COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA

RESPONDING SUBMISSIONS OF THE LAW SOCIETY OF BRITISH COLUMBIA

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PART 1 - OVERVIEW

1. In these submissions, the Law Society of British Columbia (**Law Society**) responds to the limited discussion regarding the legal profession in other participants' submissions. As is clear from the brevity of this response, few participants mentioned legal professionals in their submissions, and even fewer raised concerns about the risk of ML associated with legal professionals. Those that did, as discussed below, did not cite specific evidence of any wrongdoing or any evidence to challenge the efficacy of the Law Society's regulation and oversight of legal professionals in respect of AML. The abbreviations used in these responding submissions are as defined in the Law Society's Closing Submissions of July 9, 2021.

PART 2 - SELF REGULATION

2. At paragraph 133 of its submissions, the Government of Canada notes its continued work with law societies and the FLSC to strengthen self regulation in the legal profession as it relates to ML and terrorist financing. The Law Society agrees with the focus on self regulation and collaboration as the most appropriate means of advancing shared AML objectives.

PART 3 - REPORTING

3. The Province of British Columbia expresses, at paragraph 42 of its submissions, its openness to considering making a request to the Government of Canada to add entities to the FINTRAC reporting regime. However, the Province does not advocate for the addition of lawyers specifically. For the reasons set out in the Law Society's Closing Submissions as well as the submissions of the Canadian Bar Association British Columbia Branch and the Criminal Defence Advocacy Society, the Law Society does not believe the addition of lawyers to the reporting regime would be appropriate.

4. At paragraph 50 of its submissions, not speaking specifically of lawyers, the BC Civil Liberties Association notes its opposition to adding further reporting entities to the FINTRAC regime.

5. The Chartered Professional Accountants of British Columbia (**CPABC**) contrast, at a high level, the fact that Chartered Professional Accountants (**CPAs**) have FINTRAC reporting obligations with the fact that lawyers do not. In doing so, however, CPABC does not suggest the fact that lawyers are not subject to the FINTRAC reporting obligations is wrong. Rather, CPABC acknowledges the significance of the *Federation* case and the existence of a constitutional barrier in relation to lawyer reporting that does not apply to CPABC members (paragraphs 6, 97).

PART 4 - TRUST ACCOUNTS

6. At a high level and in passing, CPABC contrasts lawyers to CPAs who less commonly have trust accounts, are subject to FINTRAC reporting obligations, and are perceived to be associated with lower risk (e.g., paragraphs 6, 49, 51, 80-81, 91, 97). However, CPABC does not suggest that CPABC or its members themselves have any information regarding lawyer wrongdoing or the misuse of trust accounts.

7. At footnote 245 in paragraph 95 of its submissions, the Government of Canada cites page 79 of the 2016 MER in support of the statement that "[t]he main typologies identified in Canada from a review of real estate-related STRs submitted to FINTRAC included the use of nominees by criminals, the structuring of cash deposits, and the use of sophisticated schemes involving loans, mortgages, and the use of a lawyer's trust accounts." The portion of the MER relied on says that typologies include "more sophisticated schemes where, for example, loan and mortgage schemes are used in conjunction with the use of lawyer's trust account."[1] The 2016 MER notes in the same paragraph that, in light of their perception of risk, some financial institutions "conduct enhanced monitoring" of trust accounts held by lawyers and other legal professionals.[2]

PART 5 - SUBMISSIONS OF THE TI COALITION

8. In the July 20, 2021 submissions of the coalition of Transparency International Canada, Canadians for Tax Fairness and Publish What You Pay Canada (the **TI**

[1] Ex. 601, App. 5, para. 206 (p. 79)

[2] Ex. 601, App. 5, para. 206 (pp. 78-79)

Coalition), the TI Coalition makes certain statements and recommendations outside its grant of standing in this Inquiry, including in relation to the regulation of the legal profession – *e.g.*, paragraphs 31, 33, 34 and 203(c) regarding professional rules and continuing legal education courses. The TI Coalition was not granted standing in the professional services sector.[3]

9. The concern about the TI Coalition's overreach in its submissions is not a technical one. Rather, given its lack of standing, the TI Coalition is not now in a substantive position to address certain issues. In accordance with its lack of standing, the TI Coalition did not put to witnesses in the professional services sector the concerns that it now raises, nor did it file evidence directed to these points on which its authors could be cross-examined.

10. To the extent such submissions are found to fall within the TI Coalition's grant of standing, its recommendations regarding lawyers' gathering and preservation of information at paragraphs 31 and 33 as well as 203(c) do not take into account existing obligations under the Law Society Rules; client identification and verification rules or trust accounting rules are already in place addressing such matters. To the extent the TI Coalition's recommendations, including also at paragraph 203(g), go further and suggest that lawyers might provide information they gather to the state, those recommendations are contrary to the constitutional imperatives of solicitor-client privilege and lawyers' necessary commitment to their clients' cause which are reflected in the *Federation* decision.

