GENERAL OF BRITISH COLUMBIA

3. At paragraph 26 of their closing submissions, the Province notes that FINTRAC has provided information to the Real Estate Council of British Columbia (“RECBC”). For clarity, FINTRAC and RECBC signed a memorandum of understanding in 2019 that establishes a framework within which FINTRAC and RECBC can share compliance-related information in accordance with subsection 65(2) of the PCMLTFA.¹ RECBC is not a disclosure recipient listed in s. 55(3) of the PCMLTFA and, therefore, cannot receive financial intelligence from FINTRAC.

4. Contrary to the assertion in paragraph 28 of the Province’s closing submissions, both real estate agents (referred to in the legislation as “real estate sales representatives”) and real estate brokers are designated reporting entities and are required to comply with obligations under Part 1 of the PCMLTFA, including filing suspicious transaction reports.² Additionally, as of June 1, 2021, real estate sales representatives and brokers are both required to take measures to establish the source of a person’s wealth if that person has been determined to be a politically exposed person (“PEP”), or a family member or close associate of a PEP. Real estate sales representatives and brokers must also take measures to establish the source of funds if they receive \$100,000 or more from a PEP or family member of close associate of a PEP.³

5. As noted in paragraph 41 of the Province’s closing submissions, real estate professionals and other reporting entities are now required to verify beneficial ownership information of their corporate clients. However, this change is the result of amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* that came

¹ Transcript of FINTRAC Real Estate Panel, March 12, 2021 [at 78:13-15](#); Ex: 733: FINTRAC Annual Report – November 17, 2020 [**“FINTRAC Annual Report”**] [at 19](#).

² *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [**“PCMLTF Regulations”**], [s. 53](#); *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c 17 [**“PCMLTFA”**], [s. 5\(i\)](#).

³ PCMLTF Regulations, [ss. 120.1, 122.1](#).

into force on June 1, 2021, not amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.⁴

6. At paragraph 91 of their closing submissions, the Province describes the December 2017 agreement in principle made by federal, provincial, and territorial Ministers to strengthen beneficial ownership transparency (the “FPT Agreement”). The Province describes the two phases contemplated by the FPT Agreement, noting that the phases require companies to keep certain beneficial ownership information and provide it to a government-maintained registry. For clarity, the FPT Agreement did not require jurisdictions to implement a government-maintained beneficial ownership registry. Rather, the Ministers agreed to “continue existing work assessing potential mechanisms to enhance timely access by competent authorities to beneficial ownership information.”⁵

7. The Province’s submissions regarding the obligations of money services businesses (“MSBs”) under the PCMLTFA contain inaccuracies. MSBs, which may include businesses operating Bitcoin ATMs,⁶ are required to report to FINTRAC any transactions of \$10,000 or more,⁷ not transactions over \$1,000 as submitted by the Province.⁸ MSBs are required to keep records in relation to certain transactions of \$1,000 or more.⁹

8. At paragraph 136 of their closing submissions, the Province states that new federal initiatives, including the Trade-Based Money Laundering Centre of Expertise (“TMBL COE”), the Financial Crime Coordination Centre (“FC3”), and Integrated Money Laundering Investigative Teams (“IMLITs”), will not resolve federal capacity issues. In support of this claim, the Province relies on the evidence of Wayne Rideout and Garry Clement.¹⁰

⁴ PCMLTF Regulations, [s. 138](#); [Regulations Amending Certain Regulations Made Under the Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act, 2019: SOR/2019-240, ss. 25-26](#).

⁵ [Ex. 304: Finance Canada, Agreement to Strengthen Beneficial Ownership Transparency, July 11, 2019 \(MOF2327\)](#).

⁶ PCMLTF Regulations, [s. 1\(2\)](#) definition of “money services business”; PCMLTFA, [s. 5\(h\)](#).

⁷ PCMLTF Regulations, [s. 30\(1\)\(a\)](#).

⁸ Her Majesty the Queen in Right of the Province of British Columbia [“HMTQBC”] Closing Submissions, para 106.

⁹ PCMLTF Regulations, [s. 36\(c.1\)-\(h\)](#).

¹⁰ HMTQBC Closing Submissions, para 136 and footnote 310.

9. Mr. Rideout’s testimony referred only to the FC3’s predecessor, the Action, Coordination and Enforcement (“ACE”) Team, not to the FC3 itself. Detailed evidence regarding the mandate, structure, and resourcing of FC3 was presented to the Commissioner in the form of an affidavit affirmed by Lesley Soper Director-General in the National and Cyber Security Branch of Public Safety Canada.¹¹ This affidavit was filed with the Commission on May 14, 2021, after both Mr. Rideout and Mr. Clement testified.

10. Ms. Soper’s affidavit describes the policy support, training support, and operational support that FC3 intends to provide to anti-money laundering (“AML”) operational partners, including law enforcement and public agencies across all levels of government, in order to help improve those partners’ capacity to combat money laundering (“ML”) and financial crime.¹² Specifically, Ms. Soper’s affidavit explains that FC3’s training support function is intended to support the development of financial crime enforcement-specific knowledge, skills and expertise among AML operational partners. To achieve this objective, FC3 intends to widen access among partners to existing financial crime training and to consult with partners in order to identify gaps in financial crime enforcement knowledge and skills, then work with partners to develop additional training that addresses those gaps.¹³

11. In addition, Mr. Rideout did not provide any testimony regarding the basis for his opinion about the ability of the TBML COE and the ACE Team to resolve federal capacity issues. More specifically, Commission counsel asked Mr. Rideout whether he believed that the TBML COE, IMLITs, and the ACE Team, would, in his view, resolve federal capacity concerns.¹⁴ Mr. Rideout simply responded “no.”¹⁵ When asked to elaborate, Mr. Rideout provided a brief explanation of his understanding of the resources announced as part of the IMLITs.¹⁶

¹¹ Ex. 1019: Affidavit of Lesley Soper, affirmed on May 11, 2021 [[“Soper Affidavit”](#)].

¹² Ex. 1019: Soper Affidavit [at paras 13](#) and [15-24](#).

¹³ Ex. 1019: Soper Affidavit [at para 20](#).

¹⁴ Transcript of Provincial Policing Panel, April 6, 2021 [[“Provincial Policing Panel Transcript”](#)] [at 123:22 to 124:6](#).

¹⁵ Provincial Policing Panel Transcript [at 124:7](#).

¹⁶ Provincial Policing Panel Transcript [at 124:8 to 125:7](#).

12. The TBML COE was designed to “strengthen capacity at the Canada Border Services Agency and [FINTRAC]” to target growing financial crime threats related to trade-based money laundering (“TBML”).¹⁷ As noted at paragraph 51 of Canada’s Closing Submissions, the TBML COE provides the CBSA with intelligence and investigative staff across the country who work on trade fraud and TBML files.¹⁸ The TBML COE also collaborates with and provides support (including intelligence leads) to FINTRAC, RCMP, and the CRA.¹⁹ Through this collaboration, the intelligence leads developed by the TBML COE support TBML-related investigations and, ultimately, prosecutions conducted by the PPSC.²⁰

13. Mr. Clement did not identify any specific federal initiative in the portion of his testimony relied upon by the Province. He testified as to his view that in order for a “provincial unit” to be highly effective in addressing transnational organized crime, it would need to be tied in some way to the RCMP or another federal organization.²¹ He noted his opinion that “some of the announcements that have been made in the RCMP or by the Government of Canada” would be failures.²² Mr. Clement’s opinion is not based on direct knowledge about the planning and operation of these federal initiatives; he retired from the RCMP in 2003, and he has not held any role with a federal department since that time.²³

14. In any event, the opinions of Mr. Rideout and Mr. Clement go directly to the operation and management of federal entities and departments, such as the RCMP and Public Safety. As set out in Canada’s Closing Submissions, Canada’s view is that it is constitutionally impermissible for the Commissioner to opine on the federal government’s resourcing decisions or its setting of priorities. It is also beyond the Commissioner’s jurisdiction to recommend changes to these federal initiatives.

¹⁷ Ex. 339: Overview Report: Trade-Based Money Laundering Publications and Records [“**OR – TBML Records**”], Appendix H [at 199](#).

¹⁸ Canada Closing Submissions at para 51; Ex. 339: OR – TBML Records, Appendix R [at 15](#).

¹⁹ Canada Closing Submissions at para 51; Ex. 339: OR – TBML Records, Appendix DD [at 16](#).

²⁰ Ex. 339: OR – TBML Records, Appendix R [at 14](#).