11. Further, the TI Coalition's suggestion at paragraph 203(c) that the "Province enact specific professional rules" in relation to lawyers is, even apart from the substantively problematic nature of the recommendations, contrary to the fact that, by statute and in accordance with constitutional concerns regarding independence of the legal profession, it is the Benchers, not the Province, who enact rules for the governing of lawyers and the carrying out of the mandate central to the *LPA.*[4]

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[3] Ruling #1, para. 139

[4] *LPA*, s. 11

12. Although arguably this time within the subject-matter parameters of the sectors in which the TI Coalition *does* have standing, the TI Coalition also makes untenable blanket allegations of corruption and ML facilitation against the "professionals" category (including lawyers, accountants and others) that are not consistent with the detailed evidence at the hearing and, correspondingly, are not supported by any evidentiary references. See, for example, paragraphs 26, 29, 35 and 78 of the TI Coalition's submissions, where allegations against professionals are made without the benefit of evidence to support such speculation.

13. The only reference that the TI Coalition provides for "[u]nwitting or corrupted accountants, lawyers and bankers" being "vectors of money laundering and tax evasion schemes" (paragraph 28) is to two cases, one of a court and one of a tribunal: *R. v. Rosenfeld*[5] and *Re Coles*.[6]

14. The events in the *Rosenfeld* case occurred in 2002, before the introduction of the cash transaction rule and various other AML endeavours of law societies. The accused was based in Ontario and, although a lawyer, "apparently did not spend much of his time practising law" (paragraph 28). Rather, criminal activity was how he chose to make his living and was his business (paragraphs 39, 44). As is entirely appropriate, he was successfully prosecuted, with an elevated sentence that took into account his status as a lawyer (paragraphs 40-41). Also appropriately, the Law Society of Upper Canada revoked his licence in 2010; by this point, he had long also been on an undertaking not to practise law at all.[7]

15. In *Coles*, another Ontario case, the Law Society considered circumstances associated with the lawyer's conviction, in 1993, of "the offence that he, between January 1, 1983 and September 29, 1986, did unlawfully evade or attempt to evade taxes" (page 1, emphasis added). He had also committed perjury in a related receivership examination in the 1980s. Appropriately, he was sentenced to 45 months'

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[5] 2009 ONCA 307

[6] 1997 CanLII 591 (On LST)

[7] *Law Society of Upper Canada v. Rosenfeld*, 2010 ONLSHP 143

imprisonment in 1993, and disbarred in 1997. It is not clear that this was an ML case.

16. At paragraph 146 of its submissions, the TI Coalition includes an excerpt from the testimony of Oliver Bullough in which he suggests that most people involved in money laundering "in somewhere like Vancouver" have relatively high status in the community, and goes on to suggest that "two or three well publicized criminal convictions and prison terms for you know, high profile lawyers or accountants would go a very long way to dissuade any other lawyers and accountants from engaging in these kinds of activities". This should not be taken as suggesting lawyer involvement in ML in BC. Mr. Bullough had never been to Canada,[8] the focus of his work had not to date been Canada,[9] he was not put forward as an expert on BC specifically,[10] and he is not an economist or lawyer.[11] His first two books had related to Russia, including alcoholism among ethnic Russians,[12] and he is by speciality a Russianist.[13] His third book, *Moneyland*, which featured prominently in his testimony, deals with the movement of money from a range of sources, including legitimate ones.[14] Its chapters include stories about marital assets shielded from a high-profile model, tragic health conditions in Ukraine and the nuclear poisoning of a former Russian secret policeman,[15] and are engaging, but provide no basis for conclusions about the existence of lawyer wrongdoing in Canada. This said, certainly in *Rosenfeld*, the criminal conviction and prison term for which Mr. Bullough advocates were imposed, and the court intended in imposing its five-year prison sentence to prioritize the objectives of societal denunciation and both general and

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[8] Transcript (2 June 2020) p. 11 ll. 40-46 (Bullough)

[9] Transcript (2 June 2020) p. 20 ll. 17-25 (Bullough)

[10] Transcript (2 June 2020) p. 11 ll. 30-34 (comment by Commission counsel)

[11] Transcript (2 June 2020) p. 20 l. 32 - p. 21 l. 10 (Bullough)

[12] Transcript (2 June 2020) p. 14 l. 22 - p. 15 l. 31 (Bullough)

[13] Transcript (1 June 2020) p. 2 ll. 1-7 (Bullough); Transcript (2 June 2020) p. 20 ll. 14-16 (Bullough)

[14] Transcript (2 June 2020) p. 17 l. 6 - p. 18 l. 45 (Bullough)

[15] Transcript (2 June 2020) p. 18 l. 46 - p. 20 l. 13 (Bullough)

specific deterrence.[16]

17. At paragraphs 21-22 of its submission, the TI Coalition suggests that the 2016 MER (from FATF) "should be of considerable concern to Canada, British Columbia and this Commission". While the TI Coalition does not refer specifically in this regard to the MER's discussion of lawyers, the flaws in relation to that report (as described in paragraphs 57-61 of the Law Society's Closing Submissions of July 9, 2021) underline that achieving the correct and constitutionally compliant solutions for Canada is a more important goal than seeking to appease FATF. This said, it may be that faced with a persistent, firm and unified approach by government and regulatory bodies during future evaluations, FATF may come to understand the merit of those Canadian solutions as well.

PART 6 - CONCLUSION

18. Given all the above, the Law Society reaffirms the positions taken and recommendations outlined in its Closing Submissions of July 9, 2021.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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[16] *Rosenfeld, supra* note 5 at para. 46