²¹ Transcript of Enforcement Expert Panel, April 9, 2021 [“**Enforcement Expert Panel Transcript**”] [at 129:10 to 130:8](#).

²² Enforcement Expert Panel Transcript [at 129:23 to 130:2](#).

²³ [Ex. 825: Curriculum Vitae of Garry Clement](#).

B. BC REAL ESTATE ASSOCIATION

15. At paragraph 17(3) of their Closing Submissions, the BCREA recommends that the federal government amend the PCMLTFA to allow FINTRAC intelligence to be made available to additional regulatory authorities, including the BC Securities Commission and the Financial Institutions Commission (FICOM). To clarify, FINTRAC already can and does provide financial intelligence to the BC Securities Commission pursuant to section 55(3)(g) of the PCMLTFA, which identifies “the agency or body that administers the securities legislation of a province” as a designated disclosure recipient.²⁴

C. BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

16. Canada agrees with the BCCLA that AML/ATF measures must respect the rights and freedoms protected by the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). As set out in Canada’s Opening Statement, the Federal Regime, including the PCMLTFA, strives to balance the privacy rights of Canadians with robust AML/ATF measures.²⁵

17. Canada’s commitment to this balance was reiterated by a number of federal witnesses who testified before the Commission.²⁶ It is also reflected in a number of Canada’s documents entered as exhibits before the Commission, including the May 2021 “Overview of Canada’s AML/ATF Regime for the Commission of Inquiry into Money Laundering in British Columbia”, that emphasizes the importance of protecting the *Charter* rights of all Canadians in combatting ML and TF: “[t]he Regime balances safeguarding the integrity of Canada’s financial system, ensuring the safety and security of Canadians, and respecting Canadian individual rights and freedoms, including privacy rights.”²⁷

²⁴ PCMLTFA, [s. 55\(3\)\(g\)](#).

²⁵ Commission of Inquiry into Money Laundering in British Columbia, Opening Statement of the Government of Canada, February 21, 2020 at paras 8, 61, 63-65, 149, 154, 207-208.

²⁶ Transcript of STC Panel, March 11, 2021 [**“STC Panel Transcript”**] [at 125:16 to 127:17](#), [152:9 to 153:14](#), [155:1 to 158:19](#), [159:17 to 160:12](#), [181:11 to 182:4](#), and [188:12 to 189:8](#); Ex. 703: Work Stream 1 Feasibility Study, December 9, 2020 (CAN-001758) [**“WS1 Feasibility Study”**] [at 6](#), [9](#), [13-14](#); Transcript of CIFA-BC Panel, April 14, 2021 [**“CIFA-BC Panel Transcript”**] [at 160:11-24](#); Transcript of M. Nettleton, January 18, 2021 [at 77:23 to 78:13](#), [79:4-13](#), and [81:5-23](#); Transcript of TBML Panel, December 10, 2020 [at 140:1 to 141:1](#); Transcript of CISC/CISBC Panel, June 9, 2020 [**“CISC/CISBC Panel Transcript”**] [at 15:19 to 16:34](#).

²⁷ Ex. 1019: Soper Affidavit, Exhibit B [at 3](#).

18. However, the BCCLA's submissions go beyond pointing out the importance of protecting *Charter* rights and freedoms. The BCCLA's Closing Submissions include assertions that federal entities have engaged or are engaging in unconstitutional activity and effectively ask the Commission to make legal findings with respect to the constitutionality of certain federal AML measures. The mandate and jurisdiction of the Commission does not extend to inquiring into the constitutionality of federal legislation, policies, or AML activities undertaken by federal entities. While Canada vigorously disputes the assertions made by BCCLA, our primary submission is that it would be inappropriate for the Commissioner to inquire into and render judgment on these claims.

19. In any event, the BCCLA's submissions mischaracterize the testimony of numerous federal witnesses and do not provide the Commission with the full context of the evidence in respect of certain federal matters. Set out below is Canada's response to the significant factual inaccuracies in the BCCLA Closing Submissions with respect to federal entities, legislation, and AML activities.

20. In paragraph 21 of their Closing Submissions, the BCCLA overstates the evidence of a senior prosecutor with the Public Prosecution Service of Canada ("PPSC") who was interviewed by Commission counsel outside of the hearing process.²⁸ The BCCLA submits that the PPSC believes it receives fewer ML and proceeds of crime referrals from law enforcement due to the introduction of a civil forfeiture regime.²⁹ However, the answer provided by the PPSC was more nuanced:

The number of cases provided to a prosecution service in any subject area reflects the priorities of law enforcement" and merely agreed that "[i]t is possible that the number of money laundering files referred for prosecution has been impacted by the civil forfeiture regime in BC. The police may be taking advantage of the availability of civil forfeiture and some potential cases may not ultimately be referred for prosecution" (emphasis added).³⁰

21. The PPSC's response evokes the possibility that civil forfeiture may have impacted the number of ML referrals in BC. The BCCLA's statement that the PPSC believes the low

²⁸ Ex. 1015: Overview Report on the Prosecution of Money Laundering and Proceeds of Crime Offences ["**OR – Prosecution of MLPC Offences**"], [Appendix F](#).

²⁹ British Columbia Civil Liberties Association ["**BCCLA**"] Closing Submissions, para 21.

³⁰ Ex. 1015: OR – Prosecution of MLPC Offences, Appendix F [at 5](#).

number is due to the introduction of civil forfeiture attributes a causal relationship between civil forfeiture and ML referrals that is not reflected in the PPSC's answer.

22. In the same paragraph, the BCCLA implies that the PPSC believes law enforcement use civil forfeiture “as a shortcut to avoid conducting a proper criminal investigation.”³¹ However, the PPSC's answer to Commission counsel's question notes that there are a number of factors that may impact the decision to refer or not to refer a matter for prosecution. While the PPSC posits that law enforcement may be taking advantage of the availability of the civil forfeiture regime, there is no suggestion that law enforcement is doing so in order to avoid criminal investigations of ML.

23. In paragraph 22, the BCCLA cite Dr. German for the proposition that civil forfeiture is over-utilized by law enforcement and prosecutors in BC and that this may result in civil forfeiture becoming a “dumping ground for ‘bad’ criminal cases”.³² The BCCLA's submissions do not reference contrary evidence from federal witnesses. For example, the Commission's Overview Report on the Prosecution of Money Laundering and Proceeds of Crime Offences in BC noted that the PPSC and the BC Civil Forfeiture Office have an understanding that criminal forfeiture has priority over civil forfeiture.³³ Similarly, several of Canada's witnesses highlighted that civil forfeiture is an avenue of last resort.³⁴ Sgt. Vickery testified that, “. . . I work in the proceeds of crime/money laundering course and we're always teaching as a matter of first resort is to go after the criminal investigation and go after those assets criminally. And when the investigation is completely exhausted, then yes, I do see a benefit of it going civilly.”³⁵ The evidence before the Commission from federal witnesses does not support the BCCLA's submissions on the use of the civil forfeiture regime by law enforcement.

³¹ BCCLA Closing Submissions, para 21.

³² BCCLA Closing Submissions, para 22.

³³ Ex. 1015: OR – Prosecution of MLPC Offences [at para 22](#).

³⁴ Transcript of M. Chizawsky, March 1, 2021 [at 143:13-19](#); Transcript of FSOC ML/IMET Panel, April 15, 2021, testimony of T. Farahbakhchian [at 104:3 to 106:8](#); Transcript of Supt. B. Taylor, April 16, 2021 [**Taylor Transcript**] [at 56:6-16](#), [60:1-22](#).

³⁵ Transcript of RCMP Virtual Assets Panel, November 23, 2020 [**Virtual Assets Panel**], testimony of Sgt. A. Vickery [at 158:3-10](#).

24. At paragraph 50 of their Closing Submissions, the BCCLA asserts that only a small fraction of the financial transaction reports received by FINTRAC result in actionable intelligence. In support of this assertion, the BCCLA say that FINTRAC disclosed only 2,057 financial transaction reports to law enforcement in 2019-2020, out of over 31 million reports received. While the number cited by BCCLA is correct, it refers to the number of financial intelligence disclosure packages provided by FINTRAC to law enforcement, not the number of individual financial transaction reports. A disclosure package may contain hundreds, if not thousands, of individual financial transaction reports.³⁶ The number cited by the BCCLA is not reflective of the actual number of reports that are analysed and/or included in a single disclosure package. In 2019-2020, 95% of the completed disclosure feedback forms received by FINTRAC indicated that the financial intelligence provided by FINTRAC was actionable.³⁷

25. At paragraph 51, the BCCLA cites the testimony of Barbara Mclsaac, Q.C. and the 2013 and 2017 audits of the Office of the Privacy Commissioner of Canada (“OPCC”) in support of their submission that FINTRAC has consistently failed to protect personal information. This submission overstates the findings of the OPCC audits. In 2013, notwithstanding the identification of some issues with the retention and disposition of information, the OPCC concluded that overall FINTRAC has sound controls in place to protect personal information.³⁸ Further, in 2017, the Privacy Commissioner concluded that FINTRAC had made significant efforts to enhance its personal information handling practices, resulting in further improvements to privacy protections.³⁹ It is also important to note that while Ms. Mclsaac acknowledged certain statements contained in the OPCC reports, she indicated that she had no knowledge of the steps FINTRAC may have taken since the 2017 audit to further enhance its protection of personal information.⁴⁰

³⁶ Ex. 733: FINTRAC Annual Report [at 8](#); Transcript of JIGIT Panel, April 7, 2021, Session 2 [“**JIGIT Transcript**”], testimony of S/Sgt. J. Hussey [“**J. Hussey**”] [at 101:13-22](#).

³⁷ Ex. 733: FINTRAC Annual Report [at 10](#).

³⁸ Ex. 320: OPCC – Financial Transactions and Reports Analysis Centre of Canada Audit Report of the Privacy Commissioner of Canada (2013) [at 29](#).

³⁹ Ex. 321: OPCC – Financial Transactions and Reports Analysis Centre of Canada Audit Report of the Privacy Commissioner of Canada (2017) [at 19](#).

⁴⁰ Transcript of B. Mclsaac, December 3, 2020 [“**Mclsaac Transcript**”] at 119-124 [at 119:1 to 121:20](#).

26. At paragraph 55 of their Closing Submissions, the BCCLA states that the Commission heard evidence “indicating that FINTRAC’s independence from law enforcement has already been jeopardized.” This statement is based on a misunderstanding of the statutory framework that permits FINTRAC to receive voluntary information records (“VIRs”) and that delineates the circumstances in which FINTRAC shall disclose information.

27. The BCCLA correctly notes that s. 54(1)(a) of the PCMTLFA authorizes FINTRAC to receive VIRs about suspicions of ML or the financing of terrorist activities. The BCCLA expresses concern that law enforcement agencies include requests for information from FINTRAC in some of the VIRs they submit. The BCCLA concludes that the inclusion of these requests jeopardizes FINTRAC’s independence from law enforcement. However, FINTRAC does not provide law enforcement with whatever information they may request.

28. Pursuant to s. 55(3) of the PCMTLFA, FINTRAC shall only disclose information to an appropriate law enforcement agency if FINTRAC has “reasonable grounds to suspect” that the information would be relevant to investigating or prosecuting a ML or terrorist activity financing offence.⁴¹ FINTRAC must “analyse and assess” the information provided in VIRs to determine if this suspicion threshold has been reached.⁴² Only if that threshold has been reached, shall FINTRAC disclose the information requested.

29. Beginning at paragraph 56 of their Closing Submissions, the BCCLA asserts that the Project Athena initiative undermined FINTRAC’s independence.⁴³ In support of their assertion, the BCCLA cite an infographic setting out sample information flows in Project Athena, as well as testimony of RCMP Sgt. Ben Robinson.⁴⁴ However, neither the infographic nor Sgt. Robinson’s testimony suggest that FINTRAC did not act independently throughout its involvement with the Project Athena initiative.⁴⁵ In fact, Sgt. Robinson

⁴¹ Ex. 738: FINTRAC Real Estate Sector Presentation, April 26, 2018 [at 20](#).

⁴² PCMTLFA, [ss. 54\(1\)\(c\)](#) and [55\(3\)](#).

⁴³ BCCLA Closing Submissions, paras 56, 60.

⁴⁴ BCCLA Closing Submissions, para 60.

⁴⁵ Ex. 840: Project Athena Stakeholders Meeting October 24, 2026 Redacted (CAN-000005) [**“Project Athena Powerpoint”**] [at 10](#); CIFA-BC Panel Transcript, testimony of B. Robinson [**“B. Robinson”**] [at 56:4-18](#).

specifically testified that FINTRAC independently makes the decision as to whether or not [information] meets the legislative threshold for disclosure to law enforcement.⁴⁶ Both Sgt. Robinson and Melanie Paddon explicitly did not agree that the information flows associated with Project Athena jeopardized FINTRAC's independence from law enforcement.⁴⁷ FINTRAC's mere involvement with the Project Athena initiative does not equate to a loss of independence.

30. The BCCLA also asserts that Project Athena was designed "to circumvent the *Charter* requirement to obtain a production order before accessing private financial information".⁴⁸ As set out in several exhibits, the purpose of the Project Athena public-private partnership was to address a ML scheme impacting BC casinos and to combat ML and other criminal activity.⁴⁹ Its objectives were to improve collective understanding of the ML threat, to inform and strengthen financial systems and controls, and to disrupt ML activities.⁵⁰ There is nothing in the testimony of Sgt. Robinson or Ms. Paddon that would substantiate the BCCLA's assertion. The BCCLA's assertion is based solely on the views of an unidentified speaker at a Project Athena meeting that are set out in meeting minutes taken by a third party.⁵¹

31. Contrary to the BCCLA's assertions at paragraphs 57-59 of their Closing Submissions, the evidence shows that Project Athena was a voluntary collaboration between private sector, law enforcement, government and regulatory bodies.⁵² Sgt. Robinson and Melanie Paddon each testified that financial institutions participated on a voluntary basis.⁵³ Sgt. Robinson's evidence was that "all participation is voluntary. [...] the

⁴⁶ Ex. 840: Project Athena Powerpoint [at 10](#); CIFA-BC Panel Transcript, B. Robinson [at 56:4-18, 162:1-9](#).

⁴⁷ CIFA-BC Panel Transcript [at 162:10-17](#).

⁴⁸ BCCLA Closing Submissions, para 60.

⁴⁹ Ex. 847: CIFA-BC Framework revised April 9, 2021 (CAN-001806) [**"CIFA-BC Framework"**] [at 5](#); Ex. 846: Investigational Planning and Report, Project Athena, February 13, 2020 [at 1](#); Ex. 840: Project Athena Powerpoint [at 9](#).

⁵⁰ Ex. 839: Presentation - Project Athena and CIFA-BC, April 2021 [**"PA/CIFA-BC Presentation"**] [at 5](#).

⁵¹ CIFA-BC Panel Transcript [at 159:5-12](#).

⁵² Ex. 847: CIFA-BC Framework [at 6](#); Ex. 839: PA/CIFA-BC Presentation [at 13](#); Ex. 840: Project Athena Powerpoint [at 9](#).

⁵³ CIFA-BC Panel Transcript [at 54:7 to 55:15, 154:12-24](#).

actions by the partners is [sic] at their own discretion.”⁵⁴ Law enforcement did not request financial institutions to conduct investigations. Financial institutions were asked only to confirm whether certain individuals held an account with their institutions and they were not obligated to provide this information.⁵⁵ Ms. Paddon testified that, “[s]ome banks would confirm if [clients] had an account, other ones wouldn’t...it was primarily based on being a voluntary agreement between all of us that they could do what they wished to do.”⁵⁶ Any additional steps taken by financial institutions were independent decisions made by those institutions.⁵⁷

32. In paragraph 57, the BCCLA overstates the evidence of Michael Bowman with respect to the concerns of individuals at TD Bank about Project Athena. The BCCLA submits that, “[s]ome individuals were concerned that Project Athena was effectively requiring them to act as an extension of law enforcement.”⁵⁸ However, Mr. Bowman’s answer to cross-examination questions from counsel for the BCCLA was far less conclusive and Mr. Bowman acknowledged that he did not have any direct experience with Project Athena prior to 2019.⁵⁹ While Mr. Bowman agreed that someone at TD Bank may have had concerns, he had no direct knowledge of these concerns and had not discussed them with his colleagues.⁶⁰

33. In paragraph 60 of their Closing Submissions, the BCCLA misrepresents the evidence of Sgt. Robinson with respect to the use of a Project Athena hashtag. The BCCLA asserts that reporting entities were expected to flag STRs filed in the context of Project Athena with #ProjectAthena, “making it even easier for law enforcement to obtain the

⁵⁴ CIFA-BC Panel Transcript [at 154:20-24](#).

⁵⁵ CIFA-BC Panel Transcript at [53:18 to 54:6](#), [154:5-11](#), [154:25 to 155:24](#), [158:10 to 159:1](#); Ex. 460: Email from Melanie Paddon re Project Athena June 2018 - August 14, 2018 (Redacted) (TD000071) [at 1](#); Ex. 463: Email from Melanie Paddon re Project Athena, January 2019 - March 21, 2019 (Redacted) (TD000426) [at 1](#); Ex. 472: Email from Melanie Paddon re Project Athena bank drafts for July 2018 - September 27, 2018 Redacted (TD000072) [at 2](#) [at 1](#).

⁵⁶ CIFA-BC Panel Transcript [at 55:7-15](#).

⁵⁷ CIFA-BC Panel Transcript [at 54:7-23](#), [161:17 to 162:9](#).

⁵⁸ BCCLA Closing Submissions, para 57.

⁵⁹ Transcript of M. Bowman, January 20, 2021 [“**Bowman Transcript**”] [at 149:22 to 150:6](#).

⁶⁰ Bowman Transcript [at 149:22 to 150:6](#).

information it wanted from banks without first obtaining a production order.”⁶¹ However, in response to questions on cross-examination by counsel for the BCCLA, Sgt. Robinson confirmed that the use of the hashtag was connected to an Operational Alert produced by FINTRAC and that the hashtag was intended to be included when indicators from that operational alert were observed.⁶² This Operational Alert “provides money laundering indicators that were observed in FINTRAC disclosures sent to law enforcement in relation to the initial focus of Project ATHENA: suspicious casino-related transactions, particularly those involving bank drafts, that are suspected to have roots in underground banking”.⁶³

34. Beginning at paragraph 62 of their Closing Submissions, the BCCLA discusses evidence from the BC-Canada Working Group on Real Estate. The BCCLA states that the Commission was presented with numerous proposals for “the creation of AML clearinghouses that would aggregate data from many sources and allow many bodies (including law enforcement) to access this data”, and they name the AML Data Framework proposed by Work Stream 1 of the BC-Canada Working Group on Real Estate as one example of such a proposal.⁶⁴ The BCCLA makes a number of generalized statements about the harms of “these proposals”, including concerns about “mass surveillance of financial and property transactions”, the co-opting of private parties to provide the state (including law enforcement) with access to private information, and the leveraging of “big data” to combat ML.⁶⁵ In doing so, the BCCLA implies that the AML data framework developed by Work Stream 1 gives rise to these concerns. However, the BCCLA’s characterization of this data framework is inconsistent with the evidence heard by the Commission and does not accurately portray the testimony of Canada’s witnesses with respect to privacy concerns.

⁶¹ BCCLA Closing Submissions, para 60.

⁶² CIFA-BC Panel Transcript, B. Robinson [at 52:6-14](#), [161:3-9](#); Ex. 839: PA/CIFA-BC Presentation [at 15](#).

⁶³ Ex. 839: PA/CIFA-BC Presentation [at 15](#); <https://www.fintrac-canafe.gc.ca/intel/operation/casino-eng.pdf>.

⁶⁴ BCCLA Closing Submissions, para 62.

⁶⁵ BCCLA Closing Submissions, paras 62-64.

35. Work Stream 1 did not advance a prescriptive policy proposal for a consolidated AML data hub. The Work Stream 1 ‘Feasibility Study’ was an exploratory exercise that resulted in the development of a conceptual AML data framework.⁶⁶ The Work Stream 1 Feasibility Study identified three broad potential operational models for an AML data framework: a centralized model, a hybrid model, and a distributed model.⁶⁷ The Feasibility Study recommended that, “a hybrid data model consisting of custodial and co-ordinating functions could support high-quality data on BC real estate for either strategic and/or tactical purposes and merits further consideration”.⁶⁸ In response to questions on cross-examination by counsel for the BCCLA, Haig McCarrell of Statistics Canada clarified that the proposed hybrid model could take many forms, which may or may not necessitate the centralization of data sources.⁶⁹ Ultimately, the Feasibility Study was intended to be a resource document for policy makers to use in subsequent discussions when considering how to utilize data for AML objectives.⁷⁰

36. Additionally, Canada’s witnesses repeatedly clarified that potential privacy and *Charter* impacts are essential considerations that would need to be fully canvassed by policymakers before implementing an AML data framework.⁷¹ During his cross-examination by the BCCLA’s counsel, Mr. McCarrell unequivocally stated that, “privacy is an important matter and [it should] be considered in any activities.”⁷² Mr. McCarrell further noted that where privacy rights are implicated, an important weighing must take place between access to the insights data may provide and the privacy impacts of collecting, consolidating, and analysing such data.⁷³ The importance of this balancing was also highlighted in the Feasibility Study’s Executive Summary:

While the potential of an AML data framework is demonstrated at the conceptual level, a thorough review of the practical implications in the context of existing

⁶⁶ STC Panel Transcript [at 144:20 to 145:16](#).

⁶⁷ STC Panel Transcript [at 127:18 to 128:5](#), [152:1 to 153:15](#), [190:6-20](#).

⁶⁸ Ex. 703: WS1 Feasibility Study [at 15](#).

⁶⁹ STC Panel Transcript, testimony of H. McCarrell [“**H. McCarrell**”] [at 189:9 to 190:20](#).

⁷⁰ STC Panel Transcript [at 154:3-25](#).

⁷¹ Ex. 703: WS1 Feasibility Study, [at 6](#), [9](#), [13-14](#); STC Panel Transcript [at 155:1 to 158:19](#), [159:17 to 160:12](#), and [188:12 to 189:8](#).

⁷² STC Panel Transcript, H. McCarrell [at 188:12 to 191:19](#).

⁷³ STC Panel Transcript, H. McCarrell [at 198:10 to 199:11](#).

legislation is necessary. As such a model requires the collection, integration, storage, and analysis of personal data stewarded by multiple data holders, **an equally extensive assessment of the legal compatibility and privacy impacts of such an approach is warranted** (emphasis added).⁷⁴

37. Canada's witnesses did not suggest that law enforcement should have unfettered access to information in AML data hubs for tactical purposes. The Feasibility Study Executive Summary noted the existing statutory restrictions on the sharing of personal information by federal entities.⁷⁵ The Feasibility Study also highlighted the need for separate privacy impact assessments to account for different intended uses of the data framework. Specifically, the Feasibility Study explained that the generation of aggregate results for strategic, policy uses may raise different legal and privacy implications than the generation of tactical insights to inform law enforcement actions.⁷⁶

38. Beginning at paragraph 90 of their Closing Submissions, the BCCLA relies on the evidence of the RCMP panel on virtual assets in support of a number of assertions about cryptocurrencies. However, these assertions are not entirely aligned with the panel's evidence.

39. First, the BCCLA's submissions do not differentiate between the different forms of virtual assets, the types of risks associated with each, and the different methods for their use. The RCMP panel carefully explained these distinctions during their testimony. When asked to discuss their law enforcement perspective on virtual assets, the panelists were measured in explaining the risks associated with virtual assets and they provided important caveats as needed.

40. For example, the BCCLA cites Sgt. Vickery's discussion of two documented, specific cases of misuse of bitcoin ATM machines as support for the proposition that "[m]any individuals have raised concerns that criminals will capitalize on virtual assets to conceal money laundering" (emphasis added).⁷⁷ This proposition does not reflect the balanced

⁷⁴ Ex. 725: Work Stream 1 - Data Collection and Sharing Work Stream Report Executive Summary, September 7, 2020 ["**WS1 Executive Summary**"] [at 10](#); see also page [14](#).

⁷⁵ Ex. 725: WS1 Executive Summary [at 11](#).

⁷⁶ Ex. 703: WS1 Feasibility Study [at 14](#); STC Panel Transcript [at 160:14 to 161:13](#).

⁷⁷ BCCLA Closing Submissions, para 90.

nature of Sgt. Vickery's testimony. In response to questions from Commission counsel, Sgt. Vickery provided a general overview of bitcoin ATMs and noted, without judgment, that they were simply one mode of exchange.⁷⁸ In her answer, she also testified at length about the positive aspects of these ATMs, including their ease of use, their legitimate use by operators and their importance to those who cannot use traditional banking mechanisms, while acknowledging their vulnerability for exploitation or misuse.⁷⁹ Commission counsel expressly noted Sgt. Vickery's balanced description.⁸⁰

41. This balanced perspective is also seen in the RCMP panel's testimony about the future use of virtual assets and blockchain technology. The panel explicitly recognized the positive potential of this technology. In response to a question about the adoption of cryptocurrency by a country or central banking agency, Sgt. Vickery testified that, "[c]ertainly the blockchain technology provides innovation and transparency that's never been available before. So, you know, in my opinion I won't be surprised if this becomes more of a common move in the future."⁸¹

42. Second, the BCCLA submits that law enforcement's success in cryptocurrency investigations shows that existing investigatory powers are sufficient to meet law enforcement objectives.⁸² The RCMP panel witnesses were clear that law enforcement investigations into virtual assets are complex, time consuming, resource intensive, difficult to pursue, and require partnerships among stakeholder agencies.⁸³ While the RCMP has achieved some successes in the realm of virtual assets,⁸⁴ the testimony of the RCMP panel was that these investigations are a relatively new phenomenon, they remain difficult due to the dynamic and evolving nature of cryptocurrency, and they present challenges that are not easily addressed.⁸⁵

⁷⁸ Virtual Assets Panel Transcript [at 70:20-22](#).

⁷⁹ Virtual Assets Panel Transcript [at 70:20 to 75:24](#).

⁸⁰ Virtual Assets Panel Transcript [at 76:1-12](#).

⁸¹ Virtual Assets Panel Transcript [at 26:17-21](#).

⁸² BCCLA Closing Submissions, para 93.

⁸³ Virtual Assets Panel Transcript [at 117:14 to 119:14](#), [138:24 to 141:12](#).

⁸⁴ See e.g. Virtual Assets Panel Transcript [at 136:3-24](#).

⁸⁵ Virtual Assets Panel Transcript at [129:4 to 131:10](#), [136:25 to 137:25](#).

43. Finally, the BCCLA asserts that, “law enforcement should not be permitted to circumvent *Charter* privacy protections by obtaining information about Canadians via third party software or services if they would not otherwise be able to obtain that information without court oversight”.⁸⁶ While Canada agrees with the importance of protecting the privacy rights guaranteed by the *Charter*, the BCCLA appears to misunderstand the testimony of the RCMP panel with respect to law enforcement’s use of third party cryptocurrency software providers.

44. A/Sgt. Gilkes testified that data on the blockchain is “pseudo-anonymous” and all information is publicly available, except for the identity and location of the individual making the transaction.⁸⁷ The panel spoke about the interplay between the blockchain and third party exchanges and they noted the important role judicial authorizations play in the investigation of offences involving cryptocurrency.⁸⁸

45. On cross-examination by counsel for the BCCLA, the RCMP panel members were asked about software tracing tools and the extent of possible law enforcement searches.⁸⁹ The RCMP witnesses testified that Chainalysis and CipherTrace do not hand information over to police. Rather, these companies provide a tool that assists law enforcement in interpreting existing publicly available information.⁹⁰ The data collected using these tools is the product of searches done by law enforcement on the public blockchain⁹¹ and the tools add any publicly available open source data from the internet to assist law enforcement in interpreting the blockchain transaction data they are investigating.⁹² Counsel for the BCCLA also asked similar questions of the Chainalysis panel and received similar answers.⁹³ Additionally, the RCMP panel acknowledged in their testimony the inherent privacy rights of

⁸⁶ BCCLA Closing Submissions, para 95.

⁸⁷ Virtual Assets Panel Transcript [at 35:21 to 36:1](#).

⁸⁸ Virtual Assets Panel Transcript at [44:12 to 47:8](#), [67:11 to 68:6](#), [142:9-24](#), [152:20 to 153:20](#).

⁸⁹ Virtual Assets Panel Transcript [at 161:3 to 165:2](#).

⁹⁰ Virtual Assets Panel Transcript [at 162:8-18](#).

⁹¹ Virtual Assets Panel Transcript [at 162:19 to 163:24](#).

⁹² Virtual Assets Panel Transcript [at 163:25 to 164:19](#).

⁹³ Transcript of Chainalysis Panel, November 24, 2020 [at 137:2 to 139:11](#).

Canadians⁹⁴ and under cross-examination, agreed with counsel for the BCCLA regarding the legitimate interest in financial privacy of those not engaged in criminal activity.⁹⁵

46. Paragraph 116 of the BCCLA's Closing Submissions provides only selective evidence regarding the Integrated Illegal Gaming Enforcement Team ("IIGET"). For example, the BCCLA submits that, "IIGET had numerous problems from its inception, with ill-defined roles, resourcing, and staffing issues."⁹⁶ However, the Commission also heard evidence about the evolution of IIGET, including evidence that the division of responsibilities between GPEB and RCMP staff became clear over time,⁹⁷ as well as evidence with respect to the RCMP's support for a proposal that would have doubled the size of IIGET, and evidence of the RCMP's commitment to prioritizing the staffing of IIGET if that proposal had been approved.⁹⁸

47. The BCCLA's submissions on IIGET also rely extensively on the testimony of Fred Pinnock, a former RCMP officer who held the role of Officer in Charge ("OIC") of IIGET from 2005-2007. However, Mr. Pinnock's testimony was often internally inconsistent and contradicted by the testimony of other witnesses. For example, the BCCLA cites Mr. Pinnock's evidence that his team was told to "play nice with GPEB", yet Mr. Pinnock was unable to point to a superior RCMP officer or a member of the IIGET consultative board that led him to form his belief that the RCMP were expected to "play nice with GPEB."⁹⁹ Mr. Pinnock attributed his belief to conversations he had with Joe Schalk, a Director at GPEB, and Calvin Chrustie, another former RCMP member who had been offered the role of OIC of IIGET.¹⁰⁰ During the hearings, however, Mr. Schalk denied Mr. Pinnock's assertions and Mr. Chrustie described his interactions with IIGET, including being offered the role of OIC

⁹⁴ Virtual Assets Panel Transcript [at 77:18-24](#).

⁹⁵ Virtual Assets Panel Transcript [at 159:21 to 160:2](#).

⁹⁶ BCCLA Closing Submissions, para 116.

⁹⁷ Ex. 77: Overview Report – Integrated Illegal Gaming Enforcement Team [**"OR – IIGET"**], Appendix C, Effectiveness Review of IIGET, ~~at 94 and 101-102~~ [at 27 and 34-35](#).

⁹⁸ Transcript of W. Holland, December 2, 2020 [**"Holland Transcript"**] [at 106:10-22](#), [130:21 to 131:13](#), [143:2-13](#), [149:15 to 151:7](#).

⁹⁹ Transcript of F. Pinnock, November 5, 2020 [**"Pinnock Transcript"**] [at 106:3-22](#).

¹⁰⁰ Pinnock Transcript [at 105:12 to 106:16](#).

of IIGET, without referring to any conversations that corroborated Mr. Pinnock's testimony.¹⁰¹

48. The BCCLA also relies on Mr. Pinnock's testimony to assert that the RCMP members of IIGET moved across the hall from GPEB investigators due to a strained relationship between the two groups.¹⁰² Mr. Pinnock's testimony regarding tension between the RCMP and IIGET members was contradicted by evidence from multiple witnesses who indicated that, despite some personal conflict between Mr. Pinnock and Mr. Schalk,¹⁰³ the relationships between the RCMP and GPEB members were positive and not characterized by conflict.¹⁰⁴ Further, Mr. Pinnock himself clarified under cross-examination that the tension existed between him and Mr. Schalk, while the relationship between the two units was "cordial and friendly."¹⁰⁵ Senior GPEB witnesses who worked alongside Mr. Pinnock did not corroborate Mr. Pinnock's claim regarding the reason for the RCMP's move, and testified to their belief that the move was motivated by a desire to ensure police independence was not compromised, obtain more office space for RCMP members, and address security issues.¹⁰⁶

49. In addition, the BCCLA refers to Mr. Pinnock's belief that IIGET's mandate did not include investigations into illegal activity in legal gaming venues, and his testimony that IIGET did not conduct any ML investigations with GPEB.¹⁰⁷ The BCCLA's submissions present Mr. Pinnock's testimony without providing the full context of the evidence provided by other relevant witnesses, including two former RCMP members who acted as the OICs of IIGET before and after Mr. Pinnock. In contrast to Mr. Pinnock's testimony, those witnesses testified that they understood IIGET's mandate to include investigations in legal

¹⁰¹ Transcript of J. Schalk, January 22, 2021 [**"Schalk Transcript"**] [at 131:5-12](#); Transcript of C. Chrustie, March 29, 2021 [at 36:17 to 37:8](#).

¹⁰² BCCLA Closing Submissions, para 116.

¹⁰³ Transcript of L. Vander Graaf, November 12, 2020 [**"Vander Graaf Transcript"**] [at 41:14-25](#).

¹⁰⁴ Transcript of T. Robertson, November 6, 2020 [**"Robertson Transcript"**] [at 52:25 to 53:2](#); Vander Graaf Transcript [at 41:14-17](#); Holland Transcript [at 114:12 to 115:24](#); Ex. 77: OR - IIGET, Appendix C, Effectiveness Review of IIGET, ~~at 94~~ [at 27](#).

¹⁰⁵ Pinnock Transcript [at 10:23 to 11:12](#).

¹⁰⁶ Vander Graaf Transcript [at 43:17 to 44:23](#); Schalk Transcript [at 131:24 to 133:6](#).

¹⁰⁷ BCCLA's Closing Submissions, para 116.

venues.¹⁰⁸ They explained that IIGET had not pursued ML investigations during their tenures as OIC due to the time- and resource-intensive nature of those investigations, but the expectation was that IIGET would pursue those investigations if the RCMP's proposal to double the size of the unit had been approved.¹⁰⁹

50. At paragraphs 121-122 of their Closing Submissions, the BCCLA provide an incomplete description of Mr. LePard and Ms. Tait's assessment of the impact of the Joint Illegal Gaming Investigation Team ("JIGIT").¹¹⁰ The BCCLA's submissions focus exclusively on the financial analysis aspect of measuring the return on investment of JIGIT and on whether asset confiscation through CFO referrals should be factored into this financial analysis.¹¹¹ The BCCLA fails to mention the social return on investment set out by Mr. LePard and Ms. Tait in their report and discussed by Mr. LePard in his testimony before the Commission.¹¹²

51. Mr. LePard specifically rejected an assessment approach that focused solely on the economic return on investment. He testified that this approach is limited because "it's not looking at all the benefits. It's simply looking at the amount of money seized and the estimate of the potential criminal activity disrupted.... [T]here's many other benefits to what JIGIT is doing as well."¹¹³ Among those unquantifiable benefits, Mr. LePard testified, "there is great value in that in terms of the value to the community, the magnifying effect of working with the police of jurisdiction in dealing with issues that they don't have the capacity or the expertise to deal with."¹¹⁴

52. Mr. LePard also testified that, "[p]olicing is not about producing a profit but looking at what we call social return on investment. What is the downstream benefits of the activities

¹⁰⁸ Robertson Transcript at ~~36:16-23~~ [at 36:14 to 37:12](#); Holland Transcript [at 104:12-19](#).

¹⁰⁹ Robertson Transcript [at 45:18 to 48:4](#); Holland Transcript [at 104:20 to 105:12](#), [130:14 to 131:13](#).

¹¹⁰ BCCLA Closing Submissions, paras 121-123.

¹¹¹ BCCLA Closing Submissions, paras 121-123.

¹¹² Ex. 803: Review of the Joint Illegal gaming Investigation Team (JIGIT) - D. LePard, C. Tait, November 2020 (GPEB5699) [at 130-140](#); Transcript of D. LePard, April 7, 2021 [**LePard Transcript**] [at 45:14 to 46:1](#) [at 45:11 to 46:1](#); see also LePard Transcript [at 39:10 to 42:1](#).

¹¹³ LePard Transcript [at 45:21 to 46:1](#).

¹¹⁴ LePard Transcript [at 30:22 to 31:1](#).

of JIGIT.”¹¹⁵ He reiterated several times in his testimony that a proper assessment of the impact of JIGIT must go beyond an assessment of the financial return on investment.¹¹⁶ The BCCLA’s submissions on the impact of JIGIT do not provide a complete and accurate picture of LePard and Tait’s findings on this issue.

D. CHARTERED PROFESSIONAL ACCOUNTANTS OF BRITISH COLUMBIA AND CHARTERED PROFESSIONAL ACCOUNTANTS OF CANADA

53. Given that the Closing Submissions of the CPABC and the CPAC significantly overlap, Canada addresses both of these participants in this section of the Reply Submissions.

54. At paragraphs 37 and 85 of their Closing Submissions, the CPABC states that they have never received any communication from FINTRAC about suspicious transactions reports or compliance concerns related to specific accountants or accounting firms in British Columbia.¹¹⁷ Similarly, at paragraph 76 of their Closing Submissions, the CPAC argues that the risk of Chartered Professional Accountants (“CPAs”) becoming involved in ML in British Columbia is very low and cite to the evidence of CPABC in support of that proposition.¹¹⁸ In particular, the CPAC notes that the CPABC has never received a complaint about one of its members being engaged in ML activities or a referral from FINTRAC raising concerns about one of its members.

55. However, the fact that the CPABC has not received intelligence from FINTRAC in respect of any of its members does not indicate that the risk of ML in the sector is very low. Indeed, the Assessment of Inherent Risk of Money Laundering and Terrorist Financing in Canada 2015 assessed the ML/TF vulnerability of the accounting sector overall as

¹¹⁵ LePard Transcript [at 9:23 to 10:1](#).

¹¹⁶ LePard Transcript, see for example: [30:12 to 31:1](#), ~~37:20-22~~ [38:20-22](#), [45:21 to 46:1](#).

¹¹⁷ Organization of Chartered Professional Accountants of British Columbia [“CPABC”] Closing Submissions, paras 37, 85.

¹¹⁸ Chartered Professional Accountants of Canada [“CPAC”] Closing Submissions, para 76.

“medium”, noting, for example, that the client profile of accountants would include high net worth clients, PEPs and vulnerable businesses.¹¹⁹

56. The limited information sharing between FINTRAC and the CPABC and CPAC is the result of statutory limitations on information sharing under the PCMLTFA. Specifically, the CPABC and the CPAC are not disclosure recipients listed in s. 55(3) of the PCMLTFA and, therefore, cannot receive financial intelligence from FINTRAC.¹²⁰ Furthermore, FINTRAC does not have an MOU in place with either the CPABC or the CPAC that would allow for the sharing of regulatory compliance information in respect of the accounting sector. As a result, there is no existing legal mechanism by which FINTRAC could share the details of financial transactions or make a financial intelligence disclosure to the CPABC in respect of ML activities. This information is only permitted to be shared with designated disclosure recipients if the necessary statutory thresholds for disclosure have been met.¹²¹

57. Similarly, at paragraph 78 of their Closing Submissions, the CPABC rely on a Financial Action Task Force (“FATF”) report for the proposition that because CPAs in BC do not provide the services that the FATF lists as the most susceptible to ML risks, the level of risk for CPAs in BC is significantly lower than in other jurisdictions internationally.¹²² This submission is based on a misunderstanding of the FATF report. The FATF report is not a comparative document, nor is it an assessment of the risks faced by BC CPAs. Rather, it is, as the title indicates, “Guidance for a Risk-Based Approach: Accounting Profession” (“FATF Guidance Document”).¹²³ At paragraph 22 of the FATF Guidance Document, “some” of the functions performed by accountants that are the most susceptible to the potential launderer are listed. This list is not exhaustive. No assessment of BC accountants or the risks posed by the services they provide is made in the FATF Guidance Document.

¹¹⁹ Ex. 396: Department of Finance Canada, Assessment of Inherent Risk of Money Laundering and Terrorist Financing in Canada 2015 [at 32](#), [40](#).

¹²⁰ PCMLTFA, [ss. 55\(3\)](#) and [55\(7\)](#).

¹²¹ PCMLTFA, [s. 55\(3\)](#).

¹²² CPABC Closing Submissions, para 78.

¹²³ Ex. 391: Overview Report on the Accounting Sector in British Columbia – December 17, 2020, [Appendix B](#).

E. COALITION OF TRANSPARENCY INTERNATIONAL CANADA, CANADIANS FOR TAX FAIRNESS and PUBLISH WHAT YOU PAY CANADA

58. The Closing Submissions of the Coalition contain numerous assertions with respect to the Federal Regime that are inaccurate and unsupported by the evidence before the Commission. Canada's reply to the Coalition will not attempt to address each of these assertions but will, instead, focus on correcting factual inaccuracies in the Coalition's submissions regarding the Federal Regime.

59. The Coalition also puts forward numerous recommendations regarding the administration and management of federal entities such as the RCMP, FINTRAC and CRA, as well as recommendations for federal policy and legislative changes. As set out in Canada's Closing Submissions, Canada's position is that such recommendations are beyond the constitutional reach of this provincial Commission.

60. The Coalition's assertions with respect to Canada's participation in the Commission's proceedings are inaccurate. The Coalition asserts that FINTRAC and the PPSC refused to cooperate with the Commission, and that the CRA's "failure" to participate in the Commission's proceedings represented a failure of Canada to meaningfully participate in this Commission.¹²⁴ These assertions are premised on a misunderstanding of the process followed during the Commission's hearings.

61. Commission counsel were responsible for determining who would be called as witnesses during the Commission's hearings. Canada played no role in that decision-making process and provided witnesses in response to every request made by Commission counsel. In total, 32 federal witnesses from the RCMP, the Department of Finance, FINTRAC, CBSA, CMHC, and Statistics Canada testified during the hearings.¹²⁵ Officials from other federal departments, including the CRA, did not appear as witnesses because Commission counsel did not request witnesses from those departments. Canada's Closing Submissions provide a full list of federal officials, including officials from the CRA, who

¹²⁴ Coalition of Transparency International Canada, Canadians for Tax Fairness, Publish What you Pay ["**Coalition**"] Closing Submissions, para 2, footnote 1, and para 32.

¹²⁵ Canada Closing Submissions, para 6.

provided presentations and participated in interviews with Commission counsel outside of the formal hearing process.¹²⁶

62. Similarly, rather than call provincial or federal prosecutors as witnesses during the hearings, Commission counsel elected to provide the Commissioner with relevant prosecutorial evidence by conducting interviews with prosecutors and presenting relevant information in an overview report.¹²⁷ Canada facilitated an interview between Commission counsel and a senior member of the PPSC on February 17, 2021.¹²⁸ The information provided during that interview supplemented information from a report on money laundering-related PPSC files in BC that the PPSC had already provided to Commission counsel,¹²⁹ and responses PPSC had provided to written questions posed by Commission counsel.¹³⁰

63. The Coalition's request that the Commissioner draw an adverse inference about FINTRAC's motives for "refusing to cooperate with the Commission" must be rejected.¹³¹ Such an inference would be beyond the scope of the constitutional jurisdiction of this Commission. Factually speaking, it is inaccurate to suggest that FINTRAC refused to cooperate with the Commission. As noted at paragraph 6 of Canada's Closing Submissions, FINTRAC officials were actively involved in the Commission's proceedings by participating in interviews with Commission counsel and by appearing as witnesses during the hearings. A total of six FINTRAC officials participated in interviews with Commission counsel, and, at the request of Commission counsel, four FINTRAC officials later appeared as witnesses during the hearings.¹³² Three FINTRAC officials appeared as witnesses twice to provide the Commissioner with FINTRAC evidence related to two separate sectors.¹³³ In addition, FINTRAC provided the Commission with relevant documents and affidavit evidence, while complying with statutory, common law privilege, and constitutional limitations on the

¹²⁶ Canada Closing Submissions, para 6.

¹²⁷ [Ex. 1015: OR – Prosecution of MLPC Offences](#).

¹²⁸ Ex. 1015: OR – Prosecution of MLPC Offences [at para 19](#).

¹²⁹ Ex. 1015: OR – Prosecution of MLPC Offences, [Appendix E](#).

¹³⁰ Ex. 1015: OR – Prosecution of MLPC Offences, [Appendix F](#).

¹³¹ Coalition Closing Submissions, para 2, footnote 1.

¹³² Canada Closing Submissions, para 6, footnote 4.

¹³³ Canada Closing Submissions, para 6, footnote 5.

disclosure of information in FINTRAC's possession. Fifteen FINTRAC documents and one affidavit affirmed by a FINTRAC official were ultimately marked as individual exhibits during the Commission's proceedings.¹³⁴ Additional FINTRAC documents were included in overview reports that were marked as exhibits.¹³⁵

64. At paragraph 10 of their Closing Submissions, the Coalition describes Criminal Intelligence Service Canada ("CISC") as "a branch of the RCMP." CISC is not a branch of the RCMP. Rather, it is part of the National Police Services, which is administratively stewarded by the RCMP.¹³⁶

65. The Coalition's submissions with respect to the capacity of the Federal Regime are also factually inaccurate. At paragraph 39, the Coalition sets out a number of challenges that ML poses to law enforcement without providing any references to evidence before the Commission, which makes it difficult to respond to these assertions. However, some of these assertions are misleading on their face and are addressed below.

¹³⁴ [Ex. 346: FINTRAC, Professional Money Laundering Through Trade and Money Services Businesses, July 18, 2018 \(CAN-000172\)](#); [Ex. 441: Money Laundering and Terrorist Financing \(ML-TF\) Typologies and Trends for Canadian Money Services Businesses \(MSBs\), FINTRAC Typologies and Trends Reports, July 2010 \(CAN-001243\)](#); [Ex. 442: Professional Money Laundering in Canada, March 2019 \(CAN-001276\)](#); [Ex. 443: Trends in Canadian Suspicious Transaction Reporting \(STR\) FINTRAC Typologies and Trends Reports, April 1, 2011](#); [Ex. 444: Trends in Canadian Suspicious Transaction Reporting \(STR\) – Part II, October 1, 2011 \(CAN-001239\)](#); [Ex. 445: Financial Intelligence Report Criminal Informal Value Transfer Systems \(IVTS\), February 2016 \(CAN-000202\)](#); [Ex. 446: FINTRAC Statistics Letter, January 15, 2021](#); [Ex. 447: FINTRAC Report to Minister of Finance on Compliance and Related Activities, September 30, 2017 Redacted \(CAN-001168\) \[also marked as Ex. 630\]](#); [Ex. 448: 2018 FINTRAC Report to Minister of Finance on Compliance and Related Activities, September 2018 Redacted \(CAN-001169\)](#); [Ex. 449: List of Compliance Engagement Activities 2017-18 to 2019-20 \(CAN-001316\)](#); [Ex. 615: RECBC Memorandum of Understanding with FINTRAC, March 2019 Redacted \(CAN-000906\)](#); [Ex. 620: FINTRAC Overview - Slide Presentation to RECBC, May 2019 \(CAN-001319\)](#); [Ex. 626: FINTRAC's AMLTF Real Estate Sector Presentation, September 19, 2018 \(CAN-001330\)](#); [Ex. 627: FINTRAC's Meeting with Representatives of the Canadian Real Estate Association, June 5, 2018 \(CAN-001331\)](#); [Ex. 628: FINTRAC Memorandum on issue of Money Laundering and Real Estate in BC Banking and Private Lenders, December 13, 2018 \(CAN-001170\)](#); [Ex. 629: FINTRAC Report to Minister of Finance on Compliance and Related Activities, September 2019 \(CAN-001708\)](#); [Ex. 740: Sample FINTRAC Letter RE: Compliance Examination Findings \(redacted\)](#); [Ex. 990: Affidavit of Annette Ryan, affirmed April 27, 2021.](#)

¹³⁵ See, e.g., Ex. 1021: Overview Report: Miscellaneous Documents, [Appendices 5 and 15](#).

¹³⁶ CISC/CISBC Panel Transcript [at 6:46 to 7:9](#); see also <https://cisc-src.gc.ca/about-ausujet/index-eng.htm>.

66. For example, in subparagraph 39(b) the Coalition asserts that the RCMP and other provincial agencies lack the required expertise to address ML. This assertion is contrary to the evidence set out in Canada’s closing submissions with respect to the numerous federal initiatives that continue to expand and develop this expertise.¹³⁷

67. The Coalition’s assertion regarding the prosecution of ML offences in subparagraph 39(d) is also contrary to evidence before the Commission. This evidence demonstrates that ML offences are not considered secondary in importance to the prosecution of predicate offences. Since 2008, federal Criminal Operations Officers and the Deputy Commissioner of Federal Policing have identified that ML and POC should be components of all federal policing investigations.¹³⁸ More recently, a formal directive from the Deputy Commissioner of Federal Policing (the “Directive”) stated that the Public Prosecution Service of Canada recognizes that POC and ML are key priorities for the Government of Canada.¹³⁹ The Directive requires prosecutors to support investigative agencies in their increased focus on offences under the PCMLTFA.¹⁴⁰

68. Similarly, at subparagraph 39(e) the Coalition opines that, “there is a lack of political will to make financial crimes a target”. This opinion is contrary to the evidence provided by Canada’s witnesses. For example, Federal Budget 2019 committed over \$173 million to strengthening Canada’s AML and ATF regime.¹⁴¹ This commitment includes the creation of the ACE Team (also known as the FC3) and the multi-disciplinary Trade Fraud and Trade-Based Money Laundering Centre of Expertise.¹⁴² In addition to financial commitments made in Budget 2019, Canada also committed to legislative amendments to strength Canada’s

¹³⁷ See Canada Closing Submissions, paras 51, 111, 147, 179, 202, and 205.

¹³⁸ Taylor Transcript [at 45:21 to 46:9](#).

¹³⁹ Ex. 861: Letter from Michael Duheme to CROPS Officers – All Divisions re Directive on Proceeds of Crime and Money Laundering in All Future Federal Policing Serious and Organized Crime Investigations, February 4, 2020 (CAN-001278) [[“Duheme Letter”](#)].

¹⁴⁰ Ex. 861: [Duheme Letter](#).

¹⁴¹ Ex. 1019: Soper Affidavit, Exhibit A [at 2-3](#).

¹⁴² Ex. 1019: Soper Affidavit, Exhibit A [at 3](#).

legislative AML framework.¹⁴³ As noted above, the Directive also provides clear instruction from the most senior level of Federal Policing to consider ML in all FSOC investigations.¹⁴⁴

69. Paragraph 40 of the Coalition’s submissions conflates the role of law enforcement with the role of the prosecution services. The Coalition states that, “the RCMP’s success rate for convicting money laundering is a fraction of what it is for other crimes.”¹⁴⁵ The RCMP does not prosecute or convict ML offences. Law enforcement’s role is to investigate and, in some provinces, to lay charges.¹⁴⁶ It is up to the prosecution services to prosecute the offence through the court system and ultimately it is up to the Court to convict.

70. Paragraph 40 is also misleading with respect to the success rate of convictions for ML. Statistics Canada conducted an analysis of incident-based data collected from police services across the country and the Integrated Criminal Court Survey between 2009-2018.¹⁴⁷ According to the evidence provided by Statistics Canada, where ML is the most serious offence charged, the accused is convicted over a quarter of the time (27%). While this conviction rate is lower than the rate for other crimes (63%), ML convictions more often result in custody (45% of the time, versus 34% of the time for non ML convictions).¹⁴⁸ These statistics also do not capture that fact that many ML charges may be dropped as part of a plea bargain.¹⁴⁹

71. Evidence from the PPSC includes statistics on concluded prosecution files between 2012/2013 and 2016/2017. Of a total of 163 files with a ML component, ML was the stand alone offence in 45 files. Of those 45, 23 resulted in a substantive disposition. In 18 of 23, the accused was convicted or pled guilty (78%) and 5 were acquitted.¹⁵⁰

72. At paragraph 41, the Coalition suggests ML “may” have a lower priority due to other policing priorities. However, evidence before the Commission demonstrates that ML is a

¹⁴³ Ex. 1019: Soper Affidavit, Exhibit A [at 3](#).

¹⁴⁴ Ex. 861: [Duheme Letter](#).

¹⁴⁵ Coalition Closing Submissions, para 40.

¹⁴⁶ Ex. 1015: OR – Prosecution of MLPC Offences, [Appendix C](#).

¹⁴⁷ STC Panel Transcript, testimony of E. Bekkering [“**E. Bekkering**”] [at 131:2 to 133:6](#).

¹⁴⁸ STC Panel Transcript, E. Bekkering [at 138:18 to 139:16](#); Ex. 703: WS1 Feasibility Study [at 29](#).

¹⁴⁹ Ex. 703: WS1 Feasibility Study [at 28-29](#); STC Panel Transcript, E. Bekkering [at 136:7 to 139:16](#).

¹⁵⁰ Ex. 1015: OR – Prosecution of MLPC Offences, Appendix B [at 1](#).

priority focus in federal law enforcement operations.¹⁵¹ The RCMP recognizes that POC and ML are key priorities for the Government of Canada.¹⁵² POC and ML must be examined at the outset of every Federal Policing serious and organized crime investigation. A rationale must be provided if a POC/ML investigation is not pursued.¹⁵³ As Superintendent Peter Payne testified, the RCMP have made ML a priority and takes ML offences seriously.¹⁵⁴

73. At paragraph 45, the Coalition asserts that FINTRAC lacks analytic capacity and has effectively delegated oversight of Canadian financial institutions to the United States authorities. In support of this assertion, the Coalition cites a portion of its cross-examination of Mr. Matthew McGuire, a CPA and co-founder of the regulatory compliance firm AML shop.¹⁵⁵ However, the portion of McGuire’s testimony that is cited does not stand for the broad proposition advanced by the Coalition. In response to a question from Coalition counsel regarding whether Canadian regulators, including OSFI and FINTRAC, are taking a “backseat” in relation to the US regulators, Mr. McGuire opined that US sanctions “are the most powerful and persuasive ones” and that in the US, there is a focus among financial institutions on complying with legislation, in part due to the requirements of various financial networks. Earlier in his testimony, Mr. McGuire explained that many Canadian financial institutions have a presence in the US and that US legislation, including US sanctions, can have an extraterritorial effect.¹⁵⁶ The fact that US sanctions may be applied to Canadian financial institutions does not amount to a delegation of authority by FINTRAC or suggest that oversight of Canadian financial institutions by Canadian regulators is insufficient.

74. At paragraph 47, the Coalition asserts that the OSFI is “equally unable to engage in oversight or provided meaningful guidance to banks and other financial institutions” on AML protocols. The Coalition cites no evidence in support of this criticism. During his testimony, Mr. McGuire opined that OSFI did in fact have the institutional capacity to issue prudential

¹⁵¹ Ex. 863: Presentation – Briefing for the Cullen Inquiry, Supt. B. Taylor [at 4](#).

¹⁵² Ex. 861: [Duheme Letter](#).

¹⁵³ Ex. 861: [Duheme Letter](#).

¹⁵⁴ Transcript of P. Payne, April 16, 2021 [at 102:10 to 103:1](#).

¹⁵⁵ See. [Ex. 392: Curriculum Vitae of Matt McGuire](#).

¹⁵⁶ Transcript of M. McGuire, January 11, 2021 [**“McGuire Transcript”**]-at 197-198 [at 197:13 to 198:8](#).

guidance to Canada’s chartered banks and confirmed that OSFI has ordered remediation for AML for some financial institutions in Canada.¹⁵⁷ Further, and as set out in Canada’s Closing Submissions, following the 2019/2020 – 2021/2022 transition, FINTRAC will assume primary responsibility for conducting independent assessments of Federally Regulated Financial Institutions (“FRFIs”) to ensure compliance with the PCMLTFA and associated Regulations.¹⁵⁸

75. At paragraph 50, the Coalition suggests that there is “a low level of cooperation, integration, and interoperability” amongst key federal agencies including CRA, FINTRAC, PPSC and RCMP. This assertion does not take into account the legal capacity to share information. Federal entities must adhere to privacy legislation, including the *Federal Privacy Act*, RSC, 1985, c P-21, as well as requirements in numerous statutory instruments such as the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) and the PCMLTFA, when engaging in information sharing. As set out in Canada’s Closing Submissions, all cooperation amongst federal entities must respect the legislative limitations on information sharing.

76. At paragraphs 23 and 48, the Coalition recommends various audits of federal agencies, including a recommendation that the Auditor General of Canada perform and publicize annual bi-annual reports to measure improvements to the AML regime. As already noted, recommendations with respect to the administration and management of federal entities is beyond the constitutional reach of a provincial Commission of inquiry. It is also incorrect to suggest that there are no existing audits of federal agencies. Pursuant to the PCMLTFA, a review must be conducted by a committee of the House of Commons, of the Senate or of both Houses every five years. This statutory review involves an in-depth analysis of the AML regime, consultations with stakeholders and experts in the field of AML and recommendations for improvement.¹⁵⁹

¹⁵⁷ McGuire Transcript at [195:8-17](#).

¹⁵⁸ Canada Closing Submission at 18.

¹⁵⁹ Ex. 436: Confronting Money Laundering and Terrorist Financing: Moving Canada Forward, Report of the Standing Committee on Finance, November 2018 [at 9](#).

CONCLUSION

77. Canada trusts that the factual clarifications set out above are of assistance and provide the Commissioner with a more complete picture of the evidence tendered and the testimony given during the course of the Commission's proceedings. Canada looks forward to reviewing the Closing Submissions of the gaming participants when they are filed in the coming months and to providing further Reply Submissions as necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Vancouver, in the Province of British Columbia, this 30th day of July, 2021.



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